

IN THE HIGH COURT OF LESOTHO

In the matter between:

R E X

and

MOTHEO MATJENE	1st Respondent
SEJAMONNA MOTSAU	2nd Respondent
MAKANKE LEKOLOMI	3rd Respondent
SOAI JOINE	4th Respondent
RAMOSENYEHI MATLOERE	5th Respondent
THABO MQETHAKALE	6th Respondent
TSIELO TSEKA	7th Respondent
LEBAMANG RANTSO	8th Respondent
MOTHEO MOSOEU	9th Respondent
LIRA LEKOLOMI	10th Respondent
JOBO MOSOEU	11th Respondent
MOHLOLO NTSOKOLO	12th Respondent
MYALEKISO MAHLO	13th Respondent
SKHULELE MASHABATHE	14th Respondent
'MA-ELIA MOHALE	15th Respondent
MOIKETSI MOSOEU	16th Respondent
MOPELI MAKOKO	17th Respondent
SELIANE ROELANE	18th Respondent
MALEFANE LEKAOTA	19th Respondent
MYAMESELE TJOETE	20th Respondent
ZAMANE TJOETE	21st Respondent

J U D G M E N T

Delivered by the Honourable Mr Justice J.L. Kheola  
on the 25th day of February, 1994

The accused are charged with one count of murder and three counts of assault with intent to do grievous bodily harm The

murder charge relates to the death of 'Mamvulani Monatho. The assaults relate to Popotana Mqolombeni, 'Mantsane Monatho and 'Mantsolo Lepheane.

It is common cause that prior to the 11th day of May, 1989 when these crimes were committed, three of the initiates at the circumcision school of A1 died. A1 believed that his initiates died as a result of witchcraft. He was allowed by his chief and the police to seek help from diviners\witchdoctors in order to establish who caused the deaths of his initiates. A1 decided to go to A15 who was apparently well known as a diviner in that area. Her home was far from the home of A1. On the day A1 went to the home of A15 he was accompanied by a large number of co-villagers including some of the accused and the deceased as well as all the complainants in the assault case except 'Mantsolo who lived in a different village from that of A1.

It is common cause that when they arrived at the home of A15 they were put in a house and A15 purported to have discovered by inspiration, magic or intuition that the complainants were responsible for the deaths of the initiates of A1. She called the names of the complainants and ordered them to come forward. They came forward and she whipped them with her sjambok. She handed them over to A1. One of the complainants was not happy with the finding of A15. She asked that she be allowed to

consult another diviner She was overruled.

After the handing over of the complainants by A15 to A1 the ill-treatment of the complainants started. They were ordered to put off their shoes. P W 11 Popotoane Mokolombeni had gone there on horseback. His horse was taken from him and he was forced to walk. Immediately after leaving A15's home the villagers, including some of the accused, started chasing the complainants. They were on horseback while the complainants ran barefooted on a very rough terrain. They hit them with all sorts of weapons including sticks and sjamboks. When the complainants reached their village that evening they had sustained many injuries and their feet were swollen. During the night the complainants were severely assaulted. 'Mantsolo joined them during the night after a group of men fetched her from her home.

On the following morning they were driven to the home of the senior chief and more people joined the original group and further severe assaults were meted out to them. From the home of the senior chief the complainants and the deceased were driven to the circumcision school of A1 to enable one of the complainants to take out or point out the dead initiates because during the assaults she admitted that she was responsible for the their deaths and that she would point them out. When the party arrived there she failed to point them out. The assaults

continued until the deceased died.

The crucial issue in the present case is whether the accused were involved in the assaults of the complainants as well as the assault of the deceased.

