

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

MOKETE MOTENATENA

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 7th day of December, 1990.

The accused is charged with the murder of Motebang Letlaka who died on 18th September, 1987 following knife wounds he sustained while at Upper Thamae in the Maseru district.

With a view to shortening the proceedings the defence counsel admitted on behalf of the accused the preparatory examination depositions of the following witnesses:-

P.W.1 G. Letlaka
P.W.5 Dr Sheila Lungelwa
and P.W.9 Sgt. 'Neko.

The crown accepted these admissions. The admitted depositions were accordingly read into the recording

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machine and incorporated into the instant proceedings. Exhibits "A" - the post-mortem report - and "B" - the identification parade form were also admitted.

P.W.10 D/Trooper Ramakeoane told the court that on 19th September 1987 he had cause to go to Queen Elizabeth II hospital mortuary where he saw the body of the deceased. This witness saw that the body had the following injuries to wit,

- (a) two open wounds on the left hand side of the chest;
- (b) an open wound on the upper left arm;
- (c) an open wound on the left thigh and
- (d) scratch in the left palm.

P.W.10 then proceeded to the scene with P.W.7 captain Sempe and Trooper Koma. While there he saw blood on the ground next to what used to be L.C.U.

P.W.10 then started looking for the accused but failed to find him that day or the next. He ultimately found him on 21st September, 1987 and arrested him. He searched the accused and found a knife Ex."1" on him. He questioned him about it and the accused gave him an explanation regarding this knife. P.W.10 then gave the accused the usual caution whereupon the accused led P.W.10 to the accused's residence at Upper Thamae where a pair of blue overalls bearing the Maluti Mountain Breweries logo was found. This is Ex."2".

Exhibit "2" answered the description of the apparel worn by the accused on the day of the event. The

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description had been given by P.W.4 'Mankutu who identified the overalls in the presence of the accused at the Charge Office.

P.W.7 Captain Sempe in her evidence told the court that during the evening of 18th September, 1987 when she was already asleep she heard someone shouting her name. She identified the caller's voice as Moipone's. Following P.W.6 Moipone's report P.W.7 took her vehicle and proceeded to the scene where she found the deceased lying in a reclining position upon a rubble of stones heaped there by L.C.U. road construction workers.

P.W.7 recognised the deceased as the boy who presently stayed with his mother P.W.6 in P.W.7's yard.

The deceased was rushed to the casualty section of the hospital where he was certified dead shortly after arrival. Thereupon P.W.7 went to Upper Thamae police post to make a report. P.W.7 was cross-examined about the deceased's clothing and the people she found at the scene. My main concern however was whether when conveyed by P.W.7 in her vehicle the deceased sustained any further injuries. I am satisfied that he did not. I am satisfied that because P.W.7 in answer to the call about the deceased's imperilled life would have been foolish to devote the remaining precious moments examining the wounds sustained by the deceased at the scene instead of forthwith taking him as she did to a place where the deceased's life stood a good chance of being saved.

/P.W.3

P.W.3 Limo Selebeleng was at the time of the events employed as a security guard at Peete Peete's bar now owned by one Mosiane. The thrust of his evidence was that he had seen the accused at the bar on the day of the incident even though he did not know his name. He knew the accused only facially. He usually saw the accused come to the bar and drink.

Late in the evening of 18th september 1987 P.W.4 Mankutu asked P.W.3 to grant the deceased, who was under age, permission to come into the bar to look for his mother. Permission was granted.

The deceased went to his mother. The mother P.W.6 gave the deceased and P.W.4 who was known to P.W.3 something to drink. P.W.3 said P.W.4 and the deceased were drinking beer. However P.W.4 and P.W.6 deny this very vehemently. I have no doubt in my mind that because of his lack of proper attention to what these children i.e. the deceased and P.W.4 were drinking, P.W.3 is not correct in saying they were drinking beer. In any event my observation of P.W.3 is that he is a man of very low level of intelligence.

P.W.3 happened to have gone to an out-building near the gate after he had signalled in the bar that it was closing time when he saw the deceased go out through the gate in the company of P.W.4.

A while later the accused went out through the gate following them.

