

IN THE HIGH COURT OF LESOTHO

In the matter between:-

R E X

and

REMMY MOHASI

Accused

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 21st day of May, 1990

In Count I the accused is charged with the murder of Mocketetsa Ntlhanngoe on the 30th January, 1988 at Maphotong in the district of Maseru. In Count II the accused is charged with the crime of assault with intent to do grievous bodily harm, it being alleged that on the 30th January, 1988 and at or near Maphotong in the district of Maseru, the accused unlawfully and intentionally assaulted Raseta Lepphoto by stabbing him with a knife with intent to cause him grievous bodily harm.

The accused pleaded guilty to both charges; however, Mr. Ramolefe, who appeared for him, said the pleas were not in accordance with his instructions and asked for a short adjournment.

When the court resumed the accused changed his plea to one of not guilty to both charges.

The depositions of the following witnesses at the preparatory examination were admitted by the defence as evidence in this Court; P.W.4 Thabiso Ntlhanngoe who identified the corpse of the deceased to the doctor who performed a post-mortem examination; P.W.5 Trooper Sofeng whose evidence is to the effect that he arrested the accused and charged ^{him} with the two crimes he is now facing. The accused had earlier taken the witness to his home and pointed out a knife which had been placed in the bushes in the accused's yard; P.W.8 Dr. N. Mapetla is a doctor at St. Joseph Hospital. He examined Raseta Lephoto on the 31st January, 1988 and found that he had a stab wound on the left shoulder. The injury was not dangerous to life and the patient was treated as an out-patient; P.W.7 Dr. P. Ntsekhe performed a post-mortem examination on the corpse of the deceased. She formed the opinion that death was due to the left haemopneumothorax. She found eight wounds as follows: two on the left upperarm, one on the left shoulder, on the right shoulder and on the right upperarm, on the left side of the chest lateral to the nipple, on the left subscapular region and on the left flank showing a bit of gut. (her post-mortem examination report is Exhibit "B").

The first witness called by the Crown in this Court is Detective Trooper Rantemana. He testified that on the 31st January, 1988 he attended the scene of the crime at Maphotong. He was accompanied by other policemen. On arrival at Maphotong they examined the corpse of the deceased which was lying on the ground. He counted

seven wounds on the body of the deceased. He said that if the doctor who performed a post-mortem examination found eight wounds he cannot challenge that finding.

The evidence of Raseta Lepphoto (P.W.2) is that at dusk on the 30th January, 1988 he was in the house of one 'Mammote Mohasi (P.W.3). He was in the company of 'Mammote, Mapastor (P.W.4), the deceased, Maria, Glodia, Ephrase and Makuili. All of a sudden the accused entered and insulted all the people in the house and asked the child, Ephrase to come to his side so that he (accused) could kill all the satans. The deceased asked the accused why he was insulting those old people amongst whom was 'Mapastoro. 'Mammote expelled the accused and accompanied him out of the house. Immediately after that the deceased also went out.

At that time Makuili was sitting near the door and directly opposite the doorway. He exclaimed that 'that person has felled another person outside'. Raseta says that he immediately went out and found the deceased having fallen down near the door. The accused was bending over him and was stabbing him with a knife. He intervened and took a sjambok from Makuili and lashed the accused with it. He chased the accused until they came to the gate and the accused tried to open the gate but it could not open. It was then that he turned and stabbed Raseta with a knife on the left shoulder. After he was stabbed he went back to where the deceased was lying and found that he was in a critical condition. He went away to look for a vehicle so that the deceased could be taken to the hospital. When he came back the deceased was already dead.

'Mammote Mohasi was in her house when the accused arrived and told her that he was coming to take his tools. He had been building a house for her and he complained that she had not paid him and he threatened to demolish the house. After taking his tools the accused said that he was coming to kill her and that the sun would not set before he had killed a person. He left for his home.

'Mammote says that when the accused returned to her house that evening a number of people had already come to her house because she had raised an alarm when the accused threatened to kill her. Those people were P.W.2, 'Mapastoro (P.W.4), Maria, Gloria, Ephrase and Makuili. The accused said that he was coming to kill them all and insulted them. The deceased asked the accused why he was insulting such old people. He went out after she ('Mammote) had said rather than insult them it was better that he must go and take an iron rod and demolish the house. A long time after the accused had gone out the deceased went out. Immediately thereafter Makuili exclaimed that a person had fallen. They all got out of the house and found that the deceased had fallen down and the accused was not there. Raseta returned from the gate and reported that the accused had stabbed him with a knife and that the gate could not open.

