

IN THE HIGH COURT OF LESOTHO

IN THE MATTER BETWEEN:

REX

AND

TLOKOTSI RASEOTSANA

RESPONDENT

JUDGMENT

Delivered by the Honourable Chief Justice Mr. Justice
J.L. Kheola on the 30th October, 1995.

The accused is charged with two counts of murder. In the first count it is alleged that between the 1st day of July, 1991 and the 8th day of July, 1991 (the exact date to the prosecutor unknown) and at or near Matsieng in the district of Maseru, the said accused did unlawfully and intentionally kill Mpho Raseotsana. In count 2 it is alleged that between the 1st day of July, 1991 and the 8th day of July, 1991 (the exact date to the prosecutor unknown) and at or near Matsieng in the district of Maseru, the said accused did unlawfully and intentionally kill Mpaie Raseotsana.

It is common cause that the deceased persons are the sisters of the accused. He was older than them. They were both unmarried as well as the accused. However, Mpho had a small child. The accused and his sisters lived in a flat roofed house with two rooms. One room was used by the deceased as a bedroom.

Another room was used as a kitchen. However, at night the accused used it as his bedroom. The bedding would be made up in the morning to enable the deceased to use it as a kitchen.

It is common cause that the mother of the accused was working in the Republic of South Africa at the time of the deaths of her daughters and had been working there for some time before the present tragedy struck her family. She used to remit money to her children at the end of every month for their maintenance. The exact amount of money she remitted has not been proved because she did not give evidence in the present trial. According to the Crown evidence the remittances were made to the accused who was expected to utilize them to provide the necessities of the family. It has been alleged that the accused started squandering the money and not using it for the purpose for which it was intended. As a result of this unbecoming behaviour on the part of the accused his mother stopped sending the money to him. Instead she started sending it to Mpho (deceased in count 1).

The change did not please the accused and he suddenly developed a very hostile attitude towards the deceased persons. He regularly fought and quarrelled with his sisters especially at the end of the month when the money came. The fights and quarrels were so frequent that witnesses have lost count of them.

The dead bodies of the deceased were found by Kobeli Raseotsana on the 8th July, 1991. He is the elder brother of the

accused and had been living in Leribe for several years. On the day in question he arrived at his parents' home and noticed that the front door was open. When he entered into the kitchen he saw a bedding on the floor which had not been made up and yet it was 1.00 p.m. In the bedroom he found the dead bodies of the two deceased. Mpho's child was found in the bedroom. She was still alive but exhausted and weak. She was taken to the hospital/clinic and has recovered well.

Kobeli Raseotsana described the positions in which he found the bodies. Mpho's body was lying on its back on the bed which was near the window. Mpae's body was on a bed behind the door. He was so shocked that he did not examine the bodies but he went out of the house and raised an alarm. Many people came including P.W.4 who is the Chieftainess of the area.

P.W.2 testified that the hammer (Exhibit 1) which was subsequently allegedly pointed out by the accused was his property. He left it in the house when he went to Leribe.

P.W.3 Raseotsana Raseotsana is the uncle of the accused. His evidence is that when the mother of the accused went to work in the Republic of South Africa he was appointed the caretaker of the deceased and the accused. His house was not far from the home of the parents of the accused and the deceased. He used to visit them on a daily basis. He testified that he last saw the deceased and the accused on the 4th July, 1991. On that day he was returning from a local court where he had a civil case.

He passed near the home of the accused. He saw the accused sitting outside the house. Mpae was outside the house and washing a pot. He passed and went to his home. He then saw Mpho pass near his home carrying a 20-litre-tin returning from the café. She told him that their mother had sent her money with which to buy groceries. She told him that she and Mpae were going to Thaba-Chitja where their grandmother lived. They were going to launder for her. For the rest of that week he did not see the accused and his sisters.

On the following Monday he was returning from Makeneng when he saw many people at the home of the accused and his sisters. It was obvious to him that there was something amiss. He met Sgt. Mongaula (P.W.1) who explained to him what had happened. He went into the house and saw accused's bedding on the floor.

There was a big kettle on a primus stove. He examined the bodies of the two deceased persons; Mpho had a depression on the head, her face was green and there was foul smell in the house. Mpae had a depression on the head, her left ear, lower lip and two front teeth were missing.

The two corpses were taken to the mortuary. Accused was not there when the corpses were found. He did not attend the funeral of his sisters. He asked some of his relatives living in the neighbouring villages to help him in the search for the accused. After about four months one of such relatives, a certain Mokiza, arrested the accused and brought him to him (P.W.3). The accused was handcuffed and Mokiza was accompanied by other people.