P.W 1 Felake Senane testified that when he arrived at the home of the chief, A17, it was alleged that the witches who had killed the children of A1 had been found. The so-called witches were 'Mantsolo, Popotoane, 'Mantsane and the deceased. Amongst the men who were driving them he recognized A12, A1, A16, A4, A11 and many others whose names he has forgotten. The complainants and the deceased had been severely assaulted. Popotoane (P W 11) had a wound on the head and was limping, 'Mantsane was also limping and unable to walk; 'Mantsolo and deceased were also limping. A17 asked them what they knew about the death of A1's children. All of them said they knew nothing except 'Mantsane who said she had killed them. A17 ordered the villagers to take the deceased and the complainants to the circumcision school to enable them to take out A1's children.

P.W 1 says that he joined the group of men who were escorting the complainants and the deceased. He was far behind them because it took him some time to get a horse. When he found the group of men at Makomoreng's the deceased was prostrate and

the men were shouting at her and ordering her to get up. She managed to rise. A5 was amongst those men. A4 was also there. When they came to the circumcision school 'Mantsane went into the forest but came back without the children of A1. The whipping started again. All the accused whipped the deceased and the complainants. Again the deceased collapsed and said that she was hungry because they never had anything to eat since the previous day when they went to A15's place. She was put on a horse but she died. P W.1 says that A6 and A4 were the people who were beating up the complainants and the deceased. A13 was also involved in the assaults.

Trooper Mahasele testified that on the 17th May, 1989 he went to the homes of A1, A12 and A15. A1 gave him a knobkerrie (Ex 1); A12 gave him a whip (Ex 2) and A15 gave him a whip (Ex 3) which she used to whip the deceased and the complainants. The whipping was part of her work.

Sergeant Makhetha testified that on the 12th May, 1989 he went to Qhoalinyane and found the body of the deceased. He examined it and found that the left eye was missing, the right eyebrow was also missing; parts of the vagina were missing; there were weals all over the body. He saw the complainants and noticed that their feet were swollen, Popotoane had a wound on the head, there were weals on his body and the other complainants

had weals on their bodies.

P.W.4 Molapo Makoae told the Court that he was a member of a party that went to A15's place. He was amongst the group of men who were chasing the deceased and the complainants when they left A15's place. He was not actually chasing them but was trying to help them. When they crossed Mphaki River A1 and A9 started whipping the complainants and the deceased with sjambok. He dismounted his horse and held A1's horse with its reins and asked him (A1) whether what he was doing was in accordance with the contents of the police letter which authorised him to consult the witchdoctors. A1 said that he was told that if he brought one person alive that would be in order. When they reached Letsie Setho's village A1 chased the deceased and whipped her on the head and all over the body. He (P>W.4) warned A1 that he would kill that person. A15 who was the chief's messenger refused to intervene.

During the evening of the same day he (P W.4) joined the group that went to 'Mantsolo's place and they brought her to the chief's place. He went to his home. On the following morning he came to the chief's place and found the complainants and the deceased lying outside the house. Their feet were swollen.

P W5 Moroke Lekacta was declared as an accomplice. One

morning he went to the home of A16 and found the complainants and the deceased being interrogated by A16. 'Mantsane admitted that he bewitched the children of A1. The other complainants denied having bewitched them. It was at that stage that A1 hit Popotoane on the head. P W.4 stopped him from doing such a thing. Later that day A16 ordered his subjects to drive the complainants and the deceased to the senior chief's place (A17). On the way A18 who was the chief's messenger said that the people should assault the complainants and the deceased so that they would tell where the children of A1 were. They whipped them on their bodies with sjamboks. When they were at Sephooko's place A1 picked up a stone and hit Popotoane with it on the head. A12 stopped him from doing so. When they arrived at A17's place 'Mantsane again admitted that she bewitched A1's children and said they could be found in the forest near the circumcision school. It was decided that they should be driven to the circumcision to enable 'Mantsane to point out the children of A1.

P W 5 says that when they left A17's place he was in the company of A12, A7, A6, A5, A21, A20, A18, A16, A14 and A9. There were other people in the group. A18 ordered that the complainants and the deceased should be beaten up so that they could tell the truth. He and the people he has mentioned whipped them with their sjamboks on the bodies. When they were at Makomoreng's A1 came on horse back; he was chasing the deceased

who fell down She rose and A1 went ahead with her.

