

IN THE HIGH COURT OF LESOTHO

In the matter between:

R E X

and

HONKENE TLELASE

Accused

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 15th day of February, 1994

The accused is charged with murder of Ramoloko Komp1 on the 6th day of January, 1990 and at or near Mekaling in the district of Mohale's Hoek.

In Count 2 he is charged with attempted murder, it being alleged that upon or about the 8th day of January, 1990 and at or near Mekaling, in the district of Mohale's Hoek, he unlawfully and intentionally assaulted Nkuebe Mapholo with intent to kill him by hitting him with an iron rod on the head and face

Accused pleaded not guilty to both charges

P.W.1 Nkoebe Mapholo testified that on the day in question

he was at the home of one 'Matebello. He was in the company of the accused, the deceased and one 'Malili who was the girlfriend of the accused with whom he lived as man and wife. They were drinking beer. It was at about 7 00p.m. P W 1 says that he went out of the house in order to relieve nature. When he came back he found that the accused was fighting with 'Malili. He reproached the accused and ordered him to stop it. The accused complied.

Thereafter he (P.W.1) and the deceased left. As they walked away they saw 'Malili come running behind them and the accused chasing her. She came to them but passed them without saying anything. Accused came to them. P W 1 asked him what was happening. He did not answer him but struck him with an iron rod on the left side of the head above the left ear. He fell down and while he was still on the ground the accused hit him on the face just below the eyes and on the left jaw. The accused left him for a short while but came back and belaboured him with the iron rod. While the accused was belabouring him he lost consciousness and when he regained his senses he was in Queen Elizabeth II Hospital in Maseru. He remained in hospital for well over a month. When he was discharged his jaws were tied with wires because they were badly fractured.

P W 2 Makhaola Molomo gave evidence that on the day in

question he was called to the scene of the crime because he is the headman in that village. He found P W 1 lying on the ground behind the house of one 'Mathabo Mohale. He had wounds on the head and the face. While they were trying to stop the bleeding the accused came. He reported that he had gone to the chief's place to report that he had caused troubles there. He (accused) said that they should move aside so that he could finish up P W 1. P W 2 refused to stand aside and warned the accused that he had not come there to play. It was at about 8 00p m and the accused was holding a pipe of about one metre in length. P W 2 seized the pipe and kept it. Accused left.

P W 2 says that after the departure of the accused he found two knives and two hats near where P W.1 was lying. One of the hats was identified as that of P W 1. The other hat was not known by the villagers. The accused was brought back to the scene of the crime and was asked where the owner of the other hat was. He said he chased him and that he ran downwards. P W 2 instructed his subjects to look for that person because he suspected that he might be hurt. The deceased was found dead lying near a house nearby. P W 2 asked the accused about the deceased. He said he (P W 2) should excuse him because he did not realise that he had caused such injuries. The face of the deceased was smashed from the forehead to the chin. There were other wounds on the left side of the head.

P W 2 says that the villagers were so angry that they assaulted the accused with a stick but he succeeded to stop them after a wound or wounds had been inflicted on accused's head. He identified one of the knives as that of the accused. He knew it because a week before the present incident the accused had attacked one Moramang Kasane with it. He had reprimanded him and seized the knife. But after a few days he released it to accused because he decided not to bring any criminal charge against him.

Warrant Officer Tsepe arrested the accused and charged him with murder and assault with intent to murder. He says that he was given a pipe which was about one metre long. The hole of that pipe was filled with cement.

