

IN THE HIGH COURT OF LESOTHO

In the matter of:

REX

VS

MOEKETSI TSITA

JUDGMENT

Delivered by the Honourable Mr. Justice B.K. Molai on

7th day of September, 2001

The accused is before me charged with the crime of murder, it being alleged that on or about 10th March, 1998 and at or near Thabang-Matebeleng

in the district of Mokhotlong, he unlawfully and intentionally killed 'Mamoitheri Fefane.

When the charge was put to him, the accused pleaded not guilty. Mr. Khauoe, who represents the accused in this trial, told the court that the plea of not guilty, tendered by the accused person, was in accordance with his instructions. The plea of not guilty was accordingly entered.

It is significant to mention that, at the commencement of this trial, Mr. Khauoe told the court that the defence admitted the depositions of Patu Tšita, 'Methe Fefane, D/PW. Ranko and D/Tpr Sekhonyana who were P.W.2., P.W.3, P.W.6 and P.W.7, respectively, at the proceedings of the Preparatory Examination. Miss Makoko, who represents the Crown in this trial, told the court that the Crown accepted the admissions made by the defence counsel. The depositions of P.W.2, P.W.3, P.W.6 and P.W.7, at the Preparatory Examination proceedings, were accordingly admitted in evidence. It was, therefore, not necessary to call Patu Tšita, 'Methe Fefane, D/P.W. Ranko and D/Tpr Sekhonyana to testify as witnesses, in this trial.

In as far as it is relevant the evidence of D/Trp. Sekhonyana was to the effect that he was a member of the Lesotho Mounted Police Service, attached to the C.I.D. and stationed at Mokhotlong Police Station. He remembered that on 10th March, 1998 he received certain information following which he and some other police officers proceeded to the village of Thabang-Matebeleng. On arrival, they reported themselves to the headman who took them to the scene of crime which was the home of 'Mamoitheri Fefane, the deceased.

According to D/Tpr Sekhonyana, he and the other police officers found the dead body of the deceased lying outside the door of her house. Several villagers had already gathered where the dead body of the deceased was lying, in front of the door of her house. D/Tpr. Sekhonyana then proceeded to examine the body of the deceased for injuries. He observed altogether six (6) wounds on the dead body of the deceased *viz.* one open wound on the forehead and five (5) other open wounds on the body. Thereafter, D/Tpr. Sekhonyana and the other police officers conveyed the dead body of the deceased to the mortuary, at Mokhotlong Government Hospital. In the evidence of the police officer, no additional injuries were sustained by the

body of the deceased whilst it was being transported from the scene of crime at Thabang-Matebeleng to the mortuary.

The evidence of D/Tpr. Sekhonyana was confirmed, in material respects, by the evidence of D/P.W. Ranko according to whom, whilst D/Tpr. Sekhonyana was examining the body of the deceased for injuries, a certain Khotso Tšita handed over to her a spear about which he made an explanation. According to her, D/P.W. Ranko took possession of the spear. She also took possession of a maroon jersey which had been worn by the deceased. The jersey was soaked in blood and had some holes which she suspected had been caused by the spear. All the items were taken to Mokhotlong Police Station by D/P.W. Ranko and the other police officers.

At the police station, D/P.W. Ranko showed the spear to the accused who was already in the police custody. After he had given an explanation about the spear, the accused was cautioned and charged with the murder of the deceased. The spear and the jersey had since been in the possession of the police. They were, by agreement, handed in, from the bar, as exh. "1" and exh. "2", in this trial.

It is, perhaps, worth mentioning, at this juncture, that a post-mortem examination report was also, by consent, handed in, from the bar, as exhibit "A". According to exh. "A", at about 3 p.m on 12th March 1998, a medical doctor performed an autopsy on a dead body of a female African adult at the mortuary of Mokhotlong Government hospital. The body was identified, before the medical doctor, by 'Methe Fefane, as being that of 'Mamoitheri Fefane, the deceased in this case.

