

CRI/T/43/89

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

TSELISO MOJALIBE

Held at Butha-Buthe

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 15th day of June, 1990.

The accused is charged with the crime of murder of his father Malibeng Mojalibe who died on the 7th October 1986 in the district of Berea. Before the accused could plead in response to the order made by the Chief Justice who first officiated in this trial, following an application by the then legal representative of the accused Mr. Moorosi the accused was sent for observation by a psychiatrist, to determine whether at the time of the commission of the offence he was insane or not. This order was duly complied with and Dr Mohapelo came and gave evidence before me. As to the crucial matter whether the accused was insane at the time of the commission of the offence, Dr MOhapelo's reply was that he was sane.

/Dr MOhapelo

Dr Mohapeloa is a psychiatrist and he had occasion, according to his evidence, to meet the accused on several occasions following the order that was given by the Chief Justice. The last such occasion was on the 6th June, 1990. He has had occasion also to meet the accused's mother, the accused's brother and the accused's uncle.

Dr Mohapeloa's evidence was that the accused was perfectly lucid when he is said to have committed the offence. However he said he has a personality disorder of the aggressive type; but that, this is no sign of insanity or in itself any insanity. He emphasised that, personality disorder leads to aggressiveness especially in this particular case that we have before us. He explained that this is a personality development which is on-going with the passage of years. It could come about through provocation or intoxicant intake or distress. He re-emphasised that the accused is fit to stand trial.

The interview that the doctor had the benefit of was of the accused's relatives, namely his mother 'Mathabiso and the accused's brother Thabiso. From his interview of these witnesses the doctor felt that his opinion was reinforced that the accused was sane at the time of the alleged offence. He informed the court that from his interview of the accused's relatives, there emanated no sign of past mental illness. He informed the court that the personality disorder at times manifests itself in withdrawal or anti social behaviour in his relations with other people.

The court asked Dr Mohapeloa, how it is possible to determine with certainty the mental state of a man relating to events which occurred long time before he examined him. The doctor's frank reply was that such a determination is an educated guess.

In my view the bottom line is that be it educated guess or just guess, it is in the last or final analysis guess-work

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The accused duly pleaded not guilty to the charge, and the evidence of P.W.2 Dr Huslar was admitted as well as that of P.W.7 Dr Goerttler.

The first evidence of P.W.2 related to his treatment of the victim of the assault on the accused's uncle, whereas the subsequent report by the same doctor related to the assaults and an observation of the assaults detailed on the postmortem report of the deceased Malibeng Mojalibe. The crown accepted these admissions and they were read into the recording machine and made part of the record in these proceedings.

Further evidence was admitted but this time in terms of section 227 subsection 1(a) (iii) of the C.P. & E. being the evidence of P.W.1 P/W Leraha. It was so admitted because the witness due to illness could not be available to give evidence in this Court.

P.W.1 is a Police Woman who investigated the offence in this matter. Having received a report from her station she proceeded to the home of the deceased and met with the local headman. The headman showed her a dead body of the deceased and she saw external injuries. In her examination she saw a wound on the middle of the head - this was an open one and deep. There was also a bleeding wound on the middle of the chin. The right arm was broken and that was all this witness found. She is supported in this regard by P.W.3 the accused's mother.

According to the doctor the cause of death was (sic) due to an assault on the head, leading to some subdural haematoma.

It appears that there are at least two eye witnesses in this matter, namely the accused's mother and her daughter-in-law. The testimony of 'Mathabiso the accused's mother who is aged about 70 shows that she received a report from her daughter-in-law P.W.4. Following the alarm, she proceeded to the house in which the deceased was and found that the accused was hitting his father with a knob-kerrie.

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The deceased was on the ground. She asked the accused what he was doing, and the accused said she shouldn't go in there. Thereupon she proceeded and raised an alarm among the villagers in the process of which she saw Johanes and Mokete approach the scene. Meanwhile the accused was still in the house where the deceased was.

The evidence of P.W.4 'Maseetsa Mojalibe who is the daughter-in-law of P.W.3 shows that her house is about 20 paces away from that of her parents-in-law. During early dusk of the day in question she heard her father-in-law, namely the deceased, shouting and saying "Maseetsa come I am dying" and she peeped at the door and saw the accused hitting the deceased with a knob-kerrie. It was due to this that she turned right there and went to raise an alarm. The first person she told was P.W.3, who as I indicated also came and satisfied herself that it was the accused who was assaulting the deceased. Thereafter, the generality of villagers came; and it is said that the accused was furious in there and letting nobody come in.

The person who ultimately came in was the accused's brother, who got hold of the accused, as he found him bent around the feet area of the deceased fiddling for something. When the accused's attention was drawn to his brother, the accused adopted a very aggressive attitude towards the brother with the result that he even at some stage hit him with that knob-kerrie.

Further evidence shows that eventually the villagers over-powered the accused and tied him up. It is common cause that the deceased died the same day of the assaults. The other aspect is that at the time that Thabiso fell the accused to the ground and pinned him there, the accused asked him "brother are you killing me?" and in reply P.W.5 asked "what have I done that you hit me with the knob-kerrie?" The accused, it is said, did not reply.

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There was also the evidence of P.W.6 who in response to the alarm raised by P.W.4 came to the scene and when he arrived there he saw that the accused was using a knob-kerrie in the house to beat his father. And P.W.6 asked him "Old fellow what is the matter?" The accused hurled abuse at P.W.6 and asked him whether he was already there.