P W 4 'Mathabo Mohale testified that on the night in question she was sleeping in her house when one Masechaba came and woke her up. She rose and stood at the door. She saw two people at her forecourt. They were the accused and P.W 1. The former was threatening to stab the latter. P W.1 said he should do so. In the end P W 1 fell down because accused hit him with an iron rod. The deceased had been standing on the path nearby. He ran away when P W 1 fell down. The accused chased him. They ran until they disappeared on the other side of the house which is near hers (P W 4)

Thereafter she went into her house and dressed. She again came out of the house and saw the accused coming back from where he had disappeared with the deceased. He was kicking something black and when he came to where the deceased was still lying on the ground he remarked that he (deceased) was still there. He hit him four times with the iron rod. She confirms that when the Headman asked the accused what had happened to P W 1, he (accused) said he should be forgiven because he did not know that he had caused any injuries. When it was put to her by the defence counsel that the accused chased the deceased for only a short distance and came back, she insisted that he chased her until they both disappeared at the corner of that other house.

The version of the accused is that when he left 'Matebello's place he was accompanied by 'Malili P.W 1 and another man he did not know were ahead of them. 'Malili rushed saying that she was going to buy candles and matches at 'Masentle's cafe. He also walked fast behind her because he intended to buy tobacco from the same cafe. When he came behind the cafe he found 'Malili standing there with P W 1 and that other man. He asked her why she was standing there when she had said that she was in a hurry to get to the cafe. She asked him what she was supposed to do to show that she was in a hurry. P W 1 interrupted her and asked the accused what he was asking that woman. He (P W.1) insulted him. When accused asked him whether he was aware that

he was insulting him, he said: "Yes, I am saying so, this woman is my cousin " P W 1 was coming nearer to him when he uttered those words All of a sudden P W 1 raised his right arm and stabbed him on the right arm He again stabbed him on the left hand. After that they fought with their sticks He (accused) hit him on the left side of the head Accused says that it was a stick and not an iron rod or pipe as the witnesses said. His stick broke when he hit P w 1

While he was fighting with P W 1 he noticed that the other man was still there That other man hit him on the shoulder with a stick When he tried to turn and attend to that man, P W 1 hit him on the shoulder He fell down. That man ran away and when he rose he did not see where the man had gone because he was fighting fiercely with P W 1 Finally he hit P W.1 on the head He fell down He ordered him to take out the knife with which he stabbed him At that time one Mabotse came and said: "Soare, once a person, has fallen down leave him, do not belabour him". He stopped hitting him and Mabotse ordered him to go and report himself to the chief He complied He says that when he returned to the scene of the crime the chief was already there He (chief) instructed his subjects to beat him up They belaboured him with sticks

According to the post-mortem examination report the deceased

had the following injuries; open skull fracture with fracture of the base of skull and direct brain damage, seven tearwounds on the head with extensive and smash fractures of left mandibular and maxilla, open fracture of left temporal bone extending as fracture of base of left skull. The chin and the left face were deformed.

The medical report of the accused reveals that he had a 2cm laceration on the occiput, swelling below the left eye and a tiny laceration on the right arm.

I have considered the evidence as a whole and have come to the conclusion that there is overwhelming and credible evidence against the accused. It is true that the murder charge is based on the evidence of a single witness. In our law a court can convict an accused 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. (See section 238 of the Criminal Procedure and Evidence Act 1981).

IN the present case P W 4 is the single witness who saw what happened. Her evidence was criticised on the ground that she must have been drunk and was not a condition to observe the events properly. She admitted that during the day she had been drinking beer and was drunk. She went to bed and slept. When

'Masechaba woke her up she had sobered up and saw well what happened She says that after the accused had felled P.W 1 he chased the deceased until they disappeared at the corner of a house She did not see what happened on the other side of that house However after some time the accused emerged from near that corner He was kicking something black which eventually turned out to be the deceased's hat. It is common cause that later that same evening the deceased was found dead on the other side of that house where the accused had disappeared with him It seems to me that this is a case depending on circumstantial evidence

In R. v. Blom, 1939 A.D 188 at pp. 202,203 Watermeyer, J A referred to two cardinal rules of logic which governed the use of circumstantial evidence in a criminal trial

- "(1) The inference sought to be drawn must be consistent with all the proved facts If it is not, then the inference cannot be drawn