It is significant to mention that in his evidence which, as stated earlier in this judgment, was not disputed, 'Methe Fefane confirmed that he was the person who had identified the body of the deceased before the medical doctor at the post-mortem examination. The deceased was his own mother and he had, therefore, no difficulty in identifying her dead body.

According to exh. "A", the external examination of her dead body revealed that the deceased, who was apparently 77 years old, had her left side mandible broken and blood was oozing from her mouth. There were multiple stab wounds on her left lower chest and left side of the neck. There were also abrasions on the back of the body.

On opening the body, the examination revealed that the muscles of the left side of the deceased's neck were divided; the mouth and peritoneum were filled with blood; there was haematoma in the larynx and bronchi; there was also massive haemothorax; and the transverse colon was perforated. On these findings, the medical doctor formed the opinion that the death of the deceased was due to asphyxia and shock.

I can think of no good reasons why the opinion of the medical doctor, that the deceased had died of asphyxia and shock resulting from the injuries she had sustained, should be doubted. The question that arises for the determination of the court is whether or not the accused is the person who inflicted the injuries on the deceased and, therefore, brought about her death.

In this regard, the court heard the evidence of P.W.2, 'Maoaelese Tšita, who testified that she was born in 1940 and lived at Thabang-Matebeleng in the district of Mokhotlong. She knew the accused and the deceased, in her life time. They both lived in the same village as she did. The accused was her own relative while the deceased was just a co-villager.

According to P.W.2, on 10th March 1998 she and the deceased had been working with other people on a community project, in their area. They were building a road. She assured the court that the deceased was quite healthy on that day.

In her evidence, P.W.2 further told the court that in the evening of the same day, 10th March 1998, she was outside her house when she heard the accused talking to himself as he walked along the foot path leading from the direction of Mokhotlong Town toward the village of Thabang-Matebeleng. The accused could have been approximately 100 paces (ind.) away from her when she first heard him talking to himself. He was saying he would kill a witch before the night fall. Accused kept on repeating those words until he passed next to her (P.W.2's) cattle-kraal. As he passed next to her cattle-kraal, P.W.2 noticed that the accused met, and spoke, with a person called Saleoa. They were then about 40 paces (ind.) away from her. As the two met, P.W.2 heard the accused telling Saleoa that he would have killed a witch before the night fall. Saleoa then asked the accused how he would be able to kill a person since he was so drunk. Thereafter, the two men parted and the accused continued on his way towards his parental home. She herself

returned into her house.

Later on the same night, P.W.2 heard dogs barking outside. She went out to investigate and found that the dogs were barking at the accused who was still talking to himself as he passed next to her cattle kraal. As the moon was shining on the night in question, she had no difficulty in identifying the accused as the person who was passing next to her cattle-kraal. From where she was standing outside her house, P.W.2 could clearly see that the entrance of the kraal was still properly closed. There was, therefore, no need for her to go and check if her animals were still in the kraal.

After she had found that the dogs had been barking at the accused as he passed next to her kraal, P.W.2 returned into the house and went to bed. In the morning, she was surprised to learn that the deceased had passed away. She went to the deceased's home where she found her dead body lying outside the door of her house.

P.W.3, Malesitsi Fefane, told the court that she lived at Thabang-Matebeleng, in the district of Mokhotlong. She knew the accused and the

deceased, in her life time. They both lived in the same village as she did. The deceased was her grandmother-in-law whilst the accused was just a co-villager.

P.W.3 told the court that she had attended school and was in std.7 when she left school. She was, therefore, literate and able to read a watch. At about before 7:00p.m on the evening of one day in March 1998 she had been cooking outside her house when she heard a voice of a person shouting that he would kill a witch on that very night. As there was moonlight on the evening of the day in question, P.W.3 could see that person walking on the other side of the village. She could not, however, identify who that person was. In any event that person kept on shouting that he would kill a witch before the night fall until he disappeared in the lower part of her village. When that person thus disappeared in the lower part of the village, P.W.3 heard dogs barking from that part of the village. She assumed that they were barking at that person.

At that stage, P.W.3 left the place where she had been cooking outside and went into the house. Shortly, thereafter, she again went out to throw

away water, presumably from the kitchen. Whilst she was throwing away water outside her house, P.W.3 noticed the person whom the dogs had been following and barking at, after he had disappeared in the lower part of the village, eventually emerging to the upper part of the village where she lived. He was still shouting that he would kill a witch before the night fall. After that person had come to the upper part of the village, P.W.3 heard him talking to another person. She identified him by his voice as the accused. She could not, however, identify the voice of the other person. Nor could she follow what the accused and that other person were talking about. Thereafter, the accused parted with that other person and went in the direction towards his parental home.

According to her, P.W.3 then returned into her house. She did not close, behind her, the door which was facing directly towards the door of the deceased's house. Whilst she was in her house, P.W.3 noticed a person passing on the forecourt and going in the direction towards the deceased's house. She identified that person as the accused who was wearing clothes which appeared to be somewhat dark. She did not observe whether or not the accused was armed with any weapon.

As she saw him passing on the forecourt of her house, the accused was no longer shouting that he would kill a witch before the night fall. In the evidence of P.W.3, after he had passed on the forecourt of her house, the accused went to the deceased's place and entered into the house. She (P.W.3) herself closed the door of her house and retired to bed. She did not, therefore, know when the accused left the deceased's place.

Be that as it may, P.W.3 went on to testify that towards dawn on the night in question the deceased's son, Khethang Fefane, came to her house and reported that his mother had passed away. According to her, P.W.3 had no suspicion that there might have been a foul play about the death of the deceased. She thought the deceased, who was an old lady, had died a natural death. After receiving the report that the deceased had passed away, P.W.3 proceeded to her home. She found the dead body of the deceased already covered with a white sheet outside the door of her house. P.W.3 assured the court that, to her knowledge, the deceased was not reputed a witch in the village of Thabang-Matebeleng.

The evidence of P.W.1, Khotso Tšita, was to the effect that he lived at

Thabang-Matebeleng in the district of Mokhotlong. He was a married man and had his own house, in the village. He knew the accused person and the deceased, in her life time. They both lived in the same village as he did. The accused was a son of the elder brother of his father, whilst the deceased was just one of his co-villagers.

P.W.1 recalled that one night in 1998, he was already in bed when the accused knocked at the door of his house and asked him to come out so that they could talk. According to him, P.W.1 told the accused that he was already in bed and they would, therefore, talk in the morning. However, the accused insisted that he should come out so that they could have a talk. Eventually P.W.1 got out of bed and went to the accused, outside the house. When he came to him outside the house, P.W.1 found that the accused was armed with exh. "1" which he knew to be the property of his (accused's) father, Patu Tšita. The accused reported to him that he had killed 'Mamoitheri (deceased). In his explanation the accused told P.W.1 that he had been sleeping in his house when he heard something moving on the roofs. He went out to investigate. He then noticed a black object dropping down from the roofs of his house and running away. The object was about the size

of a big dog. As it ran away the accused chased after the black object until it came to the deceased's place which was a distance of about 100 paces (ind.) away. When it was about to enter into the deceased's house the accused stabbed the black object with exh. "1". After stabbing the black object with exh. "1" the accused returned to his house. However, before he could enter into the house the accused returned to the deceased's place to examine properly what that black object was. He did examine it and found that it was, in fact, 'Mamoitheri, the deceased. It was then that the accused decided to go and report to him (P.W.1).

According to P.W.1, after the accused had reported to him that he had killed the deceased, he disarmed him of exh. "1". The reason he did so was because the accused appeared to be confused and was threatening to go and kill other witches. By saying he appeared to be confused, P.W.1 said he meant that he (accused) was angry.

