

IN THE HIGH COURT OF LESOTHO

In the matter between:

**R E X**

**vs**

**PALO RICHARDS**

**JUDGMENT**

Delivered by the Honourable Mrs. Justice K.J. Guni  
on the 2nd day of February 2000

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The accused is charged with three counts.

Firstly, this accused is charged with a crime of murder of one MAMOOKHO SKOZANA. It is alleged that on the night of the 5<sup>th</sup> April 1994 this accused stabbed the deceased with a knife on her left elbow joint and also on her right arm. The deceased died the same night from those injuries.

Secondly the accused is charged with attempted murder of one TLALA TLHONG whom he unlawfully and with intent to kill he stabbed at the back with a knife.

Thirdly the accused is charged with assault common of one MOLAHLEHI NYAISI

In the opinion of the doctor who carried out the postmortem examination, the deceased could not have died from these wounds if she received immediate medical treatment. The accused himself after stabbing her left her to die. He did not bother to look for help for her or attempt to take her to the hospital. It is the finding of the doctor who carried out the postmortem examination that the deceased died from those wounds perhaps due to excessive bleeding.

It is the crown case that the deceased, her boyfriend and their male companion, TLALA TLHONG were walking together along the road that night when they passed this accused on the way. They were from a shebeen at MOTAMARA's where they had been drinking. They were moderately drunk. May be not exactly to the same degree for all three. All the three people [deceased, her boyfriend and their companion] lived in the village of MANKOANENG where this shebeen, MOTAMARA is also located. This accused also live in the same village and in the neighbourhood of MOTAMARA shebeen. He is personally known to the crown witnesses prior to this incident. Shortly after passing the accused where he had

remained stationary, the crown witness, MOLAHLEHI THABO NYAISI heard their companion TLALA TLHONG cry out, saying “here! someone is stabbing me. “ Immediately TLALA TLHONG ran passed PW7 - MOLAHLEHI THABO NYAISI, who saw that TLALA TLHONG had been injured as he ran passed him. This witness turned back to see what was chasing TLALA TLHONG. He noticed it was this accused whom they had just walked passed while he was standing near his home. Accused did not follow TLALA TLHONG passed this witness. When this witness turned to see what was chasing after TLALA TLHONG the accused had arrived at this witness and he hit him on the forehead just as this witness tried to grab hold of him. MOLAHLEHI fell perhaps unconscious and subsequently went into deep sleep. He was awakened in the early morning hours by the police who had gathered there at the scene and had made the fire. They invited him to come to the fire and warm himself up. He woke up, looked around for his hat which must have fallen off when he got a knock on the forehead. He also looked around for his companions. He walked around the area searching. He found his hat and saw his girlfriend who was by then dead. He did not say where TLALA TLHONG was. He must have concluded that as he ran passed them, he left them behind.

The accused’s defence is a denial. He claims he was nowhere near the scene of the

crime at the time of the murder of this deceased. He further claims that MOLAHLEHI has wrongly identifying him as their assailant on that night. He came home at or a little after 22.00 hours that night. This would bring him home around about the time these people were attacked . He claims he heard the cries of help which the people in the neighbourhood heard when these people were attacked. On arrival at home he briefly called at THABO SENGOAI's place where he asked for cigarettes. Immediately thereafter he went straight to bed. Thirty minutes after he had gone to bed, the accused heard a cry of help first it was a male voice, followed by a female voice. These sort of noises are common at night in that area, so the accused was not bothered by that noise according to his evidence. He continued in his sleep. On his arrival at his home, the accused was led into the house by TUMELO who opened the door for him. This TUMELO according to the accused, slept in the same room with him.

The accused further claims that the track suit trousers, on which the blood stains of the same blood group and with the same characteristics as that of the deceased, were found, is also worn or used by TUMELO at times although it belongs to this accused. If the court finds that he was wearing that pair of track suit trousers at the time it got blood stained, the said blood stains found on the track suit pair of trousers according to the accused, are made from his own blood. According to the

accused he had bled profusely and there was a big patch of blood stain covering almost the whole of the front of his thigh. It was not just a couple of small stains as those seen by the police and found by the forensic who carried out the test which determined the same to belong to the same person as the blood sample the doctor took from the deceased.