P.W.6 Rashaba Moroke says that he was a member of the party that went to the home of A15. His version of what transpired at the home of A15 is the same with the stories of other witnesses. He says that when they left the home of A15, A1 drove the complainants and the deceased. He chased them and whipped them with a plastic sjambok. He was on horseback. As the A1 chased them 'Mantsane kept on falling because she is a very old person.

P.W.11 Popotoane Mokolombeni testified that after they had been whipped by A15 all over the body and on the face they were handed over to A1 and his party. When they asked that they be allowed to consult other traditional doctors at their own expense, A1 said they were men of straw and asked where they could get the money. From there they were driven back to their village. His horse was taken from him and given to his elder brother, it being said that a wizard should not be allowed to ride a horse. A1 and A9 drove them and whipped them with sjamboks on the bodies and horse trampled on their heels. A1 and A9 were on horseback as they drove them back home. At one stage P.W.4 intervened and warned A1 that people are never treated like that. A1 became very angry when P.W.4 tried to stop him from assaulting them.



P W 11 says that he and Mantsolo reached the home of A16 ahead of 'Mantsane because she is a very old lady who kept on falling when A9 whipped her with a sjambok. When they reached the home of A16 he was very tired and had a wound on the forehead which was inflicted by A1. His ankles were painful because horses had trampled over him and there was a long wound running from the middle of the leg to the heel. 'Mantsane had an injury on the leg caused by a whip end, she had a wound behind the left ear inflicted by A1. More injuries were caused on them when they were already at the home of A16. A12 had arrived. He asked A16 whether "these people" had not yet told the truth about the whereabouts of A1's children. A16 said that they had not yet done so. A12 said that they would tell the truth. He ordered them to sit on a hide. He came and sat on his hap. He ordered him to stretch his legs and then whipped him on the feet. 'Mantsane and the deceased sat near him. They were ordered to stretch their legs. A12 whipped them on the feet.

At that time A1 had gone to his home. Other people were ordered to fetch 'Mantsolo. When A1 came back at night, he was holding a knobkerrie. He struck him (P W 11) on the head towards the back. He left numb and ran to A10. A1 delivered another blow with his knobkerrie. A10 warded off that blow with his arm. While A12 was beating up the deceased very severely 'Mantsolo arrived. After they were all searched A12 ordered them to strip

He then whipped them all over their bodies and ordered them to sing a certain song allegedly sung by witches. While they were winging A12 continued to whip them and A3 kept on pricking them with safety pins on their backs. They remained naked for the whole night. At dawn they were allowed to wear their clothes again.

In the morning A16 said that they should be driven to A17's place. A12 and A18 drove them well but on the way many other people joined them. The assaults started. A7 was the first person to join them. As soon as he came he started chasing them and whipping them with a sjambok all over their bodies. He was on horseback. When they were passing Mojari's village A1 joined them. He whipped them with a sjambok. He still had his knobkerrie on his waist under his belt. A17 was not at all sympathetic to their ordeal. He ordered the people to drive them to the circumcision school to point out A1's children. He incited the people to bring them (complainants) back dead. P.W.11 says that because of the injuries he had sustained and hunger it was not easy to get up from where he was sitting. A13 whipped him with a sjambok while he was still trying to rise and continued beating him up on the way to the circumcision school. When they crossed the river A1 came to him. A1 hit him with a knobkerrie on the head. He fell down on his back. He was unable to rise. He heard faintly when A8 said that those people

were going to kill him and that he must run away A1 said he was going to slaughter him (P.W.11) But P W 1 and A6 said if they knew that he would kill people they would not have come to his assistance

