

IN THE HIGH COURT OF LESOTHO

In the Matter Between:

REX

vs

THABANG CHAKA

Judgment

Delivered by the Hon. Mrs Acting Justice A. M. Hlajoane on 13th September, 2002.

On the 30th August, 2002 the Court pronounced its verdict in the matter, of guilty of culpable homicide to which my assessors agreed. The case was postponed to the 13th September, 2002 for the reading of its full judgment, and this is the judgment.

The accused appeared before me charged with the crime of murder. It being alleged that upon or about the 20th day of September, 1997 and at or near Ha Sello Sepolo in the Mophale's Hoek district he unlawfully and intentionally killed

‘Matimeletso Seleke. When the charge was put to him, the accused pleaded not guilty and the defence counsel showed the plea was in accordance with his instructions. A plea of not guilty was accordingly entered. I must mention that a Preparatory Examination had been held and the Crown had led evidence of seven witnesses.

The Crown before this Court led evidence of four witnesses, whilst the defence called only one witness, being the accused person himself. The deposition of one witness who was P.W.6 at the Preparatory Examination, No. 8988 Tpr Molorane, was admitted and therefore read into the machine. The doctor who performed the post-mortem was called as the Court’s witness as the information had shown that the doctor had left the country. He was therefore called after all the evidence had been led as it had turned out later that, in fact the information was incorrect as the doctor was still within the country, but then the Crown had long closed its case.

The evidence of the doctor, as the Court witness was to the effect that he had been a doctor for thirty six years. On the 27th September, 1997 he performed a post-mortem on the body of a female adult who was identified by one Moahloli Seleke as being that of ‘Matimeletso Seleke. On examining the body, he discovered an injury on the left hand on the wrist which had severed the radial artery. The wound was 3 cm long with exposure of the radius (bone). Another incised wound, 3cm long on the posterior part of the right forearm (distal part). A bruise 2 cm in diameter, at the back posterior aspect of the trunk left of the midline. A scalp haematoma, 2 cm in diameter, on the left temporal region. The scalp haematoma he described as a collection of blood under the bruise on the head.

In analyzing the wounds on the hands, the doctor indicated that a sharp instrument must have been used. He showed that the fact that the wound on the left went up to the bone bears testimony to the fact that considerable force was used. And also because the wounds on both hands had no ragged edges, indicated that the instrument used was sharp. The doctor went further and showed that the examination of the internal organs showed marked pallor which was a result of severe loss of blood.

On the basis of his findings, the doctor formed an opinion that death was a result of severe loss of blood from the severed artery. Under cross-examination when asked as to what could have caused the wound on the scalp, the doctor explained that it could either be hitting a blunt object or being hit with a blunt object, and a considerable force being used. His medical opinion on severity of blood loss to a drunken person was that that would only affect blood marrow to form blood cells not the blood flow. He said there was no documented evidence on someone injured whilst heavily drunk that there would be heavier blood loss than would be the case with someone sober. But indicated that once an artery was cut there would be heavy blood flow, as the artery is the one which carries blood to and from the heart. He concluded by saying that cutting an artery would not lead to instant death if the blood could be stopped at once, but death would be due to severe loss of blood. The evidence of the doctor confirmed what the witnesses saw at the scene of crime and where the deceased had fallen, that the amount of blood there was as though a cow had been slaughtered.

P.W.1, Tefo Sello who was P.W.2 at the Preparatory Examination told the

Court that he was a farmer and that he knew the accused well as they were related. He also knew the deceased in his lifetime. It was his evidence that on the day the deceased met his death, he had gone with the accused to a stockvel at one Tokelo's place. Amongst people who were there he mentioned Tumelo, 'Matumelo, 'Malefa, Motsetse and P.W.1's wife 'Masello. There was music played and people danced to the music. Though he did not say as to when the deceased got to the stockvel, he told the Court that the deceased asked people at the stockvel to be quiet as she wanted to talk to Motsetse.