There is no Preparatory Examination record in this case. The original court record was destroyed in the burning of the High Court caused by arsonists during Lesotho's political crisis of September 1998. The Preparatory Examination record was contained in that original court file. The loss of that court file is of no significant or very little indeed if any because this court relies entirely on the testimony of those witnesses who testified before this court. Fortunately the transcript was made of those proceedings.

As regards the murder weapon, the knife very similar to it was seen by THABO SENGOAI in the possession of the accused during early hours of the night of 5th April 1994. This THABO SENGOAI and the accused and many other people were at the MOTSOENENG Bar which is still in this MANKOANENG village. They were drinking alcoholic beverages. They were expecting the local football team to return from Maseru where it had won the football finals in which it had just participated.

Presumably as supporters of their local football team, they must have started celebrating. The overall mood of the crowd was a happy one. There was a delay in the arrival of the awaited football team. Some supporters were beginning to disperse and go home. THABO SENGOAI's girlfriend enquired from him as to when he will be going back home? She was in a way intimating to him that they should also go home. This accused produced the knife [Exhibit 1 Before court] and handed it over to THABO SENGOAI whom he asked to stab that girlfriend of his. THABO SENGOAI regarded the offer and suggestion as a sick joke. He did not take the knife. He ignored the accused and his offer and suggestion. Round about 22.30hours, after the three people had been assaulted, one of them had managed to go to report the matter to the police. The one police officer found on duty came to look for the accused at his home. In the company of the accused's uncle he entered the room in which this accused was sleeping. After being questioned by his uncle and the policeman about the stabbing with a knife, of the people who were walking along the road near his home; the accused produced from under his pillow the knife [Exhibit 1]. The accused appears to deny producing the knife. He claims that the policeman found it himself under the pillow by lifting up that pillow and by so doing revealing the knife. According to the evidence of the police officer, there were traces of fresh blood on the letters engraved on the blade of the said knife. This is the same knife which the accused had in his possession earlier on that night,

at MOTSOENENG Bar where he offered it to THABO SENGOAI and suggested to him to use it to stab his girlfriend. The accused is found in possession of a murder weapon which still had fresh blood on it. The defence counsel unsuccessfully objected to the production of this Exhibit 1 on the grounds that accused was forced to hand it over to the police officer. In his evidence the accused seemed to say that it was the police officer who found it under his pillow. In short he did not produce it under coercion or otherwise.

After handing over the murder weapon, according to the evidence of the police officer, the accused took the him together with the accused's uncle to the place where they found the deceased on her back, legs apart and dress and petticoat rolled up to her chest. Her panties had been removed. They came to the body of the deceased after following the trail of the blood they found in the passage or gravel road by the accused's home. It is this accused's evidence that they saw a trail of blood which they followed. According to the evidence of the police officer, the accused was making the indications. At this stage it really does not matter who led the way. The accused does not say what kind of light assisted him to see a trail of blood on the ground, and be able to follow it until they arrived at its source. It is this trail of blood which led them to the body of the deceased.

The crown case will fail or succeed depending on the evidence of the identity of the assailant of the deceased and her companions. On that night of 5<sup>th</sup> April 1994, the deceased, her boyfriend MOLAHLEHI THABO NYAISI and their male companion TLALA TLHONG had been drinking at the shebeen there in their village, MANKOANENG. They were moderately drunk according to the evidence of MOLAHLEHI THABO NYAISI. He told the court that he walked steadily and that his speech was not slurred. In short he was in full control of all his faculties. Although he was challenged that he could not positively identify this accused as their assailant that night of 5<sup>th</sup> April 1994, this witness MOLAHLEHI THABO NYAISI maintained his stance that he knows the accused very well. They live in the same village, MANKOANENG. The witness emphasised the point that he knew the accused well before this incident, by indicating that if it was not because of their difference in age they could have been drinking together. But because the accused is too young, he has not offered to or received an offer himself of a cigarette smoke, from the accused person. Colleagues or mates offer each other cigarettes. That means one may know the other without necessarily being colleagues or mates. This witness knows the accused person by name and as a child of the owner of the shop in that village. The three walked in a line, one after the other. The witness MOLAHLEHI THABO NYAISI was in front. He was followed by his girlfriend, the deceased, then came TLALA TLHONG, last of all. They walked passed the