The accused, it is said, then rushed at P.W.6 and levelled knob-kerrie blows at his head twice. The witness showed me old scars which are visible: one on the right upper border of the forehead and another on the left side - immediately behind the left eye. P.W.6 says as a result of these blows he fell to the ground and was blinded by blood that was oozing from the wounds while the accused doesn't deny having caused those injuries.

The accused's mother's evidence shows that the accused began showing some peculiar and aggressive behaviour about a week before the incidents - his brother said as much too.

In questions which were put on behalf of the accused to the crown witnesses it appears that there was occasion when a cow belonging to the family was sold to either Lebitsa or Tsukulu. To be exact the question put on behalf of the accused was that; "this cow was sold to Tsukulu - ?" But the accused's brother pointed out that this cow was sold to Tsukulu's father Lebitsa. P.W.4 also said as much. The accused's brother went further to show that this cow belonged to the deceased.

No question was put to contradict the accused's brother in this regard. It was only when the accused was giving evidence that the court heard for the first time that this cow belonged not to the deceased or the deceased's wife but to the accused himself.

The accused heard evidence being led by his own brother saying that the accused had no livestock at all. P.W.3 himself said he also didn't have any animals. Indeed if the accused had any animals he had the opportunity to tell his brother that he was telling a lie when he said he didn't

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have any animals. But the brother's evidence was let pass in silence even though it was in contradistinction to what the accused wished the court to believe when he was saying for the first time that he had a cow when he was in the box.

I have no hesitation in dismissing as a fabrication the evidence led by the accused that he had this cow which he sold to Tsukulu.

It also turned out from the evidence by the accused's mother that, by the time this cow was sold, the accused had already manifested the peculiar behaviour that she observed in him. It would seem therefore that the sale of this cow, did not unhinge the accused's mind if at all it was at any stage unhinged. The accused's uncle said the accused drinks a lot. Well, the accused doesn't deny drinking but he is opposed to his uncle saying that he exceeds his uncle in that type of exercise.

There is no evidence that on the day of the incident the accused was drunk at all. Evidence that and which is credible is that he was wild-very wild. The accused denies this. He gave evidence, in the course of which he told the court that he didn't want to get into the box but rather wanted to be sentenced from where he is, i.e. from the accused dock. However the fact that he did cross over to the witness box, gave the court some idea about, and served as a kind of a window into the accused's mind; at least during the course of his giving evidence.

The court and the assessors were able to assess and evaluate the accused's conduct. The court was in no doubt that not only were the versions of P.W.4 and P.W.6 vindicated as to the behaviour of the accused but also that observed by Dr Mohapeloa. Their versions were vindicated in the sense that the accused turned to be argumentative, irrelevant and didn't seem to appreciate the purpose of giving evidence at all.

At no stage did the accused show how, or whether he knew how, his father died. He only told me that he knows that the deceased died at the hands of Thabiso who had strangled him.

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But evidence here shows no signs of strangling at all. In fact the admitted evidence shows that the deceased died from head wounds. This, in itself is an indication that the accused has failed to join issue with the crown on crucial aspects of the evidence that one would have expected him to if he was of sound mind.

While psychiatrist evidence is of importance, at the end of the day it is evidence like any evidence regarding which the court is at large to determine what witness to believe and what witness not to believe. Much as Dr Mohapeloa told the court that the accused is not insane, the court and the assessors saw the accused for themselves and had great doubt as to the accused's sanity. In fact if one can refer to Chief Justice's minute of the 4th December 1989, the accused told the Chief Justice that he didn't want any counsel and that it is nothing for a man to be hanged.

In the course of his evidence before this Court the accused said words to the same effect, i.e. that he was in a hurry, he wanted the verdict to be returned and that he was prepared to take the blame for the offence committed by Thabiso. While in fact this could be taken as, in the words of Dr Mohapeloa, a sign of personal disorder one doubts whether a personal disorder which can go to the extent where a man is prepared to take another's blame can be too far from the periphery of madness itself.

The law places liability on an offender. This depends on the offender's intent. The law does not allow execution or punishment of innocent people nor does it allow execution of mad people. Insane people under the provisions of the law are to be protected, and in the process means are employed to ensure that the society itself is protected.

It would be a sad day if because of guess work a man who is insane is made to suffer the ultimate penalty imposed by the law.

Under section 172 of the C.P. & E. it is provided that

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if during trial of any person charged with any offence, it appears to the Judicial Officer presiding that such person is insane or mentally incapacitated, the court before which the trial is being held shall inquire into the question of such person's sanity.

If the court finds the person charged with an offence insane or mentally incapacitated pursuant to subsection (1) it shall record such verdict and shall issue an order committing such person to some prison pending the satisfaction of the King's pleasure.

There has been this evidence of peculiarity of the accused's conduct before the commission of the offence itself and that behaviour was not precipitated by the sale of the cow, because the cow was sold subsequent to the signs of peculiarity on the behaviour of the accused.

There was evidence - although it is hearsay evidence but I think it is to the benefit of the accused that it was reported to P.W.3 - that the accused was being aggressive to the children and was trying to burn one of them on the fire.

The sad aspect of this case is that the deceased is said to have been a blind man - hardly a danger to anybody. That he was a victim of this vicious assault shows the type of mind that the accused laboured under. Of course the accused denies commission of any act that led to the injury or death of his father. All in all the accused's evidence was just a rambling and on-going series of irrelevancies.

As a result my assessors and I have come to the conclusion that provisions of subsection 3 of section 172 of the C.P. & E. are to be invoked in this case. The court accordingly returns a special verdict in terms of which the accused is to be committed to some jail pending the signification of his Majesty's Pleasure.

  
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J U D G E.

15th June, 1990..

For Crown : Mr. Mokhobo

For Defence: Mr. Fosa: