

IN THE HIGH COURT OF LESOTHO

In the matter between:

R E X

and

SELLO MONAKALE

Accused

J U D G M E N T

Delivered the Hon. Chief Justice Mr. Justice J.L.
Kheola on the 21st day of November, 1994.

The accused is charged with murder, it is alleged that upon or about the 10th day of July, 1989 and at or near Liphiring in the district of Mophale's Hoek the said accused, acting unlawfully and with intent to kill, did assault Tsepo Makhale and inflict a knife wound upon him from which Tsepo Makhale died at Liphiring on the 11th day of July, 1989.

The accused pleaded guilty of culpable homicide. The Crown did not accept the plea but elected to endeavour to prove murder.

Medical evidence is to the effect that the cause of death was internal bleeding which caused shock. The deceased had a stab wound through the 4th left rib, penetrating wound through the pericardial sack and the left auricle of the heart, with pericardial sack full of blood.

P.W.1 Meshack Tsiame Matjola testified that on the day in question he had gone to the fields to thrash corn. He was accompanied by Malometsa, deceased, Tebello and others. After thrashing corn they returned to their village and arrived there at about 6.00p.m. They went to the café and found the deceased there because he worked for the café owner. One Nthofela bought a case of beers. As it was cold he invited the whole party to come to his home with him so that they could drink the beer in cosy surroundings. The accused was against that idea because he was of the view that they would disturb Nthofela's children and wife. He suggested that the party should go to his home because he lived alone. The suggestion was accepted.

On their arrival there the accused offered them seats and lit a lamp. They sat down and started drinking the beers. After they had finished six bottles P.W.1 says that he heard the accused say that he did not like to drink beer with children. He was directing his remarks to the deceased. Nthofela confronted the accused and said that he (accused) could not raise that issue then because he refused when he (Nthofela) said that the party should go to his home. The accused went on and ordered the deceased to get out of his house because he did not like to drink with him. The deceased did not answer the accused but Nthofela continued to defy the orders of the accused. He said the deceased could not go out because the beer was theirs (the whole party).

Thereafter the deceased rose and went out of the house. As

he was moving out of the house he trampled on the stack of maize just behind where they were sitting. The accused severely scolded him for that. The deceased apologized and went out. He was going to pass water. The accused was furious and P.W.1 says that he and the others tried to calm him but without much success. He went into his bedroom. When he came out of the bedroom he had put his right hand into the back pocket of his trousers and still scolding the deceased. He proceeded towards the door. When he reached the door the deceased opened it from outside and tried to come in. However the accused stabbed him with a knife on the chest; before he fell down the deceased said, "Ntate Sello why are you stabbing me with a knife?"

P.W.1 says that the accused ran back into his bedroom immediately after stabbing the deceased. He locked himself in there until the deceased was taken to the clinic where he was treated. The wound was sutured. He was allowed to return to his home. He died on the following morning.

It is common cause that the accused and deceased had very cordial relations and we often seen drinking beer together. They were related to each other.

The version of the accused is that when the party left the café for his home, the deceased and P.W.1 were not there at all. They arrived at his home much later after Malometsa had even gone home. When the party arrived at his home the accused says that the offered them seats and built a fire for them because it was

winter. The deceased did not sit down. He refused to sit down even after the accused offered him a seat. The accused did not like what the deceased was doing and was afraid that he might trample on his stack of maize and cause it to slide further into the house. The deceased suddenly went out and as the accused had predicted trampled on the maize. The accused says that he drew the deceased's attention to what he had done and said that that was the reason why he did not like to drink beer with children. The people who were in the house were singing and paid no attention to him when he reported to them what the deceased had done.

The accused says that he then ordered the deceased to leave his house. The latter left without making any apology.

The accused sat near the door and all of a sudden heard the sound of a breaking glass. He saw through the door that a person was breaking the widow-pane of his bedroom. He again tried to draw the attention of the people in the house but none of them paid any attention to him. He then went to his bedroom and took his knife (Exhibit "1"). He came out of the bedroom holding the knife openly so that it could be seen by all. He denies that he was hiding it in his pocket. He walked towards the door and opened it. He was immediately confronted by the deceased who was raising up a stick and uttering the words "I want you." He stabbed the deceased with the knife he was holding but he does not know where he stabbed him. He did not intend to kill the deceased because he loved that child. He was visited by the

devil. He was angry because the deceased had broken his window-pane.