After disarming the accused of exh. "1", P.W.1 left him and went to report to his (accused's) father, Patu Tšita, with whom he returned, after a short time. They found the accused still at the place of P.W.1. In the

presence of P.W.1, the accused's father told him he learned that he (accused) had killed the deceased and asked him why he had done so. In reply the accused gave his father the same explanation that he had earlier given to him (P.W.1).

On the instructions of the accused's father, P.W.1 and the accused himself went to report, what had happened, to Thabo Tšita, the village headman. The headman detailed his son to assist P.W.1 by arresting and taking the accused to the police station. According to P.W.1, he and the headman's son did comply. At the police station the accused was, in the presence of P.W.1, asked to explain what had happened and he gave the same explanation as the one he had earlier given to him (P.W.1) and his (accused's) father.

In his defence, the accused did not call any witnesses to testify on his behalf. However, he himself went into the witness box and gave evidence on oath. In his testimony, the accused told the court that he was 27 years old. He too lived at Thabang-Matebeleng in the district of Mokhotlong. He, therefore, knew P.W.1, P.W.2, P.W.3 and the deceased, in her life time.

They all lived in the same village as he did. To his knowledge, the deceased was not commonly regarded as a witch, in the village. He himself did not believe in witchcraft. He did not, therefore, believe that there were witches in his village. The accused confirmed the evidence that both P.W.1 and P.W.2 were his relatives whilst the deceased was just his co-villager.

Although he was already a married man, the accused did not have a separate house of his own. He and his wife lived at his parental home, in the village of Thabang-Matebeleng.

According to him, on 10th March 1998, the accused never went to Mokhotlong town or, for that matter, anywhere else. He had spent the whole day at his parental home working in the cattle-kraal. After he had put his animals into the kraal on the evening of the day in question, 10th March 1998, he retired to bed. The accused denied, therefore, the evidence of P.W.2 that he was the person she had heard talking to himself on the late evening of that day saying he would kill a witch before the night fall.

The accused denied the suggestion that he was, on the night of the day

in question, perhaps under the influence of intoxication or suffered from mental defect of some sort. Asked why P.W.2, a relative of his, would falsely implicate him by saying she had heard him shouting that he would kill a witch before the night fall, the accused replied that he once had a sister-in-law by the name of Mahlompho Tšita, with whom he lived at his parental home. 'Mahlompho was in the habit of making frequent visits to P.W.2's home and thus neglecting her duties at the parental home of the accused. According to him the accused requested P.W.2 to discourage 'Mahlompho from making those frequent visits to her home. However, P.W.2 refused, saying the accused was the person who was making 'Mahlompho's stay at his parental home unhappy. 'Mahlompho's, frequent visits to P.W.2's home, therefore, continued unabated.

It may be mentioned that all this was denied by P.W.2 who told the court that 'Mahlompho's visits to her home were not as frequent as the accused wanted the court to believe. She was, at times, calling at her home just like any other people in the village.

The accused went on to tell the court that, whilst he was still a herdboys,

he looked after his animals together with those of P.W.2. One day P.W.2's animals trespassed into the field of one Mohlolo Shea and damaged his crops. P.W.2 blamed him for that. In his evidence, the accused told the court that P.W.2 had never forgiven him for all these incidents. That explained why P.W.2 went into the witness box and implicated him falsely in this case by saying she had heard him shouting that he would kill a witch before the night fall.

It is to be recalled, however, that the evidence of P.W.2 that, on the night of the day in question, she heard the accused saying he would kill a witch before the night fall, was corroborated by P.W.3. There was no suggestion that the accused had had a misunderstanding with P.W.3 who was just his co-villager. Why then would P.W.3 falsely implicate the accused by telling the court that she had heard him saying he would kill a witch before the night fall?

Be that as it may, the accused went on to testify that on the night of the day in question, 10th March 1998, he was sleeping alone in his house. His wife had gone to Butha-Buthe, where she had allegedly given birth to a baby.

He learned that the baby had died after it had been born. Indeed, his wife later returned home from Butha-Buthe without the baby. The accused had, therefore, never seen that baby.