accused's uncle's shop. This shop and the house where this accused slept that night are in the same yard. According to this witness the accused was just standing against the fence outside his yard on that road which these three people were travelling on that night. Shortly after passing the accused, this witness heard TLALA TLHONG cry out thus:- "Here is a person stabbing me." This witness turned to see what was taking place behind him. He saw that TLALA TLHONG was injured as he ran passed him. He saw that this accused was chasing after him. The witness grabbed hold of the accused. According to him, he grabbed hold of the accused in order to ask the accused why he was attacking them. Simultaneously as that occurred, the accused hit him on the forehead with something which he did not see. This witness fell unconscious until perhaps early hours of the next morning. This is an eye witness who identified the accused at the time this accused perpetrated the alleged crime.

Another type of evidence which connects this accused with the alleged crime, is in the form of blood stains found on his pair of trousers. While the accused was at the Charge Office on 6<sup>th</sup> April 1994, one of the investigators of this case, Detective Sergeant MOSUHLLI noticed blood stains on the pair of track suit trousers which the accused was wearing. The accused was ordered to take them off. Those trousers together with the blood sample taken from the body of the deceased during post

mortem examination, were sent to the laboratory for forensic tests. The Forensic scientist, Major BULARA KHOMOHAKA received the two items:- blood sample of 'MAMOOKHO SKOZANA, deceased and the pair of track suit trousers from Detective Trooper KHOBOTLO of Leribe Police. As a result of the test, the scientist came to the conclusion that the blood stains on the pair of track suit trousers worn by the accused, came from the injuries sustained by the deceased MAMOOKHO SKOZANA. The claim by this accused that the blood stains on the pair of track suit trousers were his own blood is rejected as false. According to the accused, there were no stains on his trousers but a big patch of blood stain almost covering his whole thigh. This claim came very late. No crown witness who claimed to have seen stains on the accused's trousers was challenged to show that it was a big patch not small stains as they told the court. It was a very belated claim at the end of defence case. It was clearly a lie. It was totally unrelated to the cross-examination of the crown witnesses on that point. At first it appeared to be this accused's contention that there were no stains at all on his pair of trousers as claimed by crown witnesses. This change of his mind, that now there was this big patch of blood stain covering almost the whole of his thigh, destroys completely his first explanation. Giving two inconsistent versions of the existence or otherwise of the blood stains on his pair of trousers, amounts to a failure to give satisfactory explanation. **S v HUTCHINSON 1990 (1) SA CR 149 at 150 - a**

This pair of track suit trousers had not been worn by this accused in the last two weeks preceding the attack of the deceased and her companions. Although the blood stains found on it may be from the blood of the deceased, those stains did not come there during the time the said trousers was worn by this accused. Although not in so many words, this appears to be the suggestion made by or on behalf of the accused, in the cross-examination of the crown witnesses. A week before the date of the death of the deceased, this accused saw TUMELO, a person who lives with him, wearing that pair of track suit trousers. Accused told the court that he picked up that pair of trousers to wear before he slept on 5<sup>th</sup> April 1994 because it was particularly chilly that night. He denies that he was wearing it prior to his going to bed.