In *Rex v. Ramakau Molomo* 1976 L.L.R. 64 at p. 70 Cotran, C.J. said:

"I have warned myself as I did my assessors of the danger inherent in accepting the testimony of a single witness and more particularly in case involving sex, but I consider the discrepancies referred to as not being so material as to cast doubt on Tholo's veracity in general. When two adversaries confront each other over the love and favours of one woman, both may be said to be "biased" against each other. I do not think however that Tholo had any motive to mislead let alone to fabricate nor did he strike me as a man lying on his oath. He probably did see the deceased strike the accused with the stirring stick, and tried to make the picture darker for him. What has to be decided when there are conflicting stories is for the court to be satisfied beyond reasonable doubt that the story of the party on whom the **onus** rests is true and the other false (*R v. Segole* 1947 (2) S.A.641)".

P.W.1 Meshack Tsiame Matjola impressed me as being a truthful and reliable witness. He gave his evidence in a straightforward way and never hesitated in answering questions. He was not shaken by the long and searching cross-examination by the defence counsel. When it was put to him that the deceased

broke the window-pane of the accused's bedroom that night, he gave a prompt reply that the window-pane was actually broken by the accused himself a few days after the death of the deceased when he (accused) returned from the police station and discovered that he had lost his key. He admitted without any hesitation that the deceased trampled on the accused's stack of maize when he went out to pass water. This unfortunate act by the deceased infuriated the accused so much that he went to his bedroom and took a knife and then waylaid the deceased. On the whole the demeanour of P.W.1 was very good.

On the other hand the accused was a hopeless and very unreliable witness. He attempted to give the Court the impression that P.W.1 and his colleagues were drinking and singing; and that they were so noisy and drunk that whenever he reported to them his quarrel with the deceased they ignored him or failed to appreciate his problems because of their advanced state of intoxication. He alleges that when the deceased trampled on his maize he reported to them, but they did not do anything. When the deceased broke the window-pane he reported to them but they did nothing. It is interesting to note that it was the story of the accused that there was noise and singing in the house but at the time the window-pane was allegedly broken all noise and singing had stopped. The accused was the only one who heard the sound of the breaking glass. There is no explanation why the other people could not hear such a sound. P.W.1 denied that there was such a sound. His evidence is that when the deceased went out the accused was still scolding him.

He immediately went into his bedroom and came out with his hand deep in the pocket.

Section 238 of the Criminal Procedure and Evidence Act 1981 provides that any court may convict any person of any offence alleged against him in the charge on the single evidence of any competent and credible witness. The exceptions being perjury and treason.

I have already come to the conclusion that P.W.1 is a competent and credible witness.

The accused says that when he opened the door he was confronted by the deceased who was raising up his stick and saying that he wanted him (accused). The natural or normal reaction of a man who was thus confronted would have been to shut the door before the blow was delivered. The accused wants this Court to believe that the deceased was so stupid and slow to strike him with the stick that he (accused) had the chance to stab him. The story of the accused is not only improbable but is an outright lie. The deceased was much younger than the accused and could not have been so out manoeuvred.

In **S. v. Mini**, 1963 (3) S.A. 188 (A.D.) at p.192 Williamson, J.A. said:

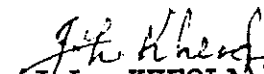
"To constitute in law an intention to kill,

there need not, however, be a set purpose to cause death or even a desire to cause death. A person in law intends to kill if he deliberately does an act which he in fact appreciates might result in the death of another and he acts recklessly as to whether such death result or not."

I have come to the conclusion that the accused had **mens rea** in the sense stated above. He says that when he stabbed the deceased he did not aim at any particular part of the body. He just stabbed in a reckless manner and stabbed him on the chest and directly on the heart. He must have foreseen the possibility that his act might cause the death of the deceased but was reckless as to whether such death resulted or not.

I accordingly find the accused guilty of murder.

My assessors agree.


(J. L. KHEOLA)
CHIEF JUSTICE

EXTENUATING CIRCUSMTANCES

There is no doubt that there are extenuating circusmtances in the present case. The evidence led during the trial proved beyond any reasonable doubt that the accused was drunk. It also emerged in the court's judgment that this was a **dolus evenutalis** case.

The two factors amount to extenuating circumstances.

SENTENCE: Ten (10) years' imprisonment.


(J.L. KHEOLA)
CHIEF JUSTICE

21st November, 1994

For Crown: Mr. Ramafole
For Accused: Mr Mathafeng.