'Mantsolo Lepheane (P W 12) says that she knew A1, A7, A8, A10, A11, A12, A14, A15,, A17 and A19 On the 10th May, 1989 she was summonsed to her chief's place When she arrived there she was informed by her chief that she was wanted at A16's place in connection with the death of A1's children. She was handed over to a group of men who had to escort her to A16's place. On the way she was beaten up by the people who escorted her She saw A19 He whipped her with a sjambok all over her body Molapo intervened and stopped them from assaulting her. When she arrived at A16's place the house was full of people She was ordered to sit with the so called other witches They were Popotoane, the deceased and 'Mantsane Amongst the people in the house she recognised A1, A8, A11, A12, A16, A10, Moroke, Mankanke, Phopiso and A19. A16 asked her to tell the truth whether she knew anything about A1's children She denied knowledge about them A16 left and went to sleep.

P W 12 says that during the night they were severely assaulted They were hit on their bodies with sticks and whipped with sjamboks The soles of their feet were hit with sticks and

sjamboks A1 was hitting them with a knobkerrie. He hit her with a stick on the neck and between the shoulders. A19 and other hit her on the soles of her feet A9 hit the deceased with a stick on the right side of her body and with a knobkerrie between her shoulders. A1 hit P.W.11 with a knobkerrie. While they were sitting down they were pricked with safety pins on their backs. A1 hit 'Mantsane with a stick above the right knee and on the ankle. In the morning their bodies and legs were swollen They were driven to the home of A17 On the way the assaults continued At one time A8 whipped her with a sjambok She fell down on her face. A6 hit her with a stick He passed her and went to P.W 11 He beat him up. He also beat up 'Mantsane A7 and A14 also beat her up

From A17's place they were driven to the circumcision school On their way assaults continued She says that A4 severely assaulted her. A1 hit the deceased with a knobkerrie between the shoulders

A7 Tsietsi Tseka testified that on the day in question he was threshing wheat at his field and never joined the party that was escorting the complainants and the deceased I am not satisfied that A7 is telling this Court the truth He is implicated by not only the two complainants i e. P.W 11 and P W 12 but he is also implicated by P W.5 and P W 9. Their

evidence was to the effect that he joined them on their way to P.W 17's place and that as soon as he did so, he started assaulting the complainants and the deceased P W.5 and P W 9 are fellow villagers of A7, they know him well and there can be no question of mistaken identity. The events took place in broad daylight The complainants also know A7 and they allege that they saw him assault them.

I have come to the conclusion that the story of A7 is not true He went to his field after he had taken part in the assault of the complainants and the deceased I have ignored the evidence of P W.10 because he was not cross-examined The warrant of his arrest for failing to appear before this Court was apparently never served

A8 Lebamang Rantso testified that he was a member of a party that went to fetch P W 12 from her home On the way the people in his party started assaulting P W 12 He and P W.4 stopped the people from assaulting P W 12 In his evidence P.W 4 confirms that he and A8 stopped the men from assaulting P W 12 In her evidence P W 12 says that during the night A8 assaulted them at the home of A16. A8 denies this P W 11 confirms his evidence that during the night he (A8) never assaulted anybody I have come to the conclusion that A8 must be given the benefit of doubt.

A15 Maelia Mohale admitted that she whipped P W 11, P W 12 and the deceased as part of her work. She was merely reprimanding them for witchcraft. She whipped each of them with a sjambok only three times. She denies that she severely assaulted P W.11. She also denies that she used the thick end of the sjambok when she whipped them. She did not instruct any of the people who were present in the house when she did her work to assault the complainants and the deceased. It seems to me that A15 admits having assaulted the complainants and the deceased.

A1 Motheo Matjene testified that he never assaulted any of the complainants and the deceased. He says that from the home of A15 he drove P W.11 but never assaulted him. The women were driven by A9 and P W.4. At A16's place the so called witches were not assaulted by anybody. He did not hit P W 11 with a knobkerrie on the head. He agrees that in the morning he attempted to assault P W.11 but was restrained by A12. He says that on their way from P W 17's place they passed near his circumcision school. When he saw the graves of his children he was overwhelmed by anger and wanted to assault P W 11. A18 restrained him. He admits that when 'Mantsane failed to produce his children they assaulted the so called witches.