A short time afterwards P.W.4 came back running towards the bar and made a loud report to the deceased's mother. Following this report P.W.4 and a good number of those who were in the bar including the deceased's mother hastened to the scene where they found the deceased fallen. P.W.3 saw blood in the chest area where the deceased had clutched his hand.

P.W.3 tried to raise him but the deceased slumped back still clutching at his chest. The deceased gave a few kicks and collapsed.

P.W.8 Thabang Moseli a night-watchman staying some 15 paces away from the scene also came near the scene but did not go beyond the fence lying some five paces away from the scene. The scene is said to be 50 paces away from Mosiane's bar. Thus it could be made in 3 minutes in a round trip at a fast pace. At a run it could even take shorter.

In his evidence P.W.8 said he was on night duty at L.C.U. on the night of the incident. He said he saw two people approach the place next to him at a run. They were chasing each other. P.W.8 moved towards them but was kept away from them by a high fence that surrounded the L.C.U camp. However he saw one of the two people get hold of the other just beyond a high heap of crushed stones. Then the one being held was crying and asking for forgiveness from his pursuer.

Some women asked P.W.8 where the person who was

/crying

crying was. P.W.8 gave them the direction by throwing a stone at the scene some ten paces beyond the fence.

The two that he had seen seemed to have been engaged in a fight. One of them fell to the ground before the women arrived. The one who was crying only stopped crying when the other left taking the direction of Mantalo's place.

The evidence of this witness carries the event just a stage further than where P.W.4 leaves hers off.

P.W.4 testified that she and the deceased went looking for the deceased's mother at Mosieane's bar. They found her and asked her to go along with them home. But she delayed and gave them a go ahead by letting them carry her sling bag with them.

When they had gone some 30 yards beyond the gate they noticed that someone was chasing after them and throwing stones at them. When the pursuit became hotter and hotter P.W.4 separated from the deceased and turned into L.C.U. camp by jumping over or through the fence. The accused proceeded hotly behind the deceased, caught up with him and started assaulting him. P.W.4 immediately and hurriedly retraced her steps to the bar and made her report to the deceased's mother. The latter hastened to the scene in the company of many others including P.W.3.

The accused made much of what proved to be a totally imagined series of events which occurred in the bar.

/P.W.4

P.W.4 denied that the accused came and sat next to her in the bar. She denied that he proposed love to her. She denied that the deceased had given permission to the accused to propose love to P.W.4 on consideration of beer offered by the accused to him. The accused said he had kept P.W.4's company for a long time in the bar. But P.W.2 Thabiso Fosa who had kept the accused's company throughout the period spent by the accused denied that. P.W.2 said the accused approached P.W.4 who was sitting alone while the deceased was dancing and never kept her company beyond two minutes.

The accused said he had also kept company with the deceased and P.W.4 offering them drinks while they were thus seated. But credible evidence shows that the deceased never sat down but was dancing throughout that time except when given money to go along with P.W.4 to buy some fat cakes which they failed to get.

To this extent it is imperative to reject the accused's version as a mere figment of his imagination.

The accused's explanation of his encounter with the deceased is that he was obstructing him when he was trying to speak with his "imagined" lover 'Mankutu. He said while he was sitting with the two who had flanked him in the bar he could see that they were laughing at him behind his back. Reliable evidence shows that there was never any occasion when the two got to sitting down flanking him.

He said he was astonished when the two sneaked out of the bar making it appear as though they were due to

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return by leaving half-full glasses of beer bought for them by him. The accused's contention that when the two left it was as though they would return is flawed by the fact that the hand-bag belonging to P.W.6 was carried by her son in a manner that did not suggest that he was concealing it. Hence the fact that P.W.3 saw it at the gate when the two went past. This was before P.W.4 took it from the deceased and covered it under the coat she was wearing. The accused also underrates the force of the evidence of P.W.6 who was not secretly asking the deceased and P.W.4 to go ahead of her.

It would seem then that the accused has bent his mind on giving false evidence in this Court.

Concerning the injuries he inflicted on the deceased he started off by saying he remembered inflicting only one on the deceased's thigh. He pretended that he did not recall inflicting any of the chest wounds.