The evidence of 'Mapastoro Lephoto (P.W.4) is the same with that of 'Mammote and Raseta as to what happened when the accused found them in 'Mammote's house. However, this witness had an encounter with the accused earlier that evening. She was at her home at about 4.00 p.m. and she was cooking. She heard a person insult her. When she raised her head she noticed that it was the

accused. He was very angry and said she and her lover must give him his pair of pliers. He said he would kill her that evening and that her relatives would mourn her death. He said he would do to her what had been done to a man of Qoaling, i.e. cut her neck. She was so frightened that she decided to go and report the threat to one Raetiene who suggested that they should go to 'Mammote's place. On their arrival there Raetiene went to the home of the accused. He never came back until the deceased arrived at 'Mammote's home.

After the Crown closed its case Mr. Ramolefe, counsel for the accused, applied for the discharge of the accused in Count II. This application was refused on the ground that at the time the accused stabbed the complainant, it cannot be said that he was defending himself because the accused had stopped whipping him with a sjambok.

Mr. Ramolefe closed the defence case without calling any witness.

The summary of the evidence of the Crown witnesses which has not been controverted by the defence, is that on the afternoon of the 30th January, 1988 the accused was in a very bad mood. He went to the home of 'Mapastoro Lephoto at about 4.00 p.m. and accused her of having taken her pair of pliers. When she denied the accusation, he threatened to kill her that evening. From there ^{her} the accused went to the home of 'Mammote Mohasi and insulted and took his tools accusing her of refusing to pay him for the work he had done for her. After taking his tools he said he was coming to kill her and that he would kill a person before sunset.

Later that evening the accused returned to the home of 'Mammote and insulted all the people in the house and threatened to kill them all. The deceased asked him why he was insulting old people like 'Mapastoro. He did not answer that question but 'Mammote expelled him. He left. After he had left the deceased went out. Immediately after that Makuili exclaimed that a person had fallen. Raseta went out and found the accused bending over the deceased and stabbing him with a knife. Raseta took a sjambok from Makuili and whipped the accused with it. The latter ran away and Raseta chased him until they came to the gate which could not open.

The facts stated above ne negative self defence because at the time Raseta went out the accused was bending over the deceased and stabbing him with a knife. The deceased was stabbed eight times and there is no doubt that those wounds or some of them caused the haemopneumothorax and that accused is responsible for the death of the deceased. In any case the defence did not claim self-defence. The entire cross-examination was directed at attacking the credibility of the Crown witnesses by trying to show contradictions in their evidence at the trial and in the preparatory examination.

Whatever contradictions the defence succeeded to show were of such a minor nature that the Court need not give them any serious consideration. If a party wishes to discredit another party's witnesses on the ground that their statements in this Court are inconsistent with their statements at the preparatory examination, he must not rely on minor variations of the words used in this Court

and the words used in the court a quo. He must show that in substance the evidence has changed. In the instant case the defence failed to show that in substance the evidence of the Crown in this Court differs from their evidence in the court a quo.

The defence hopelessly failed to put its case to the Crown witnesses. In fact right up to the close of the defence case not the slightest indication was made as to what the defence is going to be. It was not denied that the accused stabbed the deceased. It was not alleged that he stabbed him because the deceased provoked him or that the stabbing was done in self-defence. To crown all, the accused closed his case without giving any evidence. I am not surprised that the defence failed to raise any kind of defence because when the charge was read to him, the accused pleaded guilty to both charges. He changed his plea only after Mr. Ramolefe had said the pleas were not in accordance with his instructions and asked for an adjournment. Whatever further instructions Mr. Ramolefe got from the accused, he did not disclose them to the Court. Not even drunkenness was claimed by the defence.

Mr. Qhomane, counsel for the Crown, submitted that the accused's failure to give evidence is one of the factors that the Court must take into account in reaching its decision. In S. v. Khomo and others, 1975 (1) S.A. 344 it was held that in cases in which the accused has refrained from offering any explanation, whether under oath or in a form of an unsworn statement, in general,

greater weight will be attached to silence where there is direct testimony implicating the accused which the Court could reasonably expect he would simply explain if it were not true, than in a case where there is no direct evidence, and where the question of his guilt or otherwise depends upon inferential reasoning.

