CRI/T/59/91

IN THE HIGH COURT OF LESOTHO

In the Matter:

R E X

v

MATJELE MCONDO

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai

on the 24th day of October, 1991.

The accused is charged with the crime of murdering 'Manyefolo Secomba, it being alleged that on or about 4th June, 1990 and at or near Matebeng in the district of Thaba-Tseka she unlawfully and intentionally killed the deceased. She has pleaded not guilty to the charge.

It may be mentioned from the word go that at the commencement of the trial Mr. Lenono, counsel for the crown, accepted the admissions made by Mr. Drametu, who represents the accused in this case, that the depositions of all the witnesses who had testified at the proceedings of the Preparatory examination including the Post Mortem Examination

Report would not be disputed by the defence. In terms of the provisions of S.273 of the Criminal Procedure and Evidence Act, 1981 all the depositions including the Post mortem Examination Report, became evidence and it was unnecessary, therefore, to call the deponents as well as the medical doctor who had compiled the Post Mortem Examination Report, as witnesses in this trial.

In as far as it is relevant the crown evidence is to the effect that in the early morning of 4th June, 1990 Sefoka Motjeka-Tjeka, Manyethela Secomba and Mpapi Secomba received a certain information following which they proceeded to a spot next to the village spring where they found a pair of shoes, a "moholu" blanket, a yellow plastic water container, an iron rod and the deceased who had sustained a wound above her left eye-brow. Manyethela, who is the deceased's husband, identified the yellow plastic water container and the iron rod as his property. The iron rod had always been kept underneath a bed in his house. The yellow plastic water container had been carried by the deceased when she went to draw water from the village spring earlier on that morning. She had been wearing the "moholu" blanket which was lying some distance away from the spot where she was found next to the village spring. Manyethela Secomba who was in fact a relative of the accused identified the pair of shoes as the property of the

latter.

Although her wound was not bleeding, the deceased was lying on the ground unable to move or speak. She had to be carried in her "moholu" blanket to the chief's place by Sefoka and Manyethela whilst Mpapi went to make a report at the home of the deceased. On his return Mpapi found the deceased already at chief's place.

The evidence of Thamatho Soai is that he is the right hand man of the local chief. On the day in question (4th June, 1990) he received a report following which he proceeded to the chief's place where he found the deceased. According to Thamatho the deceased had sustained a wound above her right eye and was unable to speak. He gave instructions that the deceased should be taken to a clinic for treatment.

In his evidence Bobi Phakamile testified that on Sunday, 3rd June, 1990 he had spent the night at the cattle post. When he returned home on the following day, 4th June, 1990, he found the deceased already at the chief's place. He confirmed that the deceased was then unable to move or speak. According to him, Bobi was the person who actually carried the deceased on his horse-back from the chief's place to Matebeng health centre (clinic) where he left her in the company of Manyethela

and others whilst he himself returned home.

Manyethela and Sefoka further testified that the deceased, who was still alive, spent the night at the health centre from where she was, on 5th June, 1990, transported by plane to Qacha's Nek hospital. She was admitted. On Wednesday, 13th June, 1990, she passed away at the hospital and her dead body was identified before the medical doctor who performed the Post Mortem examination by Manyethela.

According to the Post Mortem Examination Report on 18th June, 1990 the autopsy was performed on the deceased's body which was admittedly identified before the medical doctor by Manyethela. The external examination revealed that the deceased had sustained a single 1cm laceration just above the medial aspect of the left eye brow.

It will be remembered that according to Thamatho the wound was above the right eye. There is, therefore, a contradiction between his evidence and that of the medical doctor who compiled the Post Mortem Examination Report as regards the exact location of the deceased's injury. The evidence of the medical Doctor is, however, corroborated on this aspect by Sefoka, Manyethela and Mpapi. I am inclined to accept as the truth the story of the medical Doctor confirmed

by sefoka, Manyethela and Mpapi and reject as false the uncorroborated version of Thamatho on this point.