P.W.3 says that when he saw the accused he asked him why he was handcuffed. The accused said "I killed my two sisters and Mpho's child". P.W.3 says that he asked the accused whether he was the one who killed them; the answer was "Yes". He says that when the accused uttered those words he had not been assaulted or forced in any way to make that admission.

P.W.3 says that a few days later he was at his home when he was called to the home of the accused by the police. When he arrived there the accused was sitting in the buck of a vehicle. The police ordered him to alight. He went into the house and took Exhibit 1 from inside the box and handed it over to the police. They returned to the vehicle and left with him (Accused).

Accused and deceased no longer lived happily together. The reason for the unhappy relationship was that at the beginning their mother used to send money to the accused so that he could buy the necessities for the family. As time went on the accused started squandering the money and buying nothing for the family. Their mother decided to make a change and then sent the money to Mpho. They started fighting and quarrelling with each other because the accused would demand money from Mpho and when she refused to give him money the trouble would start. P.W.3 says that he often confronted them and sometimes the accused would show some understanding. His complaint was that sometimes large sums of money were sent to them but they did not give him anything. He often invited the Chieftainess when he confronted

the accused with his late sisters.

Under cross-examination P.W.3 denied that he met the police and the accused at the gate after the hammer was taken from the house. He denies that he even asked the police whether that was all they found. He says that the injuries were not consistent with the use of a hammer alone, other weapons must have been used. He says that he uttered those words while they were still in the house searching for weapons.

P.W.4 Chieftainess 'Mats'oeu Letsie testified that she is the Chieftainess of Ha Mafafa where accused lives. She knew the mother of the accused very well because she is her subject. For many years the mother of the accused has been working in the Republic of South Africa. P.W.4 alleges that during the absence of the accused's mother she was also in charge of the accused and his sisters. She was aware of the frequent fights between the accused and his sisters. According to her the cause of these fights was that the accused wanted that their mother should send the monthly maintenance allowance to him and not to his sister Mpho.

On the 8th July, 1991 P.W.2 came to her and reported that there was a dead body in their parents' house. She raised an alarm and went to the house accompanied by some people.

On her arrival there she found bedding in the kitchen,

accused's shirt was hanging from a chair, there was a kettle on a primus stove. In the bedroom she saw the dead body of Mpho on a bed near the window; the dead body of Mpae was on a bed behind the door. There was a child behind the curtain. Her face was swollen and she was barely alive. Mpho's body had a big depressed wound on the forehead as well as at the back of the head. The body was already turning green in colour as if it was burnt. There were abrasions on the private parts.

Mpae's body had blood on the ear, the earlobe was missing, there was a wound near the same ear, a wound at the back of the head, two front teeth and the upper lip were missing.

P.W.4 says that about three months after the death of the deceased the accused was brought to the village by his relatives. He was in a vehicle with many people. He appeared to be in a good condition and had no injuries. When she looked at him he cried. She asked him why he was crying, he said: "It is because I killed my three sisters." He explained that he meant the deceased and Rethabile (Mpho's child).

Dr. Puleng Ramataboee (P.W.5) testified that she performed post mortem examination on the bodies of the two deceased persons. According to her, Mpho Raseotsana died as a result of skull fracture and burns which covered 40% of her body. The burns were on the head, anterior chest, abdomen, perineum and medial thighs. There was gross swelling of the abdomen and the neck which was dislocated.

Mpae Raseotsana died as a result of skull fracture with intracranial haemorrhage. She had dry blood on the face and head, amputated right ear, laceration of the upper lip, multiple scalp stabwounds, cut upper lip and one front tooth was removed.

The defence of the accused is an alibi. He testifies that he left his parents' home at about 6.00 a.m. on the 3rd day of July, 1991. At the time of his departure his two sisters and Mpho's child were alive and well. He told them where he was going and asked them to tell people who might look for him where he had gone. When he left his home his destination was roads camp at Teyateyaneng. He was going to look for a job. On his arrival there he stayed with one Samuel Mpota who is his relative. Samuel Mpota was to help him find a job at the roads camp where he was working. He arrived there on the 3rd day of July, 1991 and stayed with Samuel Mpota for two weeks while attempts were being made to find him a job. At the end of two weeks his attempts to find a job had not been successful. He decided to move on and went to Kolonyama where he met one Mphethe who got a job for him at Fobane. He was employed as a herdsman by one Chaka Sekeleoane. He worked there until November, 1991 when he decided to go home for a while and come back.