In the instant case the accused was seen by at least one witness. He was bending over the deceased and stabbing him with a knife. Furthermore, when Detective Trooper Sofeng asked the accused to give him the knife he used to stab the deceased, he led him to his yard and pointed out a knife hidden in the bushes. There is direct evidence by one eye witness and circumstantial evidence of pointing out.

The Crown witnesses agree that it was not yet dark when the deceased was stabbed. They allege that it was at dusk and there was a little light from the moon.

I am convinced that the accused had the necessary intention for murder in that earlier that evening he told some of the Crown witnesses that he would kill a person before sunset. He carried out that intention by killing the deceased who had not provoked him in any way. The wounds he inflicted are all on the chest and abdomen which are vital organs of the body because they contain the heart, lungs, kidneys etc. The fact that he stabbed these vital and delicate parts of the body is a clear indication of his intention to kill.

In Count 2 the accused is charged with assaulting Raseta Lepphoto with intent to cause him grievous bodily harm.

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Although the accused tendered a plea of guilty to common assault, I think the Crown has failed to rule out that the accused was defending himself. The evidence of Raseta is not convincing in this charge. At the preparatory examination he is recorded as having said, "I took a sjambok from Makuili. I lashed accused with it. Accused ran away up to the gate which refused to open. I got to him and he stabbed me on the left shoulder with a knife." In this Court he is now saying that he chased the accused up to the gate which could not open. He came back to the deceased and when he was only a few paces from him (deceased), he heard foot-steps behind him. When he looked back the accused stabbed him with a knife.

One of the two statements cannot be true. And I think the last statement he made in this Court is false. I am supported in this finding because there is evidence that when the accused came back from the gate he told 'Mammote and 'Mapastoro that he had been stabbed at the gate where he quarelled with the accused.

It is trite law that one cannot claim self-defence against a lawful arrest. If Raseta intended to arrest the accused when he chased him up to the gate, the latter cannot be heard to say he stabbed the former in self-defence. Raseta has not claimed that he intended to arrest the accused and what seems to be clear is that he was whipping him with a sjambok as a punishment for what he had done to the deceased. The accused ran away but when he came to the gate he found that for some unexplained reason it could not open. It seems to me that he was justified to defend himself by stabbing his aggressor. Raseta cannot be heard to say that up to the gate he was still defending the deceased because as soon as the accused stopped

stabbing the deceased and ran away, the life of the latter was no longer in any imminent danger.

For the reasons stated above I have come to the conclusion that in Count 1 the Crown has proved its case beyond a reasonable doubt. The accused is found guilty of murder.

In Count 2 the accused is found not guilty .

My assessors agree.


J.L. KHEOLA

JUDGE

21st May, 1990.

EXTENUATING CIRCUMSTANCES

In an attempt to find out whether there are extenuating circumstances or not the Court mero motu put the accused in the witness-box. He gave such an incoherent story that at the end of his evidence the Court doubted his state of mind. He was immediately referred to a psychiatrist for a proper examination.

Dr. Mohapeloa has now filed a report in which he has stated that the accused has no mental abnormality; and that he is fit to stand trial and that in all probability he was normal at the time of the alleged offence. During the interviews the accused had a tendency to tell lies and Dr. Mohapeloa attributed this tendency to an attempt by the accused to simulate insanity.

The finding of the Court was that the accused had the intention to kill in the legal sense or dolus eventualis. In S. v. Siqwahla 1967 (4) S.A. 566 (A.D.) it was held that in determining whether, where an accused is convicted of murder, there are extenuating circumstances, trial Courts, in their conspectus of possible extenuating circumstances, should not overlook the fact (if it be such) that it is a case of dolus eventualis. While it cannot be said that this factor must necessarily be an extenuating circumstance, in many cases it may well be so, either alone or together with other features, depending on the particular facts of the case."

In the instant case the accused seemed to be unusually aggressive that afternoon and wanted to fight or kill a number of people for no apparent reason. He made a number of false accusations against these people and must have been under the same wrong impressions when he attacked the deceased. He had ^{no} apparent motive to kill the deceased.

I find that there is an extenuating circumstance .
Accused is guilty of murder with extenuating circumstances.

Sentence:- Nine (9) years' imprisonment.


J.L. KHEOLA
JUDGE

8th August, 1990.

For Crown - Mr. Qhomane
For Defence - Mr. Ramolefe