The evidence of THABO SENGOAI, the person who was earlier on that evening of 5<sup>th</sup> April 1994 offered a knife [Exhibit 1] and advised by this accused to use it to stab his girlfriend, told the court that the accused was wearing a dark bluish pair of track suit trousers. This is the very same pair he was found wearing by the police officer who found him sleeping on that night of the 5<sup>th</sup> April 1994. The accused was taken to the charge office, where in the early morning hours of 6<sup>th</sup> April 1994, that very same pair of track suit trousers was observed to have blood stains and

taken off him by Detective Sergeant MOSUHLI. The police officer who arrested the accused, PW9 also testified to the effect that he saw blood stains on accused's trousers that night of his arrest. The determination of the identity of the assailant of the deceased and her companions is helped to a great extent by the finding of fresh blood from the victim on the assailant. **S v HUTCHINSON 1990 (1) SA CR 149 at 150 - a**

The blood stains on this accused's pair of trousers was the same blood group as that of the deceased. It was proved by the forensic scientist by tests he carried out, to have exactly the same characteristics as the blood sample taken from the deceased. It must, therefore be held to be the stains made by the deceased's blood at the time of her attack more especially considering their freshness when they were first observed by the police officers who investigated this case.

The identification of this accused by PW7 is disputed on the grounds that it was dark that night. The witness persisted in his testimony that there was light. He saw that the accused was wearing a hat. This the accused accepts. The evidence of the crown witness shows that at the accused person's uncle or father's shop they use gas light. This light illuminates the whole area in the neighbourhood of that shop according to the witness. This was not disputed. The accused told the court that

those working in the shop remained counting the money after the shop was closed at about 8 pm. The only suggestion made against this factor was that the shop was closed. It was put to the witness that the shop was closed. This witness did not dispute the fact of closure. He could not say whether the shop was closed or open. All he saw was the light. It emerged from the evidence of the accused that even though the shop was closed, the light was not put out. Those working in the shop according to this accused remained counting the day's takings. There is no evidence before this court that the light was actually put out. The suggestion was made, to the effect that when the shop closes, the light is put out. Could the money be counted with the light out? It is most probable that the light was there.

The accused was wearing a hat which covered half or whole of his forehead. It was put to the witness that he could not identify the person whose forehead was covered by the hat. The witness indicated that although his forehead was covered, his face was not covered and he saw clearly that it was this accused. Much later, the accused, his uncle and the police officer who arrested this accused, followed along the very same route the trail of blood trail which led them to the deceased.

The time of the assault of these three people who had been to the shebeen, the deceased and her companions, is put round about 10.00p.m. PW7 was not quite

certain of the exact time. He felt that it must have been after 8 or 9 p.m. They were chased away from the shebeen. Presumably because it was late. The police officer to whom the report of assault was made, had just come on duty at ten (10.00 p.m.). He estimated the time he got to the scene of the crime to be at about ten-thirty (10.30 p.m.). The accused suggests that he arrived at his home after 10.00 p.m. That being the case, the deceased and his companions had already been assaulted or the assault was just about to take place, since they were assaulted round about 10.00 p.m. Strangely enough the accused claims to have now heard the cries of help by first the male voice which should be TLALA TLHONG's and then the female voice, which should be the deceased's voice when he was already in bed and asleep. That is not true. He was out there committing the alleged crimes. The time he suggests he arrived at his home, is approximately the same time when the alleged crimes were being committed in the neighbourhood of his home.

As regards the cause of death there is no dispute. The deceased according to the evidence of the doctor who performed the postmortem examination died from the stab wound on her left elbow joint and another wound on the right arm. According to the doctor's evidence had the deceased received immediate medical treatment, she would have survived. It sounds incredible that this deceased died from stab wounds on the elbow joint and arm. The other victim of that attack, did not fall down and

die. He ran away and later went to report the matter to the police. From the police station he was sent to the doctor. He died much later, after the Preparatory Examination in respect of this case, was conducted. There is no evidence that she had been falling all along the way due to her drunkenness.