- (2) The proved facts should be such that they exclude every reasonable inference from them save the one to be drawn If they do not exclude other reasonable inferences, then there must be a doubt whether the inference

sought to be drawn is correct "

In the present case the only reasonable inference to be drawn from the proved facts is that when the accused finally caught up with the deceased when they disappeared near the corner of that house he severally assaulted him and murdered him. The other inference is that the deceased might have been killed by some other person or persons when he came there but that is not a reasonable inference when the facts of this case are taken into account

It was put to P W 4 by the defence counsel that the accused will admit that he chased the deceased but for only a short distance. In other words it is common cause that the accused did chase the deceased. In his evidence in the witness box the accused came up with an entirely different story that he did not chase the deceased at all. His story cannot be true because his counsel could not put to the Crown witnesses a case which was not in accordance with his instructions. In any case we have a Crown witness who saw when the accused chased the deceased

The accused was seen kicking the hat of the deceased until he actually came to P W 1. One wonders why the accused could do such a thing if he had not just felled the deceased and was showing his contemptuous attitude towards his victim, he was

proud of what he had just done to his victim

The injuries found on the deceased were identical with those found on P W 1. The skulls, jaws and faces of the victims of the assault were smashed to smithereens. This indicates that the weapon used on both victims was the same. It was described as a pipe of about one metre in length and whose hole was filled with cement\concrete. It was a very dangerous weapon.

The accused lied that he used an ordinary stick which broke during the fight. He said he left those two pieces of the stick at the scene of the crime. No such pieces were found at the scene of the crime.

I formed the opinion that the Crown has proved the case of murder beyond any reasonable doubt. The accused had the requisite intention for murder in that he foresaw the possibility that his actions might cause the death of the deceased but he was reckless as to whether death occurred or not. I say he foresaw the possibility of death because he knew very well that the weapon he used was very heavy and that he would smash the skulls of his victims.

With regard to the second charge I have absolutely no doubt that the accused intended to kill P W 1. The weapon used was a

murderous one, the parts of the body which were smashed - the head, face and jaws - are delicate ones and it is proof that he intended to kill. When the accused returned from chasing the deceased he found P W 1 still lying prostrate on the ground. He again mercilessly belaboured him with that dangerous weapon until one Mabotse came and pleaded with him that once a person has fallen down he should not be belaboured. The accused says that Mabotse uttered those words because he (accused) was forcing P W.1 to produce the knife with which he had stabbed him. It was unreasonable of him to belabour a person who was already unable to rise

I formed the opinion that the Crown has proved beyond a reasonable doubt that the accused had the intention to kill P W 1

Judgement: Count I.- Guilty of murder as charged.
 Count II.- Guilty of attempted murder
 as charged.

My Assessors agree

J. L. Kheola
J. L. KHEOLA
 JUDGE

15th February, 1994

Extenuating Circumstances

One of the factors I took in consideration in determining whether there were extenuating circumstances or not was intoxication. In the present case it was common cause that the accused and his victims had been drinking beer for a greater part of that day and that they were drunk. However the drunkenness was not such that they did not know what they were doing or unaware of what was happening around them. That intoxication is an extenuating circumstance was emphasised in the case of S. v. Ndhlovu (2) 1965 (4) S.A. 692 (A.D).

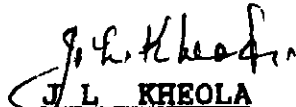
I have also taken into consideration that this was a case of dolus eventualis. See S v. Sigwahla, 1967 (4) S A 566 (A.D) at p.571

I found that there are extenuating circumstances

Sentence Count I: Eleven (11) years'
Imprisonment

Count II: Four (4) years'
Imprisonment. Sentences shall
run concurrently.

My Assessors agree.


J L KHEOLA
JUDGE

15th February, 1994

For Crown Miss Nku
For Accused Mr. Putsoane (Legal Aid)