

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

THABO MAFATLE TLALI

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai on
the 16th day of February, 1990.

Held at Butha-Buthe

The accused is charged with the crime of murdering Mpho Mosae, it being alleged that on or about 31st October, 1987 and at or near Ha Tjopa in the district of Leribe he unlawfully and intentionally killed the deceased.

When the charge was put to him the accused pleaded guilty to Culpable Homicide but not murder. Mr. Kolisang, who represents the accused in this matter, informed the court that the plea was in accordance with his instructions. However, Mr. Mokhobo, counsel for the crown, told the court that the crown would not accept the plea of guilty to Culpable Homicide tendered by the accused person. The plea of not guilty was consequently entered.

It may be mentioned from the word go that at the commencement of this trial Mr. Mokhobo, for the crown accepted the admissions made by Mr. Kolisang, on behalf of the accused person that the defence would not dispute the depositions of Fani Mosae, D/L/Sgt Mahase and 'Mamosuoane Rantuba who were, respectively P.W.1, 3 and 5 at the

2/proceedings

proceedings of the Preparatory Examination. In terms of the provisions of S.273 of the Criminal Procedure and Evidence Act, 1981 the depositions of P.W.1, 3 and 5 at the Preparatory Examination proceedings were admitted in evidence. It was, therefore, unnecessary to call the deponents as witnesses in this trial. It is further worth mentioning that the post-mortem Examination Report was, by the consent of both counsels, handed in from the bar as Exhibit A. It was likewise not necessary to call the medical doctor who performed the autopsy as a witness in this trial.

Now, very briefly stated the evidence of D/L/Sgt Mahase was that she was stationed at Peka police post. On 1st November, 1987 she received a certain report following which she proceeded to the village of Ha Tjopa where she found the dead body of the deceased. She examined the body for injuries and found that it had sustained a single stab wound below the left breast she caused the body to be conveyed to Hlotse hospital.

According to the police officer before she left the village a knife was handed to her by the chieftainess of the area. That was confirmed by Mamosuoane Rantuba who told the court that she was the chieftainess in the village of Ha Tjopa. Following the death of the deceased she searched the accused's home and found the knife between parcels of maize and suit cases. Because it had blood stains on it she took possession of the knife and handed it to the police officer. She testified that she had seen the accused when he returned from Hlotse and assured the court that the accused had no wounds on him although he appeared to be limping as he walked.

In her testimony D/L/Sgt Mahase further told the court that when it was handed to her, she took possession of the knife

3/ which she

which she handed in as Exh 1. When she returned to the police post she found the accused and showed him Exh. 1. Following his explanation about the knife she cautioned and charged the accused as aforementioned.

According to the Post-mortem Examination - Exh A - the autopsy was, on 6th November, 1987, performed by a medical doctor at the mortuary of Hlotse hospital. The body was identified as that of the deceased by Fani Mosae.

That was confirmed by Fani Mosae who told the court that the deceased was his own son. On 31st October, 1987 there was a party at his home. Later on that day he left home for his place of employment where he worked as a nightwatchman. Early in the morning of the following day he received a report as a result of which he was rushed home where he learned that his son, the deceased, was lying dead in the street next to 'Mapakiso's home. He went to the spot and, indeed, found the deceased dead. He confirmed the evidence of D/L/Sgt Mahase that the body of the deceased had a single wound on the breast.

According to Fani Mosae he was one of the people who accompanied the body of the deceased ^{the} to mortuary at Hlotse hospital. It sustained no additional injuries whilst it was being transported from the village of Ha Tjopa to the mortuary.

The findings of the medical doctor were that the Post-Mortem Examination revealed a 10cm long stab wound which had penetrated into the pericardial sac causing massive bleeding. In the opinion of the medical doctor a sharp instrument could have been used to inflict the stab wound on the deceased and death was due to excessive loss of blood from the injury.

I can think of no good reasons why the findings of the medical doctor that the deceased's death was due to excessive loss of blood resulting from the stab wound that had penetrated into his pericardial sac should be doubted. That being so, the salient question for the determination of the court is whether or not the accused is the person who has inflicted the stab wound and, therefore, brought about the death of the deceased.

The accused conceded that he was the person who had inflicted the fatal injury upon the deceased and therefore brought about his death. He, however, contended that he had no intention to kill the deceased. It is common cause that on the night of the day in question 31st October, 1987, the accused attended the party that was held at the home of the deceased. When he left the party at about 12 midnight he was in the company of P.W.1, Simon Mokhoabane and one Boy Boy. According to the accused, as they left the party, they were followed by a group of people amongst whom he identified the deceased, Kajang and Lipholo. They were apparently in a fighting mood. The accused, therefore, took a knife from P.W.1 so that he could defend himself. After he had parted company with P.W.1 and Boy Boy the deceased and his party threw stones at and chased him. He ran into the yard of one 'Mapakiso and around her house with his assailants still in hot pursuit. As he ran out of 'Mapakiso's premises the accused noticed the deceased waiting outside the gate. The deceased who was holding a knife raised his hand and told him to hand over his knife. As he was about to run passed him the deceased stabbed him on the right cheek. However, the accused later changed his story and told the court that as he went through the gate of Mapakiso's premises he had the occasion to look back and Kajang, one of the people who were chasing him, stabbed him with a knife on the right cheek. It was only after Kajang had stabbed

5/ him that

him that the accused noticed the deceased who was holding a knife and raising up his hand outside the gate leading from 'Mapakiso's premises. As he ran passed the deceased the accused drew out his knife and stabbed him.