Confronted with the fact that the absence of any person at the scene during the interval spanning the time when he was last seen assaulting the deceased and the time when those responding to the alarm arrived his lie was even the more exposed.

The accused failed to say why he assaulted the deceased. The attempt he made to raise self-defence is undermined by the number of wounds sustained on the deceased's chest any of which would not enable the deceased to continue fighting after the first had been inflicted

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assuming extremely charitably to the accused that at any stage the deceased threatened him physically.

The accused further proffered to this Court a cock and bull story that the knife he used was wrenched from the deceased's grasp.

Apart from the fact that in lying as he did the accused strengthened an inference of guilt his conduct after the event clearly showed that he had killed the deceased without cause. Even though he must have realised that he might have caused the deceased serious injury he never bothered to report to the police or the chief, that is, assuming his assault on the deceased was based on self-defence. There was a clear attempt on his part to avoid the police. He avoided going to stay at his ordinary and usual place of residence. His callousness is accentuated by the fact that he sought to make the court believe that the injuries he had inflicted on the deceased were of such a minor nature that it was no surprise that some days later he saw the deceased walking around on his own with a bandage wound round his leg. Or according to him someone looking very much like the deceased.

P.W.2 is the accused's close acquaintance and drinking mate. He struck me as impressive in his evidence. He had never had any quarrel with the accused, yet his version as to what occurred in the bar is in sharp contrast with the accused's. P.W.2's evidence is supported in all material respects by that of P.W.4, 3

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and 6. Needless to say he had no cause to implicate the accused falsely more so because he offered the accused beer to drink at the bar.

The accused made a merit of the fact that he had earlier that day been drinking large quantities of what he termed raw beer from the place of his work at the Maluti Mountain Brewery. On the back of that he had also taken some two bottles - "quart size" - of beer before proceeding to the bar where he invited P.W.2 to join him in drinks. But from P.W.2's observation the accused did not seem drunk. There was nothing peculiarly distinct about him from his usual self after drinks. Thus it could safely be concluded that even though the accused had taken drink he was not deprived of his faculties to distinguish between right and wrong. Conversely he was capable of forming an intention to kill.

It is clear from the concentration of the wounds on the deceased's upper part of the chest on the left thereof that he was pinned down and afforded no opportunity to escape. The accused's denial of this is just a bizarre farce.

Even though P.W.4 did not know the accused before this incident she had observed him sufficiently long in the bar and afterwards when the accused chased after her wearing the same overalls that he had been wearing in the bar that there can be no case of mistaken identity. Moreover the accused does not deny his encounter at the scene with the deceased even though there was a strenuous

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attempt by the defence to discredit P.W.8 who picked up the threads of evidence from immediately where P.W.4 left off.

But it should be borne in mind that P.W.4 'Mankutu' indicated that from the position where she had sought refuge she was able to see that the accused who had by then felled the deceased had pinned him to the ground and seemed to be hitting him repeatedly on the chest. The deceased was even then pleading for relief from the accused's savage attack. The evidence of P.W.8 as to the pleas of a man he saw running towards him is pertinent on the point raised by P.W.4.

In the circumstances it seems to me that the holding of the identification parade though in most cases a necessity was but in the instant case a mere redundancy.

The post mortem report shows that death was due to haemorrhage caused by punctured heart and lung.

This alone should suffice to make it plain that the accused's contention that he saw the deceased walk about any time after these injuries had been inflicted deserves contemptuous rejection for no how could anybody thus injured and in mortal danger of his life walk. His wanton pursuit of the deceased for a distance of no less than forty paces culminating in his killing him for no apparent reason is all the more damnable and revolting. It derogates from any form of respect for human life and its inviolability. It manifests utter disregard for the need to preserve the life of a fellow being.

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As stated above the accused has failed to show any earthly reason why he killed the deceased. The crown on the other hand has proved the accused's guilt beyond doubt. He is accordingly convicted of the intentional and unlawful killing of the deceased.

My assessor agrees.

J U D G E.

7th December, 1990.

EXTENUATING CIRCUMSTANCES.

Drink having been found to constitute extenuating circumstances, the accused is sentenced to 16 years' imprisonment.

J U D G E.

7th December, 1990.