A1 said that he separated the clans i e Basotho from Xosas

when he noticed that the people were dying because they were being assaulted. He would then see who were assaulting the complainants. A12 was also pleading with the people to stop assaulting the so called witches. After the Basotho had left he threatened to kill P W.11. P.W.1 restrained him.

I have formed the opinion that A1 has not been honest with the Court and has told it nothing but a pack of lies. He is implicated by all the Crown witnesses that he assaulted all the complainants and the deceased at different times. The big open wounds on the head of P W 11 were inflicted by him with a knobkerrie, a stone and a stick at different times. It is not true that he was all time trying to protect the complainants and the deceased from the mob who wanted to assault them. The truth of the matter is that whenever he saw the so called witches he saw red. I think rightly so because he alleges that he worked very closely with P.W.11 in the establishment of his circumcision school. He worked with him when he put magical pegs around the circumcision school. He says that P W.11 was one of his instructors at the circumcision school. P W 11 denies this.

I have no doubt that as the owner of the circumcision school and father of some of the initiates who died, A1's anger towards the so called witches was very intense and that he would like to see them dead like his children. I accept the story of the Crown

witnesses that he assaulted the so called witches. The complainants know him well and they saw him assault them with a knobkerrie, a stick and a stone. It cannot be true that at one time he was protecting the complainants and the deceased from the mob who were attacking them. I have come to the conclusion that A1 assaulted all the complainants and the deceased. In one breath he says that P.W.12 did not have any injuries but in another breath he says she had a few weals which she sustained before he ordered a separation of Basotho from Xosas. He minimizes the severe injuries which P.W. 12 sustained. According to the medical report (Exhibit "D") P W.12 had several abrasions on the face and several lacerations on her feet. According to exhibit "C" 'Mantsane had four lacerations on her face and her lower legs were sore.

Exhibit E reveals that P W.11 had lacerations on the head and face and a large wound on the left leg with a loss of flesh which necessitated skin graft. Exhibit B reveals that the deceased had a broken neck and numerous severe lacerations on her body and removal of genitals and the left eye which was cut out with a sharp object. Both small lips of the valva were cut away.

A14 Skhulule Mashabathe says that he was nowhere near where the complainants were assaulted. He was threshing wheat at the field of P W 4. They started threshing wheat in the morning



until dusk. However he admits that during the night he was in the house in which the complainants and the deceased were kept. A1 was very angry against P.W.11 but he and A10 restrained him (A1) when he tried to hit P.W.11 with a knobkerrie. P.W. 5 is an accomplice who implicates A14. He says that he was in the company of A14 and others when the complainants and the deceased were being driven to Sekhalabateng. They drove them very hard and assaulted them. His evidence is confirmed by P.W.12 that A14 assaulted her when they were at Sephooko's. On the other hand P.W. 4 says A14 was not there at all i.e. where the assaults took place. I have come to the conclusion that A14 must be given the benefit of doubt.

There seems to be no satisfactory evidence against A11. He must be acquitted.

A12 Mohlolo Ntsokolo's evidence is to the effect that during the ordeal of the complainants and the deceased he played the part of a benefactor. At various times he stopped many people from assaulting or attempting to assault the complainants and the deceased. He says that he does not know how they sustained the injuries which they had. I have formed the opinion that A12 has told this Court nothing but lies. There is overwhelming evidence by not only the complainants but by independent witnesses that he severely assaulted the complainants and the deceased. There

is no reason why so many witnesses can implicate him for no apparent reason. I am satisfied that A12 participated in the assaults of the complainants and the deceased

A19 Malefane Lekaota denies that he assaulted P.W 12 when he and the others fetched her from her home. He is implicated by P.W.12 only. As it was dark at night when P.W 12 alleges that she saw him assault her, I am of the view that it is not safe to rely on such evidence. She might have made a mistake about the identity of a person who assaulted her. He must be given the benefit of a doubt.