He decided that before he went to his home he must call at Qeme at the home of one Mokiza who is his relative. He was well received by Mokiza and decided to spend the night there. That night Mokiza invited many men who came to his place and arrested him (accused) and accused him of having killed his sisters and

Mpho's child. He categorically denied the charge. The produced handcuffs and handcuffed him warning him to tell the truth. He never admitted that he killed his sisters. He was taken to the Chief's place where he spent the whole night. He was not assaulted by anybody during his detention.

In the morning he was taken to his home village. He travelled in a van accompanied by not less than five men including Mokiza. The vehicle was stopped at the café and Mokiza called P.W.3 Raseotsana. When the latter arrived he asked the men where they found him (accused). P.W.3 then borrowed a stick from one of the men and hit him on the head once. The men who were accompanying him intervened and stopped P.W.3 from assaulting him. Chieftainess 'Mats'oeu Letsie arrived at a later stage. She asked where they found him. The accused denies that he confessed to the Chieftainess and to P.W.3 that he had killed his sisters and Mpho's child.

The accused says that a few days after he had been handed over to the police he was taken to his parents's home. On their arrival there they went into the bedroom. One of the policemen who accompanied him went straight to his (accused's) suitcase, opened it and took out a hammer (Exhibit 1). He denies that he pointed out the hammer. He did not know who put it in his suitcase. He denies that he uttered the words to the effect that it was the weapon he had used.

At the close of the defence case I decided to call Samuel

Mpota but I made a mistake and called the wrong person as a court witness. He is Ts'epo Raseotsana whose evidence was clearly irrelevant. Section 202 (2) of the Criminal Procedure and Evidence Act 1981 provides that

"The court shall subpoena and examine or recall and re-examine any person if his evidence appears to it essential to the just decision of the case."

Once I decided that the evidence of Samuel Mpota was essential to the just decision of the case, subsection (2) makes it mandatory that I call such a person.

Samuel Mpota is a witness called by the court. He testified that in 1991 he was working at Teyateyaneng in the Roads Department as a labourer. He lived in the roads camp at Ha Ramochini where a corrugated iron sheet tent was allocated to him. His tent was just outside the camp. He said that when the sisters of the accused died he was still stationed at Teyateyaneng. He heard about their deaths over the radio. It was on a Monday when he heard the obituaries.

At that time the accused was his guest and he was staying in his tent with him. He told him (accused) that he heard over the radio that his sisters had died and that he must go home. He gave him R10.00 for transport to return home. The accused left on the following day which was a Tuesday. At the following weekend he (witness) went to his home to attend the vigil and burial of the accused's sisters. By the way, Samuel Mpota's home

is at Ha Mafafa i.e. he and accused come from the same village.

Samuel Mpota says that when he arrived at home he was surprised because the accused was not there despite the fact that he had given him money for transport to enable him to go home and attend his sisters' funeral. He asked P.W.3 the whereabouts of the accused. It was clear that accused never arrived at his home.

The evidence of Samuel Mpota has established that it is correct that the accused was at Ha Ramochini in Teyateyaneng when his sisters were reported dead. In other words his alibi has been established. The second thing which has been established beyond any reasonable doubt is that the accused heard about the deaths of his sisters while he was still staying with Samuel Mpota. In his own evidence he said that he left his home on the 3rd July, 1991 and arrived at Samuel Mpota's place of work on the same day. He then remained there for two weeks. That is to say, he was there until about the 17th July, 1991 which was a Wednesday.

The question is : Why did the accused not attend his sisters' funeral? He knew that they had died because Samuel told him and was even kind enough to give him money for transport. Samuel went to the funeral but the accused was not there. The only reasonable inference to be drawn from his strange behaviour is that he killed his sisters and was afraid that he would be arrested.

Mr. Fosa, counsel for the defence, submitted that Samuel Mpota is not a reliable witness because in his evidence-in-chief he said that the accused did not tell him the reason why he had paid him a visit. In cross-examination he said that he had given the accused his address so that he could get in touch with him (Samuel Mpota) from time to time to find out if Samuel had found a job for him. In other words the accused had come to find out if a job had been found for him.

I did not have the impression that Samuel was deliberately misleading the court. The way the question was framed by the court may not have been clear to him. He struck me as a reliable witness and gave his evidence well and in a straightforward manner.