According to the Post Mortem Examination Report on opening the skull the medical doctor found that there was a hole, 0.5cm in diameter, perforating the left frontal bone just above the left orbit. There was also epidural and subdural haematoma.

From these findings the medical doctor formed the opinion that a hard sharp instrument could have been used with great force to inflict the injury that penetrated the decease's skull causing primary brain-damage that resulted in her death.

The question that immediately arises is whether or not the accused is the person who inflicted the injury that was found on the deceased. In this regard the accused testified on oath and told the court that some time in 1986 or 1987 she and the deceased had a quarrel over an unfounded complaint that the former had an illicit love affair with the latter's husband. The matter was, however, amicably settled and their relations became normal.

According to the accused, since the incident of 1986 or 1987 the deceased's husband was not in the habit of coming to

her house. However, on Saturday, 2nd June, 1990, the accused was selling grape beer at her house when the deceased's husband and another man came and bought two bottles of the beer. Whilst they were drinking their beer, the deceased came in and also bought a bottle of grape beer for herself. After they had finished drinking their beer the trio left the house of the accused, apparently in a happy mood.

However, during the night of the same day, 2nd June, 1990 the accused was sleeping in one of her huts with her daughter who had recently given birth to a baby, when she heard a knock on the door of the hut in which she had been selling beer. At the same time she heard a voice calling out : "Matjele, come out!" The accused recognised the voice as being that of the deceased, her next door neighbour. She (accused) did not reply because she suspected the deceased, who was very noisy when drunk, to be under the influence of intoxication. However, the deceased came to the door of the hut in which the accused and her daughter were sleeping. She again knocked at the door and shouted: "Matjele, come out and ululate, for the feast you have been preparing is now ready. I have killed that husband of ours" or words to that effect.

According to her, the accused had a mind to get out of bed and tell the deceased to stop making noise at her home as

well as asking her exactly what she meant by saying they have a common husband. She was, however, persuaded against it by her daughter and the deceased eventually left although still crumbling. On the following day, 3rd June, 1990 the accused and her daughter-in-law had to go and collect beans from the fields. She did not meet the deceased on that day. On the early morning of Monday 4th June, 1990 the accused was on the forecourt of her house when she noticed the deceased standing outside her house. She called out at the deceased and asked her what it was she had been saying on the night she came to her house. In reply the deceased politely suggested that they should go together to draw water from the village spring. The accused agreed and went into her house to collect her water container. When the accused came out, the deceased had already left for the spring. The accused, therefore, proceeded alone to the spring. When she came to the area where the village spring was, the accused noticed the deceased standing alone some distance away from the spring. Her water container was on the ground next to her feet. The accused went to the deceased and asked her what it was that she said on the night she had called at her house. Instead of replying, the deceased bent down and took out of her water container an iron rod with which she suddenly delivered a blow at her (accused). The accused caught hold of the iron rod and a struggle ensured for possession of the weapon. In the

course of the struggle the accused eventually managed to disarm the deceased of the iron rod with which she hit her a blow on the head. She no longer remembers if she actually hit or punched the deceased with that iron rod. However, she clearly remembers that after delivering the blow on her head the deceased looked dizzy and staggered like a person who was about to fall. The accused then dropped the iron rod on the ground and returned home. When she was some distance away she looked back and noticed that the deceased had in fact fallen to the ground.

According to her, as she entered the village the accused met Sefoka and reported to him what had happened between her and the deceased at the village spring. When Sefoka rushed towards the home of the deceased she (accused) went to her house. She picked up a blanket and went up a mountain where she stayed until the morning of the following day, 5th June, 1990. After she had returned to her house the accused learned that the deceased had been taken to the clinic and Qacha's Nek hospital. She then went to surrender herself to the police at Thaba-Tseka. She took with her a small iron rod and a small "Kolitsana" stick which she handed to the police as being the weapons used in her fight with the deceased. She was confirmed on this by Tpr Monyau who testified that he took possession of the weapons. He subsequently cautioned,

arrested and charged the accused as aforesaid.