According to him, at about 12 midnight, on 10th March 1998, the accused heard something moving on the roofs of the house in which he was sleeping. As a result, he got out of bed, put on his pair of trousers, armed himself with exh.1 and went out to investigate. He did not have to put on his under pant because he always got into bed to sleep still wearing the under pant. He also did not put on either a vest or a shirt. When he went out of his house, he was, therefore, wearing only his under pant and the pair of trousers.

Whilst he was looking around, outside the house, the accused noticed a black object, about the size of a big dog, dropping down from the roofs of the house in which he had been sleeping. When he tried to go close to it so that he could see what it was, the black object ran away in the direction towards the deceased's place. He chased after that black object intending to get hold of it. As he chased after it, the black object was running away very

fast. He did not, however, raise an alarm so that the villagers could come to his assistance. He wanted first to get hold of that black object himself and thereafter raise the alarm for the villagers to come and see what it was.

According to the accused, when the black object entered the forecourt of the deceased's house, which was about 100 paces (ind.) away from his house, he caught up with it. He stabbed it with exh. "1" once. It, however, continued running away. Because of its agility, the accused feared that the black object might escape and get out of his sight if he left it after stabbing it only once. He, therefore, stabbed it again about two or three times. It eventually fell to the ground outside the door of the deceased's house.

Having stabbed it in the manner he described, the accused left the black object where it was lying motionless in front of the door of the deceased's house. He returned to his house intending to report, to his father, what had transpired. However, before he could actually reach his home, the accused decided to return to the deceased's place and examine closely what the black object was. On arrival, he found the black object still lying motionless where he had left it, in front of the door of the deceased's house.

He did examine it closely and found that the black object was, in fact, 'Mamoitheri Fefane, the deceased in this case. She was dead.

From his evidence, it is obvious that what the accused was telling the court was that, on the night in question, he had been to the deceased's home on two occasions, firstly when he was chasing after the black object which he stabbed to death outside the deceased's house, and secondly when he returned there to examine the black object closely and found that it was, in fact, 'Mamoitheri Fefane (deceased).

If the accused were to be believed in his evidence that on the night of 10th March 1998, he chased after a black object from his home to the deceased's place where he stabbed it to death, it is important to bear in mind that, in his own mouth, the accused told the court that the black object which was running very fast, turned out to be 'Mamoitheri Fefane (deceased) who was admittedly an old lady of over 70 years old, at the time. Granted that the deceased was an old lady of over 70 years old, I find it incredible that she could have run with the agility the accused wished the court to believe. In my finding, the accused was simply not being honest with the court on this point.

He never chased after any black object which was running very fast on the night in question. Indeed, it will be remembered that the accused told the court that when he was chasing after the so-called black object which was, according to him, running very fast, he did not raise the alarm so that the villagers could come and assist him to catch it because his intention was to get hold of it himself and thereafter raise the alarm for the villagers to come and see what it was. Well, according to him, the accused did get hold of the so-called black object outside the house of the deceased. If he were testifying to the truth in his evidence, one would expect the accused to have raised the alarm for the villagers to come. He did not. The inference that the accused had, again, not been testifying to the truth, on this point, is irresistible.

Surely if his evidence that he stabbed the black object to death on the forecourt of the deceased's house in the manner he described before this court were to be believed, the accused must have appreciated that the commotion he had made outside the door of the deceased's house had frightened her. One would, therefore, expect the accused to have woken the deceased and reported that he had killed a mysterious black object outside her house. In his own words, the accused did not bother to do so. Instead, he decided to go

back to his home without saying a word to the deceased. An inference, that the accused knew he had killed the deceased who was, therefore, not in the house is, again, hard to resist.

It is to be recalled that in her evidence P.W.3 told the court that, on the night of 10th March 1998, she was in her house whose door was left open when she noticed the accused passing on the forecourt of her house. He was neither running nor chasing after anything. He was just walking. As the door of her house was directly opposite the door of the deceased's house, P.W.3 told the court that she clearly saw the accused entering into the deceased's house. Thereafter, she closed the door of her house and did not, therefore, know or see when the accused left the deceased's place.