It seems to me that the Monday on which Samuel heard the obituaries must have been the Monday following the discovery of the death bodies. It was on the 8th July, 1991 when the bodies were found and the obituaries over the radio could not have been made on the same day. They must have been made during the course of that week and Samuel heard them on the 15th July, 1991. He says that the accused had been with him for only three days. Which means that if the accused left his home on the night of the 4th July, 1991 or on the morning of the 5th July, 1991, he did not go straight to Samuel's place. He arrived there on the Saturday following the discovery of the bodies.

I have come to the conclusion that the accused told this

court lies about his movements from the time he left his home until he came to Samuel's place of work. He lied because he knew that before he left his home he killed his sisters.

As I understand it the Crown's case rests partly on circumstantial evidence and on some admissions allegedly made by the accused after he was arrested. I shall first deal with the law regarding the approach the Court must adopt towards circumstantial evidence.

The leading case is Rex v. Blom, 1939 A.D. 188 at p.p. 202 - 203 where Watermeyer, J.A. said:

" In reasoning by inference there are two cardinal rules of logic which cannot be ignored:

- (1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
- (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought 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 Rex v. De Villiers, 1944 A.D. 493 at p.p. 508-509 Davis A.J.A. said:

" The court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is

only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way; the Crown must satisfy the Court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence."

Mr. Thetsane, counsel for the Crown, has given a list of what he calls or regards as facts which have been proved. They are as follows:

1. that the accused was last seen on the 4th July, 1991 and so were the deceased persons.
2. that the accused decided to leave his home so unceremoniously that he could not inform his uncle or his sisters with whom he was staying.
3. that in an attempt to absolve himself from liability the accused attempts to demonstrate that when he left his home for T.Y. everything was still in order.
4. that the accused unashamedly lied before this Honourable Court to say that he went to T.Y. looking for a job where he met Mpota and his cousin respectively. This turned out to be a lie as his cousin had already left for Thabana-Morena at that time.
5. that when he is accused, according to him, by Mokiza of having killed the children he does not demonstrate a single sign of marvel at such a serious allegation but merely responded by saying he never killed any children. This was a clear indication that he knew who these children were.
6. that the accused is unable to account for his suspicious movements from the time he left his home till he was arrested by Mokiza who handed him over to his uncle.

P.W.3 testified that he last saw the deceased and the

accused on the 4th July, 1991. He says that he was passing near accused's home when he saw him sitting outside the house. Mpae was also outside the house washing a pot. Later Mpho passed at his (P.W.3's) home and she told him that their mother had sent them money. She was carrying a 20-litre tin of paraffin. She told him that their mother had sent them money with special instructions that she must buy soap and go to Thaba-Chitja and wash their grandmother's clothes. Mpho said that they would go to Thaba-Chitja on the following day. He never saw the deceased again until on the 8th day of July, 1991 when their bodies were found. He never saw the accused until November, 1991 when he was brought to him by Mokiza under arrest. P.W.3 explained that when he saw the accused and Mpae outside their home he was returning from the court where he had a case.

It seems to me that the 4th day of July, 1991 was a day P.W.3 could remember well because a very important thing happened to him on that day. He had a case in a court and was returning from that court case when he saw the accused and his sisters. P.W.3 impressed me as being a reliable witness who gave his evidence in a straightforward manner. It is significant to note that the accused puts his date of departure from his home as the 3rd day of July, 1991. He must be aware by now that there is satisfactory evidence by reliable witness that on the 4th July, 1991 he was still at his home. He was seen in the company of Mpae.

Mr. Thetsane submitted that the accused on at least three

occasions is alleged to have admitted that he killed his sisters and Mpho's child. These occasions were as follows:

- (i) when he first met his uncle;
- (ii) when he first met the Chieftainess;
- (iii) when he was later confronted with Exhibit "1" after he had produced it.

He submitted that the only issue for determination in the light of this statement which was repeated at divers times will be whether or not such a statement is admissible. He referred to The South African Law of Evidence by Hoffmann and Zeffert, 4th edition pages 211 -212; David Petlane v Rex, 1971-73 L.L.R. 85 at pp. 90-91.

I agree with that submission. The statements made by the accused are admissible. They were not a confession made to a policeman but mere admissions which are not equivalent to a plea of guilt in a court of law. The accused could later raise several defences such as self-defence or provocation or insanity. In the present case the accused has not raised any such defences. His defence is that he never made such admissions. I carefully observed P.W.3 Raseotsana Raseotsana and Chieftainess 'Mats'oeu Letsie when they were in the witness box and they struck me as being honest and reliable people who intended to tell the court the truth. The accused made no such impression.