The accused told the court that the reason why she took the smaller iron rod and "Kolitsana stick was because the iron rod with which she had assaulted the deceased was thicker and therefore, a more dangerous weapon than the one she took to the police. She conceded that she had told the police an untruth by saying she had injured the deceased with the smaller iron rod which she took to the police station.

The evidence of D/Tpr Matete was that on 28th August, 1990, Manyethela (the husband of deceased) came to his Mashai police post and handed over an iron rod which was allegedly found at the spot where the deceased was injured next to the village spring. When he handed it over Manyethela explained that the iron rod was his own property which he had always kept underneath a bed at his house.

Considering the evidence as a whole I am satisfied that on 4th June, 1990 the deceased was found injured next to the village spring. In her own words the accused has told the court that she is the person who injured the deceased under the circumstances she described to this court.

It has been argued that in assaulting the deceased in the

manner she did the accused acted in self-defence. It is, however, significant to observe that, in her own mouth, the accused had already disarmed the deceased of the iron rod at the time she hit her a blow on the head with that weapon. If she were still fighting the accused after she had been disarmed, the deceased was obviously doing so with her bare hands. When she was being attacked with bare hands the accused admittedly used an iron rod to repel that attack. She has, in my finding, exceeded the bounds of self-defence and the private defence of self-defence cannot avail her.

Regard being had to the fact that the accused hit the deceased with as lethal a weapon as an iron rod on the head which is a vulnerable part of a human body I am of the opinion that the accused was aware that death was likely to occur. She nonetheless acted reckless of whether or not it did occur. The accused had, therefore, the intention to kill, at least in the legal sense.

Assuming the correctness of the accused's evidence that she was merely asking the deceased about the incident of the night of Saturday, 2nd June, 1990, when the latter suddenly attacked her with the iron rod, it seems to me that in hitting the deceased as she did the accused acted in the heat of passion and under extreme provocation. Such provocation could

not exonerate the accused. It had, however, the effect of reducing an offence which would otherwise have been murder to a lesser offence e.g. culpable homicide or assault with intent to do grievous bodily harm.

I have some difficulty with the evidence in this case. After she had been admittedly assaulted by the accused the deceased was still alive when she was taken firstly to Mäteheng health centre, where she spent a night and secondly to Qacha's Nek hospital where she stayed until 13th June, 1990 when she passed away. There is, however, no evidence, at all, as to what treatment (if any) was administered to her both at the health centre and the hospital. Nor is there evidence as to the qualification of the person who administered the treatment. In the absence of such evidence, the possibility that the death of the deceased may have been precipitated by a wrong treatment inadvertently administered by an unqualified person either at the health centre or the hospital cannot, in my opinion, be ruled out. That being so, it must be accepted that there is a doubt that the deceased died as a result of either the injury inflicted upon her by the accused or an actus novus interveniens in the form of a wrong treatment inadvertently administered to her. The benefit of such a doubt is, in our law, always given to the accused person. I accordingly give the accused the benefit of doubt as to

whether or not the deceased died as a result of the injury she had admittedly inflicted upon her. I have not the slightest doubt, however, that the accused delivered a savage blow with an iron rod on the deceased's head which, as it has been pointed out earlier, is a vulnerable part of a human body. In assaulting the deceased in the manner she did the accused had in my finding, the requisite intention to cause her grievous bodily harm.

From the foregoing, it is obvious that the view that I take is that the accused ought o be found guilty of assault with intent to do grievous bodily harm. She is accordingly convicted.

Both my assessors agree with this finding.

S E N T E N C E: M120 or twelve (12) months imprisonment.

B.K. MOLAI

JUDGE

24th October, 1991.

For Crown : Mr. Lenono,

For Defence : Mr. Drametu.