

IN THE HIGH COURT OF LESOTHO

In the matter between:

REX

V

MOETI MOHALE

JUDGMENT

Delivered by the Honourable W.C.M. Maqutu  
on the 29th day of November, 1994  
-----

The Accused is charged with the crime of murder, in that upon or about the 15th September, 1991 and at or near Rapoleboea in the district of Maseru the said Accused did unlawfully and intentionally kill Matona Lechela. In this case the Crown has called one witness which witness seems to have been a victim of the Deceased's harassment. P.W.1 Mamohlolo Sefali says she had gone to a stockfel where she met the Deceased. The Deceased reminded her of his love proposal which had been rejected by her. P.W.1 persisted in her refusal to accept Deceased's love proposal. Deceased told her whether she liked it or not she would have to accept his love

/...

proposal.

The harassment became so bad that P.W.1 had to go into another house to escape this harassment by Deceased. The Deceased followed P.W.1 to that house and persisted with his unwelcomed advances making P.W.1's position intolerable. P.W.1 decided she should leave for two reasons - the first one was that it was too late and the second one was to escape from the Deceased.

I must say, P.W.1, who is the sole witness for the Crown, was not perfectly truthful. She had been drinking there. She mentioned this fact before the magistrate. Before this Court she wants to pretend that she did not take a drop. That is not the only thing. She gave the impression that she was there for a very short time and had to leave in a very short time because of the Deceased. But then, when she elaborates as to the time she took at the stockfel it turns out that it was from 11.00 a.m. to 4.00 p.m., that is five hours. That shows clearly that her memory is not the best or she decided deliberately not to tell the truth as it was. The Accused says that they came to the stockfel at around 1.00 p.m. and she left around 7.00 p.m. or thereabout. They were there for about six to seven hours, a difference of two hours.

/...

Nevertheless this is all the Crown evidence and P.W.1 is the only Crown witness on whose evidence I have to rely. This witness's evidence corroborates that of the Accused in many respects.

According to P.W.1 on her way home the Deceased followed her, and when he came to her he virtually grabbed her by the neck by catching her blanket in the neck region and shaking her, threatening her with violence for having this attitude of refusing his love proposal and saying P.W.1 will have to accept his proposal. According to P.W.1 the Accused intervened, removed the hand of the Deceased from her neck, and said that is not how to treat somebody's wife especially if she is in Accused's company. Then the Deceased asked the Accused,

"will you give me what this woman will give me?".

Those are clear provocative words. Any man with a lady would be expected to do something, if he is able to give her protection. If he is unable to do so, it is another matter. P.W.1 says Accused had a stick, and according to P.W.1 Accused said she should move on as he is trying to rebuke the

/...

Deceased or trying to make Deceased to see reason.

According to P.W.1 Deceased was beginning to calm down and was beginning to be less aggressive when she left. Then a strange thing occurred during cross-examination. P.W.1 says these two people seemed to have a grudge against one another. It was shown to her that (at the magistrate's court during the preparatory examination) she actually said to Accused they should go home because the Deceased appears to have trapped him. She agreed she was not quite correct when she said Deceased was beginning to calm down.

Well, whether Accused had a grudge or not against the Deceased, Deceased did something that must have put Accused under an obligation to intervene and stop this harassment of P.W.1. There are a few differences in the evidence of Accused and P.W.1 on this point. Accused says Deceased never calmed down. In fact he became angrier when the Accused let his quarry to go away and that is when things became worse.

The Accused was of the view that the intention of man was to drag this woman into a donga. Whether that was so or not is beside the point. What is clear from what the Accused says is that the Deceased was not pleased with Accused for having

/...

thwarted him in what he intended to do to P.W.1. According to the Accused the Deceased got hold of the Accused and Accused then pulled himself away, and just as he did this Deceased hit Accused with a stick on the head. When the Deceased tried to hit the Accused the second time Accused warded off the blow and Accused hit the Deceased with a stick once, and the Deceased fell. As P.W.1 had left, Accused is the only one who can tell us what happened.

The medical evidence is not helpful, because it shows a skull fracture and that there was sub-dural haemorrhage. One blow could cause this. Therefore this medical evidence does not help to rebut the possibility that the Accused might have exceeded bounds of self-defence.

Now in cases of self defence the law is clear that a man is not only entitled to defend himself against danger that is imminent or that he thinks is imminent. Further more the law of self defence permits a person to defend another. That is why the recent text books no more call it self-defence but private defence. See Burchell and Hunt *The South African Criminal Law and Procedure Volume I General Principles* page 272.

/...

Now the case law is clear that, the Court should not take an armchair speculative view of evidence. The view of the law is that the Court must take into account that decisions are made fast and in heated situations in which danger is perceived or believed to be imminent. The situation in which the Accused finds himself must be viewed objectively not subjectively. In *Rex v Hele* 1947 (1) S.A. 272 at 276 AD the Accused was acquitted because he killed Deceased because he reasonably believed the Deceased to be having a knife when in fact Deceased did not have one. In *Zikalala* 1953 where the trial court felt the Accused should have called for help or run away Van den Heever J.A. on appeal in quashing conviction observed:

"But the observation places a risk upon the appellant that he was not obliged to bear. He was not called upon to stake his life upon 'a reasonable chance to get away'. If he had done so he may well have figured as the deceased at this trial, instead of as the accused person. Moreover, one must not impute to a person who suddenly becomes the object of a murderous attack that mental calm and ability to reason out *ex post facto* ways of avoiding violence without recourse to

/...

violence."

This case meets the essentials of private defence in the following ways:

1. there was an unlawful attack on P.W.1 which was later directed at Accused when he came to P.W.1's rescue.
2. Accused was ~~actually~~ attacked and consequently was obliged to defend himself.
3. Accused hit Deceased with a stick once on the head after Deceased had hit Accused with a stick on the head and was attemptive to hit Accused the second time. The means Accused used to avert Deceased cannot be said to be unreasonable or that Accused used excessive force.

Therefore, what Mr. *Mofelehetsi* argued namely that the Accused could have run away is a bit difficult for this Court to accept. In the first place he was going with a lady, whom he was obliged to try to defend. Could he run away and leave that woman to this violent man to ravish. I don't think it

/...

is reasonable to think that the Accused in that situation could be expected to do that. Even during the fight the fact that the Deceased was drunk, has not been shown to have rendered him helpless. On the contrary it shows him only to have been in a position where he had lost normal inhibitions and self control. But otherwise he was still very able to inflict harm that is why he was able to leave the stockfel and come after the woman he wanted.

The Court must act on evidence that exists not on speculation. If P.W.1 lied in favour of the Accused, it is something that this Court will not be able to detect because it can only do so if there is some other evidence. Even if there was, in the circumstances of this case, the only option this Court has would be to give the Accused the benefit of doubt. But with the evidence as it is, the Court finds itself obliged to acquit the Accused.

This Court finds the Accused not guilty and he is discharged.

.....  
W.C.M. MAQUTU  
JUDGE

/...



For the Crown : Mr. *Mofelehetsi*  
For the Defence: Mr. *Mathafeng*