The next important issue is whether the statement was freely

and voluntarily made. P.W.3 said that when he found the accused in a vehicle with Mokiza and others he asked him why he was handcuffed. Accused said that he had killed his two sisters and Mpho's child. P.W.3 asked him, "Are you the one who killed them?" He said "Yes." P.W.3 further said that the accused had not been assaulted before he made the admission. I have no doubt that the accused is not telling the truth that P.W.3 hit him with a stick on the head. The police did not see any injury on his head nor did he report to them that he had been assaulted.

Chieftainess 'Mats'oeu Letsie said that when she came to the vehicle the accused was sitting in it. When she looked at him he started crying. He said it was because he had killed his sisters and Rethabile. She said that at that time the accused did not have any injuries.

It seems to me that the discovery of the hammer (Exhibit "1") in the house was of no important significance. The hammer used to be kept in the same house long before the deceased were killed. I do not think that the court must rely on its discovery as the pointing out as contemplated by section 229 (2) of the Criminal Procedure and Evidence Act 1981.

Taking into account all the circumstances of this case I have come to the conclusion that the only reasonable inference to be drawn from the proved facts is that the accused killed the two deceased persons in the counts against him. Judging from the extent of the injuries and brutal way in which the deceased were

killed I have no hesitation to hold that this is a proper case of dolus directus.

For the reasons stated above I have come to the conclusion that the Crown has proved its case beyond a reasonable doubt. I find the accused guilty of the murders of Mpho Raseotsana (Count 1) and Mpae Raseotsana (Count 2).

J/L. Kheola
CHIEF JUSTICE

30th October, 1995

Extenuating Circumstances

Section 296 (1), (2) and (3) of the Criminal Procedure and Evidence Act 1981 read as follows:

- (1) Where the High Court convicts a person of murder, it shall state whether in its opinion there are any extenuating circumstances and if it is of the opinion that there are such circumstances, it may specify them.
- (2) In deciding whether or not there are any extenuating circumstances, the High Court shall take into consideration the standards of behaviour of an ordinary person of the class of the community to which the accused

belongs.

- (3) Failure to comply with the requirements of sub-section (1) shall not affect the validity of the verdict or any sentence imposed as a result thereof.

The accused was born in the rural area of Lesotho and he grew up in that area. He attended school until he reached the Secondary School but did not complete his Junior Certificate. Like the community to which he belongs the accused is not a sophisticated person. He was the elder brother of his late sisters and regarded himself as not only the heir but also a person who was a caretaker of his sisters in the absence of his mother. It must have appeared to be a demotion in status in his family when Mpho was made to manage the financial aspects of the family. He now had to beg for money from her. A request which was refused by Mpho.

The accused must have felt that he was being insulted by the behaviour of his mother. The quarrels and fights which he had with his sisters had been going on for a long time. In South African Criminal Law and Procedure, Vol. II by Hunt, Revised 2nd edition by Milton at p.p. 381 - 382 the learned authors say:

"It is clear that provocation short of what is required to negative guilt may constitute an extenuating circumstance. Moreover, X's emotional instability may be such, as a result of a series of events spread over a long period of time and not strictly amounting to 'provocation', as to amount to an extenuating circumstance. In R v Von Zell, for instance, one of the extenuating circumstances specified by the Appellate Division was:

'the strains and stresses to which appellant was subjected because of his relations with his wife and daughter, because of his wife's desertion and because of the legal proceedings which she instituted against him.' "

I have also considered the question of youthfulness. At the time of the commission of the offence the accused was already 21 years of age. It has been held that youthfulness may itself amount to an extenuating circumstance (S. v. Manyathi 1967 (1) S.A. 435 (A.D.) at pp. 438 - 439). It is trite law that youthfulness applies to persons of 18 years of age or more. I am of the view that the accused was still immature and lacked experience of life. I do not think that he acted from inherent wickedness. He was under emotional stress because of the fights with his sisters that have been going on for a long time.

I have come to the conclusion that the cumulative effects of the points I have stated above is that there are extenuating circumstances.


In mitigation of sentence I took into account that

- (1) The accused is a first offender.
- (2) He has been in custody awaiting trial for nearly four years.

Sentence: Count 1 : Twelve (12) years' imprisonment.

Count 2 : Twelve (12) years' imprisonment.

Sentences shall run concurrently.


J. L. Kheola
CHIEF JUSTICE