It may be mentioned, at this juncture, that under cross-examination it was pointed out to P.W.3 that at the proceedings of the preparatory examination she was recorded as having told the magistrate that after she had seen the accused entering into the deceased's house, she also saw him going out of that house. However, before this court P.W.3 was positive that she had never told the magistrate that she had seen the accused leaving the deceased's

house. If the magistrate had, indeed, recorded her as having said she had seen the accused leave the deceased's house, it was a mistake. The truth was in her evidence before this court that she had only seen the accused entering into the deceased's house. She had never seen him going out of that house. By and large P.W.3's evidence is, in my finding, sensible and, therefore, more probable than the accused's version. Consequently, I am prepared to accept it as the truth and reject as false the accused's story.

Be that as it may, in his evidence the accused confirmed the evidence of P.W.1 that on the night of 10th March 1998 he went to the latter's house, woke him out of bed and told him that he had killed the deceased. There was no suggestion that the accused did so under coercion of some sort. He did so out of his own volition. That being so, there is not the slightest doubt, in my mind, that what the accused did, amounted to a confession which is, in law, admissible evidence.

The accused confirmed the evidence of P.W.1 that after he (accused) had confessed to have killed the deceased, the latter disarmed him of exh. "1". He, however, disputed P.W.1's evidence that the reason therefor, was because

he (accused) was threatening to go and kill other witches, on that very night. As stated, earlier in this judgment, on the night in question the accused was heard by P.W.2 and P.W.3 shouting that he would kill a witch before the night fall. I must say I also observed all the witnesses as they gave evidence before this court. P.W.1 was the most impressive. Of all the witnesses who testified before this court, he was the only one who gave evidence in a straight forward manner. I am convinced that P.W.1 corroborated by P.W.2 and P.W.3 were testifying to the truth in their testimony that, on the night in question, the accused did threaten to kill a witch in the village. In his denial of these, the accused was simply not being honest with the court. Indeed, he was not being honest with the court when, in his evidence, he said he did not believe in witchcraft. In all probabilities he believed that the deceased was practising witchcraft and was responsible for the death of his baby.

The accused further confirmed the evidence that after he had disarmed him of exh. "1", P.W.1 left him outside his (P.W.1's) house and went to his parental home. Shortly, thereafter, P.W.1 returned in the company of his (accused's) father who admittedly questioned him as to why he had killed the deceased. According to him, the accused gave his father the same

explanation as the one he had given before this court. On the instructions of his father, the accused and P.W.1 went to report the incident to the headman, Thabo Tšita, who detailed his son to assist P.W.1 to take him (accused) to Mokhotlong police station. In the presence of P.W.1, the accused explained to the police what he had already explained to both P.W.1 and his father, Patu Tšita.

Considering the evidence as a whole, I am convinced that the deceased was stabbed to death. Although no other witnesses testified to have seen the person who had killed the deceased, the accused did not dispute that he did it. Indeed, he confessed to P.W.1 that he was the person who had killed the deceased. As stated, earlier in this judgment, I found P.W.1 to be a reliable witness. I had no reason, therefore, to disbelieve him on this point. In terms of subsection (2) of section 240 of the **Criminal Procedure and Evidence Act, 1981**, the accused can, by reason of his confession, be convicted. The subsection reads:

“(2) Any court may convict a person of any offence alleged against him in the charge by reason of any confession of that offence proved to have been made by him, although the confession is not confirmed by any other evidence, provided the offence has,

by competent evidence other than the confession, been proved to have been actually committed.”

In any event, I have found, on evidence, that in his evidence that he stabbed the deceased to death believing she was the black object he had been chasing from his home to the deceased's home, the accused was not being honest with the court. On the night in question, the accused never chased any such black object, as he wished the court to believe. On his way to the deceased's home, the accused was seen by P.W.3 who told the court that when she saw him passing on the forecourt of her house he was not chasing anything. He was walking normally. From the aforesaid, it is obvious that the view I take is that the answer to the question I have, earlier in this judgment, posed, *viz.* whether or not the accused, was the person who had inflicted the injuries on the deceased and, therefore, brought about her death, must be in the affirmative.