The defence counsel submitted that the Crown witnesses should not be believed as far as the injuries sustained by the deceased and the complainants are concerned because they exaggerated. Their evidence is not confirmed by that of the doctor or doctors who examined the deceased and the complainants. It seems to me that the criticism is not justified. The observance of a wound on the body of a person is not something which requires scientific knowledge. One does not have to be a medical doctor to see a wound on a body of a person. In the present case we have the evidence of several witnesses who testified that the feet of the deceased and the complainants were swollen and that there were weals on their bodies. The evidence of these witnesses must be weighed in the same way as that of the

doctor If the doctor was negligent in not doing a proper examination his evidence must not be allowed to override the evidence of credible witnesses on the simple ground that the doctor is an expert I am convinced that in the present case the doctor overlooked some injuries which were observed by the lay witnesses.

The doctor formed the opinion that death of the deceased Mamvulane Monathi was due to a broken neck and that the removal of genitals and the left eye could have caused lethal bleeding Now the question to be decided by the Court is, who caused those fatal injuries? There is, practically, no evidence as to who broke the neck It is not clear as to when and how it was broken Regarding the removal of the genitals and the left eye, again, there is no evidence as to how and when that happened The evidence seems to suggest that they were removed after the deceased had died.

It was submitted by the Crown Counsel that the doctrine of common purpose applied to the present case, Association in a common illegal purpose constitutes the participation - the actus reus It is not necessary to show that each party did a specific act towards the attainment of the joint object, see R. v. Wilkens, 1941 T P.D. 276 at p. 289 Where Murray, J said.

"In order to fix criminal responsibility upon any of the present appellants for this invasion of the rights of others, it was not necessary for the Crown to establish that each accused person committed any particular act of violence, and to justify a conviction it was sufficient to show that the accused persons were associated with the others in the execution of some common purpose the result of which, either as deliberately intended by the associated person or as being the natural and probable consequence of their acts, was a riotous public invasion of the rights of others "

It seems to me that in the present case there is no need for the Crown to establish that any of the accused committed any particular act of assault. It is sufficient to show that they had common purpose to either kill the deceased and the complainants or to cause them grievous bodily harm. The accused regarded the complainants and the deceased as witches who had killed the children of Al by witchcraft. They assaulted them with various weapons such as sjamboks, sticks and a knobkerrie. They chased them over a fairly long distance during which time the deceased and the complainants fell down but they were whipped

with sjamboks to force them to get up and walk or run. All the accused associated with others in meting out severe punishment to the so called witches. Evidence has shown what each of the accused did. In other words Crown was able to prove particular acts done by each of the accused. It would have been enough for the Crown to have proved that the accused had common purpose.

Association in the common design makes the act of the principal offender the act of all. In *S. v Malinga*, 1963 (1) S A 692 (A D) at p 695 Holmes, J A said:

"In the present case all the accused knew that they were going on a housebreaking expedition in the car, and that one of them was armed with a revolver which had been obtained and loaded for the occasion. It is clear that their common purpose embraced not only housebreaking with intent to steal and theft but also what may be termed the getaway. And they must have foreseen, and therefore by inference did foresee, the possibility that the loaded fire-arm would be used against the contingency of resistance, pursuit or attempted capture. Hence, as far as individual mens rea is

concerned, the shot fired by the accused No.4 was, in effect, also the shot of each of the appellants. On the question of intention to kill, they must have foreseen, and therefore by inference did foresee, the possibility that the use of the loaded fire-arm would have fatal consequences. Violence, fire-arms, and death are ever an easy and sombre trinity, as I observed in *S v Masheane and others* (A D), 16 November, 1959). And the appellants were clearly reckless whether death would in fact ensue or not. Hence the intention to kill must be imputed to each one of them. In the result all were rightly found guilty of the crime of murder."

