

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

SEBATELI TSEKI

HELD AT BUTHA BUTHE

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 13th day of June, 1991  
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The accused was charged with the Murder of one Teboho Mpheng who succumbed to the stab wound inflicted on his chest on the fifth of March, 1989 at or near Mankoaneng in the Leribe district. The defence admitted the entire preparatory examination depositions. The Crown accepted the admissions and accordingly the Crown closed its case.

It is worth mentioning that the preparatory examination depositions were made part of this record by an order adopting them as such without necessarily having been read into the machine.

The accused gave evidence in his defence part of which is consistent with that of the Crown.

On that fateful day the accused came later to the scene accompanied by a friend of his; and his friend was

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confronted by the deceased with having not paid up the bill he had been saddled with after the accused's friend's dog had bitten the deceased.

One of the parties who were in there called the combating fellows outside and the accused remained sitting in the house. After a short while the deceased came into the house, made a bee-line for the accused and during a short exchange of words the accused says that the deceased asked whether he is like his other friend too. When the accused was bewildered by this, the deceased delivered a knife blow towards the upper body of the accused who dodged. The accused pushed him back, and the deceased was standing across the only path that would have allowed the accused to move out. The deceased is said to have been holding a knife at the ready, and the accused feeling that his life was endangered avoided the second blow and stabbed the deceased once on the chest.

As to the reason why the accused did not avail himself of means of moving out of the house, it appears to me that there was no way he could move out because the deceased was obstructing his path; and the way the furniture was crammed in that place it also couldn't afford him enough movement to effect his exit without exposing his back to the deceased who was only two paces away when he was pushed back by the accused.

The Crown witnesses showed that they saw the accused holding this black knife. The accused doesn't deny that he was holding that black knife. He says that his is the brown one though. It is significant that the black knife is a flick type and one that doesn't waste time before being made ready to stab or use. The accused on the other hand had to use his teeth to open his brown okapi knife in order to quell the attack that he says he apprehended from the deceased. The knife that the deceased was holding dropped after he had been stabbed and found its way in a

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pool of blood flowing from the deceased. The accused, fearing that this knife might be spirited away by someone whose interests probably are adverse to his picked it up and held it together with his own and took them to the police station. This accounts for the blood that is found on the black knife. It also accounts for the fact that the Crown witnesses at one stage saw him holding the black knife. The accused admitted the admitted evidence that the knife belonged to him, including that the black knife belonged to him. Thus his explanation as to how the Crown witnesses might have associated this knife with him is acceptable to me.

There is no history of prior animosity between the accused and the deceased. The evidence that has been adduced from the Crown's side is that the deceased was extremely drunk, hence his being reprimanded by the owner of the dog about why the deceased should confront him about the dog bite in public, and consistent with the deceased's attitude on that day he now found that the next target must be the man who came along with the owner of the dog and on account merely of that should be confronted with that question of the dog bite again - at least impliedly in the sense that the question put to the accused was whether he too is like his friend. It should be borne in mind that the question which had been put to the accused's friend was the one confronting him with the wound that was not paid for albeit sustained by the deceased from the owner's dog.

The Court gained a distinct feeling that the accused was unduly attacked by the deceased. The question of this black knife which does not belong to the accused seems to support the version that the knife belonged to the deceased. The fact that it is not shown when it was flicked open but that when collected it was already open shows that someone must have opened it. It also supports the accused's version that he was placed in danger of his life by an attacker who held that knife. In the circumstances it would be idle to deny that there was existence of

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self-defence.

The second question is whether, in fact, if there was such self-defence, it was reasonable. I think the answer to that question is that it must have been reasonable because I can't envisage an attempt to quell an attack by a knife with a knife being otherwise unreasonable. Now, if the attack was reasonable I don't think the Court need consider whether the use of the weapon that caused the death in the circumstances was excessive moderately or immoderately, more especially regard being had to the fact that only one wound was inflicted in the process, and that the law requires that the means used must be consonant with the danger apprehended, and further that when the apprehended danger had subsided the counter - attacker must stop and indications show the accused stopped as there was no further use made of the only weapon he had.

Consistently with what should redound to the accused's credit is that he went straight to the police Charge Office immediately after his encounter with the deceased. The accused was accompanied there by people who had come to the feast. He handed over both the black knife and the brown knife. Nowhere is it suggested he collected the black knife along the way with the hope that it should serve as a red herring across the trail and thus intended to buttress his self-defence version. Witnesses had seen him holding the black knife immediately before his departure to the Charge Office. His manner of holding it was such that it obstructed the brown one from view.

There is plenty of authorities guarding against Judicial officers adopting an armed chair critic's posture in matters of this kind and that regard must be had to the heat of the moment and that Judicial officers must put themselves in the boots of the accused. It's too bad if the accused's boots are either too big or too small. The accused is found not guilty therefore and is discharged.

For Crown : Mr. Mokhobo  
For Defence: Adv. G. N. Mofolo

J U D G E  
13th June, 1991