The degree of drunkenness of the deceased and her companions does not excuse the accused or anyway from respecting them and their rights. This court is satisfied that MOLAHLEHI THABO NYAISI was moderately drunk. He was in full control of his faculties until he was knocked out by the blow on his forehead from this accused. Even although TLALA TLHONG was the first victim of that vicious assault by this accused, he got away. His cries for help were the first ones to be heard by MOLAHLEHI THABO NYAISI, THABO SENGOAI and the accused. Thereafter according to THABO SENGOAI and this accused followed the cry of help from a female voice, which should be of the deceased. Quite a lot seems to have happened to her. The manner in which her body was found indicates clearly that she was in addition sexually assaulted. Evidence shows that, there was some whitish substance on her private parts and legs. That whitish substance could have been some semen. The doctor was not asked to investigate the possibility of a crime of rape having been committed upon her despite the abundance of other indications to that effect. The charges put to this accused are (1) murder (2) Attempted murder

and (3) assault. Count 1 is murder of MAMOOKHO SKOZANA. Count 2 is attempted murder of TLALA TLHONG. Count 3 is assault of MOLAHLEHI THABO NYAISI. To all three charges the accused is found guilty. In respect of the murder charge the accused is found guilty of murder with direct intent.

### **SENTENCE**

The accused has been convicted of the crime of murder with extenuating circumstances. This accused is now (25) twenty five years old. At the time of the commission of this crime this accused was said to be under the age of (18) eighteen years. There is a law, which prohibits the sending to jail, of young offenders under the age of (18) eighteen years. Those young offenders should be released into the care and custody of their parents or guardians. The apparent intention of the legislator by enacting as it did, this piece of legislation, was to protect such juveniles from being put amongst criminals. There are no special juveniles detention centres or training institutes here in Lesotho, where the young offenders could be rehabilitated. This enactment seems to presume that every juvenile has a parent or guardian who has full control over him or her. The parent or guardian is expected to exercise the full control and supervision over the juvenile.



It is also important that the juvenile must be amenable to be subjected to the control and supervision of the parent or guardian who must be able to correct and rehabilitate the juvenile.

Looking at the present case, we find that the accused committed the crime of which he has been convicted at the time when he was reported to be under the age of eighteen (18) years. He has since become a major of (25) twenty-five years. The senior probation officer has pointed out, in his report presented before this court, the objectives of the policy of the Probation Unit. It is primarily intended to rehabilitate the juvenile who have committed petty offences. Therefore the policy applies with some relevancy where the crimes committed by the young persons are petty offences. The accused in this case, is no longer a juvenile because he is now twenty five years of age. Furthermore, the crime he has been convicted of, is not a petty one. These factors remove him out of the ambit of the law which protects juveniles from being sent to prison. Learning is a lifetime process, but there is an age limit as regards the length of the period during which the fruits of a person's learning may be of some use for his or her benefit. This accused left schooling at an early age when he was only doing Standard {4} four. He has been out of school for many years now. This must be an added handicap on this accused, in his endeavour to benefit from that statutory provision for the protection of young

offenders.

The accused has not only become a major, but he is presently in prison - where he is serving a sentence after having been convicted of one of the very serious offences. This offence for which he is serving a term of imprisonment, must have been committed while he was awaiting this trial after he had attained the majority age. The purpose for which he was to be kept out of prison has fallen away. He is now mixing in prison with other criminals. It would not serve any useful purpose to try and keep him out of jail.

By leaving school at that early age, by committing these serious offences, house breaking with intent to steal and theft and this murder this accused has indicated that he has emancipated himself from minority status and therefore does no longer need the protection provided by this act PROTECTION OF MINORS ACT.

The present murder crime was very callously committed. He was bragging in a public place showing off the murder weapon which he offered to his friend whom he urged to stab his girlfriend for no good reason. Having been ignored by his friend who found the offer to stab his girlfriend a very sick joke, the accused should have been restrained. It was thereafter that he attacked and stabbed the deceased

and her friends.

The probation officer's report shows he is a person who is always striving to impress other misguided older boys. He should be removed from those older boys' bad influence. He does not seem to accept to be under the control of his uncle who should be the father figure to him since his father has left him with his mother. His mother appears to have no power to control nor supervise him. Weighing this accused's interest against those of the society at large, there seems to be a great need to keep him in prison than outside.

He is sentenced to six months on each count of assault. He is sentenced to 12 years on a count of murder. Sentences to run concurrently.



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K.J. GUNI

JUDGE

2<sup>nd</sup> February 2000

For Defence: Mr. Putsoane

For Crown: Mr. Lenono