Assuming the correctness of his story that he was being hotly pursued by a group of people who had been throwing stones at him; he had just been stabbed with a knife on the cheek and regard being had to the fact that it was at night, I must say I find it hard to believe that the accused who admittedly had a lot to drink at the party could have clearly seen that the deceased was holding a knife as he waited outside the gate of 'Mapakiso's premises. In my view when he stabbed the deceased with a knife the accused was not under the apprehension that the former was threatening his life in the manner he wants this court to believe.

The evidence of P.W.1 was not very helpful in as much as he told the court that after he, the accused and Boy Boy had left the party he parted their company before there was any fighting between the accused and the people who were following them. He did not therefore, know how the deceased had sustained the injury that brought about his death.

It may perhaps be convenient to mention at this juncture that although he had testified as P.W.2 at the Preparatory Examination proceedings it was common cause that Lipholo Tsehlo had since died. It was, therefore, a physical impossibility to compel him to testify in this trial. In terms of the provisions of S.227 (1)(a)(i) read with (3) of the Criminal Procedure and Evidence Act, 1981 his depositions at the Preparatory Examination proceedings were admitted and read as evidence in this trial.

6/ In as far as

In as far as it is relevant, the evidence of Lipholo was to the effect that on the night of the day in question, 31st October, 1987 he too attended the party which was held at the home of the deceased. According to Lipholo when he left the party the accused was walking with the deceased. They were in fact not in the best of moods as the accused had assaulted him (Lipholo) and the deceased was demanding an explanation for it. Shortly before the deceased walked away with accused, Lipholo had allegedly noticed one Boy Boy arming the accused with a knife a fact which was, however, denied by both the accused and P.W.1 according to whom the latter was the person who had given the knife to the former.

Be that as it may Lipholo testified that as the deceased walked away in the company of the accused he drew the attention of Kajang to the fact that the accused had been armed with a knife. They then decided to follow the deceased and the accused so as to see what would happen. It was then that they noticed the deceased suddenly coming back and screaming that he had been stabbed by the accused. Lipholo and Kajang ran to and found the deceased injured. He had been fatally stabbed a wound below the chest and the accused had ran away. They raised the alarm as a result of which many people including the chieftainess of the area came to the scene of crime. Lipholo confirmed that on the following day the body of the deceased was conveyed to the mortuary.

As it has already been pointed out earlier, Lipholo has since died. For that reason his evidence could not be subjected to cross-examination. It has, therefore, less value than that of the accused person.

7/ I have,

I have, however, found that on his own evidence the accused stabbed the deceased the fatal injury. The question I have earlier posed viz. whether or not the accused is the person who had inflicted upon the deceased the stab wound and, therefore, brought about his death must be answered in the affirmative. Assuming the correctness of my finding, earlier in this judgment, that at the time the accused stabbed the deceased the former did not apprehend that his life was seriously endangered by the latter, it seems to me self defence could not avail him. However, regard been had to the fact that the accused stabbed the deceased in the course of a fight I am not convinced that he could have formed the requisite subjective intention to kill. I must say in fairness to him Mr. Mokhobo, counsel for the crown, conceded to this.

In the circumstances, I have no alternative but to come to the conclusion that the accused is guilty of culpable Homicide and he is accordingly convicted.

Both my assessors agree with this finding.

B.K. MOLAI

JUDGE

16th February, 1990.

For Crown : Mr. Mokhobo

For Defence : Mr. Kolisang.

S E N T E N C E

It has been remarked by the defence counsel that the question of sentence is always difficult because no two cases can ever have the same facts. I entirely agree. The question of sentence is also a difficult part of a criminal trial because the Law gives us no directions. It is left entirely in the discretion of the Judicial Officer. For obvious reasons the sentences will always differ according to the discretions of different Judicial officers.

For the benefit of the accused person I shall take into account the fact that Mr. Mokhobo (for the Crown) has told the court that the accused has no previous convictions - he is, therefore, a first offender. In punishing him the court bear in mind that there is no evidence or indication that the accused is a heart-hardened criminal.

I have also been invited by Mr. Kolisang to consider a number of factors on behalf of the accused person. He has eloquently tabulated them, and I find no need to go over them again. I shall, however, not turn a blind eye to the fact that the offence with which the accused person has been convicted is a serious one calling for a commensurately serious sentence. No man has a right to deprive his fellow human of his life. The reason is very simple - the life of a human being is God-given and for that reason sacred. This court takes a rather dim view of people who lightly take the lives of other humans. If the accused felt that the deceased had wronged him, he should have taken him to court and avoid taking the law into his own hands.

All in all, I consider it necessary that the accused should be given a sentence that will serve as a deterrent - a sentence

9 / which will

which will serve as a lesson to people of accused's mind that the courts of law do not encourage the sort of a thing that the accused person has been found guilty of

It is for these reasons that I have come to the conclusion that the sentence that is appropriate for the accused person is that he goes to prison for five years, of which two years will be suspended for three years on conditions that the accused is not convicted of any offence involving violence on other people, during the period of suspension, and following which conviction he is sentenced to serve a term of imprisonment with no option of a fine i.e. the suspended sentence will only fall upon the accused if during the three years he were found guilty of killing or assaulting a person and the court, in sentencing him, does not give him a fine. In other words, he will have committed an offence as serious as the one I have convicted him of today.

I accordingly sentence the accused .

B.K. MOLAI
JUDGE.

16th February, 1990.

For Crown : Mr. Makhobo,

For Defence : Mr. Kolisang.