The next salient question, for the determination of the court, is whether or not in stabbing the deceased to death, as he did, the accused had the requisite subjective intention to kill. Intention is a matter of inference to be drawn from the evidence. In this regard I have accepted the evidence, that the

accused was, on the fateful night, heard saying he was going to kill a witch before the night fall. He was seen going to the home of the deceased whom he admittedly killed. It is also significant to bear in mind that according to exh. "A", all the injuries which the accused had inflicted on the deceased were concentrated on her jaw, neck, chest and the abdomen i.e the upper parts of a human body which are vulnerable. A weapon, as lethal as a spear (exh. :1"), was admittedly used to inflict those injuries. In my view, the only reasonable inference to be drawn from such evidence is that in stabbing the deceased, as he did, the accused had the requisite subjective intention to kill.

In the result, I come to the conclusion, that considered as a whole, the evidence has established, beyond a reasonable doubt, that the accused committed the offence against which he stands charged. He is accordingly convicted as charged.

EXTENUATING CIRCUMSTANCES

Having found the accused guilty of murder, as charged, the court is enjoined by the provisions of S. 296 of the **Criminal Procedure and**

Evidence Act, 1981 to state whether or not there are any factors tending to reduce the moral blameworthiness of his act. I have found, in the course of my judgment, that, in his testimony that he did not believe in witchcraft, the accused was not being honest with the court. He was, on the night in question, heard by several witnesses saying he would kill a witch before the night fall. Indeed, on that very night the accused admittedly killed the deceased, presumably because he believed that the latter was practising witchcraft and, therefore, the person responsible for the death of his newly born baby.

In the decision of **Rex v Montoeli Tlaitlai 1996 - 98 LLR and Legal Bulletin 428** at p. 435 per Kheola, C.J., the learned Chief Justice held that a belief in witchcraft was an extenuating circumstance. On the authority of the above cited decision, I find that there is, in the present case, extenuating circumstance, *viz.* the accused's belief in witchcraft. The proper verdict is, therefore, that the accused is guilty of murder, with extenuating circumstances.

My assessor agrees.

SENTENCE:

Miss Makoko, counsel for the crown, has informed the court that the accused has no record of previous conviction. He is, therefore, a first offender. Mr. Khauoe, counsel for the defence, also invited the court to consider, in mitigation of the accused's punishment, a number of personal factors. He eloquently tabulated them and there is no need for me to go over them again. Suffice it to say they have all been taken into account in assessing the sentence that is about to be imposed on the accused person.

However, the court is not prepared to turn a blind eye to the seriousness of the offence with which the accused has been convicted. He has unlawfully deprived another human being of her life. The life of a human being is God-given and for that reason sacred. The courts of this Kingdom have, on numerous occasions, warned that they will take a diem view of people who unlawfully kill others. These warnings seem to be going unheeded. There is, therefore, the need to impose a sentence that will demonstrate to the accused and people of his mind that the courts of law are serious in their warnings, that they will not tolerate the kind of behaviour against which the accused

has been found guilty. A sentence that will serve as a real deterrent to the accused and others of his mind against a repetition of this heinous offence.

I come to the conclusion that the appropriate punishment for the accused person, in the circumstances, is that he must go to gaol and serve a term of ten (10) years imprisonment with no option of a fine. He is accordingly sentenced.

It is, perhaps, necessary to mention that after he had advised me on the question of verdict, my only assessor, Mr. Motsamai, rushed to assist Lehohla J. in another criminal case. He has not, therefore, been available to advise me on the question of sentence which I have imposed in my sole discretion.



B.K. MOLAI

JUDGE

For Crown : Miss Makoko

For Defence: Mr. Khauoe