In the present case the accused must have foreseen, and therefore by inference did foresee, the possibility that the brutal assaults meted out to the so called witches were likely to cause death but they were reckless as to whether death ensued or not. There is evidence that at one stage A1 hit the deceased between the shoulders with a knobkerrie, at one stage the deceased fell down on that rough terrain. The fact that she broke her neck at the time that she was being driven by the

accused should not come as a surprise to the accused She fell down on that rough terrain and was severely assaulted with various weapons.

Association in the common design need not be express, it may be implied from conduct. (R. v. Duma and another, 1945 A.D. 410 at p 415)

It is a well established principle of our law that a prior agreement on a common purpose is not required, it is sufficient if collaboration began without premeditation and on the spur of the moment (S. v. Maree, 1964 S A 545 (0), R. v. Mashotonga, 1962 (2) S A 321). In the present case some of the accused, such as A7, joined the party that was escorting the so called witches and started whipping them There was no prior agreement. Most of the accused joined in the assaults as soon as they heard that it had been established that the complainants and the deceased were witches who were responsible for the deaths of the children of A1

For the reasons given above I have come to the conclusion that the Crown has proved its case beyond a reasonable doubt

Judgment: Count 1: A1, A12 and A7 are found guilty of  
murder

Count 2: A1, A12, A7, A15 are found guilty of assault with intent to cause grievous bodily harm in respect of Popotoana Mokolombeni (P W 11)

Count 3 A1, A7, A12, A15 are found guilty of assault with intent to cause grievous bodily harm in respect of Mantsolo Lepheane (P>W>12)

A8, A14, A11, A19 are found not guilty on all counts

Note - When this trial started on the 2nd March, 1992 there were only thirteen accused persons who appeared before Court instead of twenty-one. The Crown decided to proceed with the trial. During the course of the trial a number of the accused failed to appear Warrants of arrest were issued but they were never served On the 29th September, 1993 when the case was completed only eight accused persons were before court.

A7 is not before Court.



Rem. to 22nd March, 1994

  
J. L. KHEOLA

JUDGE

On the 25th April, 1994 all the accused who were convicted on the 22nd March, 1994 are before Court

Extenuating Circumstance

**Belief in witchcraft:** In R v. Fundakubi, 1948(3) S A. 801 (A D ) it was held that in deciding whether there are extenuating circumstances in a case of murder, no factor, not too remote or too faintly or indirectly related to the commission of the crime, which bears upon the accused's moral blameworthiness in committing it, can be ruled out of consideration. A belief in witchcraft entertained by the murderer, and particularly the belief that the victim had caused the death of near relatives of the accused by witchcraft, will materially bear upon this question and should be considered.

In the instant case the accused genuinely believed that the victim had caused the deaths of A1's children by witchcraft. Their belief was based on a finding of a diviner (A15) who was consulted by the A1 and others. The accused were encouraged to consult a witchdoctor by not only their chiefs but by the police as well.

I find that there is an extenuating circumstance in the form of a belief in witchcraft.

Sentence In passing sentence I took into consideration that the accused are first offenders That they did what they did because they genuinely believed that the accused were witches.

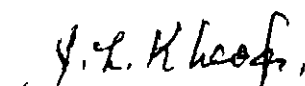
Count 1: A1. Eight (8) years' imprisonment

A7 and A12. Six (6) years' imprisonment each.

Count 2: A1, A7 and A12 Eighteen (18) months' each

Count 3: A1, A7 and A12 Eighteen (18) months' imprisonment  
each

A15. M100 or three (3) months' imprisonment. Counts taken as one for purposes of sentence. Sentences in Counts 1, 2 and 3 shall run concurrently

  
J.L. KHEOLA  
CHIEF JUSTICE.

25th April, 1994

For Crown ; Miss Nku  
For Accused: Messrs Ntlhoki and Fosa