P.W.1's evidence went further and showed that just about sunset, he saw accused and deceased leaving together. He had earlier mentioned that during the stockvel the accused had become angry and was rebuked by the owner of the house, 'Matukiso Seleke, who became P.W.2 in this trial. P.W.1 had seen accused and deceased leaving together for home as they came from the same village.

While P.W.1 was already in bed, he received a message by the son of Mokoto Seleke to the effect that deceased had problems and could no longer talk. The witness woke up, and together with his wife and Molupe Sello proceeded to where the deceased was. When they got there, he said, they found the deceased fallen and was already dead. With the help of Molupe's torch, P.W.1 observed the injuries on the deceased. A severe wound on the left hand which was bleeding, a small wound on the right hand, and a swelling on the left side of the scalp.

P.W.1 and Molupe then left for accused's place, and the reason being to find out from the accused as to what had happened as they were seen leaving the stockvel

with the deceased, but when they got there the accused was not there but reported by his wife to have left to a place not known to her after he had exchanged the blanket he had been putting on. The matter was reported to the chief who came the following day. Presumably because it was late when he received the report. The chief had ordered that the deceased be taken to her place, so that when the Police came would find the deceased at her place.

The evidence went further to show that Police visited the scene, where they found a lot of blood on the ground up to a point where deceased had fallen, and a lot of disturbance on the ground with some of the bushes uprooted, presumably because of the fight. The deceased's scarf was also found at the scene, a broken safety pin and a purse or wallet made from a goat's scrotum which P.W.1 identified as belonging to the accused. He showed he knew the wallet as he was always in accused's company and would see accused taking out money from that purse. The accused later in his evidence did not deny that the purse belonged to him and also explained about the safety pin.

Under cross-examination the witness told the Court that he did not know the accused as a violent person since their growing up together. The witness showed he did not examine the wounds to see how deep they were, but could tell on looking at them that the one on the left hand was serious as it appeared to be deeper than the other on the right. He was shocked by the blood which he observed on the ground. He also mentioned under cross-examination that the deceased was drinking at the stockvel and when they got there with the accused they found the deceased already at the stockvel, but could not tell if she was drunk. His evidence concerning the

nature of the injuries was confirmed by the post-mortem report and also concerning the amount of blood found at the scene.

The second witness for the prosecution was No.6380 Sgt Nkune who was P.W.7 at the Preparatory Examination, who told this Court that he had fifteen years experience as a Police Officer. Though presently stationed at Mafeteng, he was stationed at Mohale's Hoek during 1997. He was on duty as usual on the day in question when accused arrived and reported about his involvement in the death of a woman. He had first identified himself and explained that he had killed a person. I must mention here that the Defence Counsel objected to this piece of evidence as amounting to a confession, but he was overruled because the statement was taken not to have excluded the possibility of having killed for a reason, not intentionally. The witness had said, "I quarrelled with 'Matimeletso and have killed her." It had not at that stage been very clear as to whether accused left knowing that the deceased was dead or whether he learnt later.

His investigations confirmed that a woman had been killed by the name of 'Matimeletso Hlalele. The witness then went further and told the court that, the accused handed over to him a brown okapi knife showing, it was the one he used. The accused was cautioned and given a charge of murder and the knife which was seized as an exhibit had been produced at the Preparatory Examination but was not handed in before this Court. The witness showed it was still with Mohale's Hoek Police. This might have been because the witness was not the investigating officer. P.W.2 concluded by showing that the accused had not himself sustained any injuries. The handing in of the knife confirmed the opinion by the doctor that a sharp

instrument must have been used to cause the injuries.

The testimony of P.W.3, 'Matokiso Lipuo Seleke who was P.W.4 at the Preparatory Examination, was to the effect that she stayed in the same village with both the accused and the deceased, the latter being her sister-in-law, when the former was her husband's friend. Her evidence was that, on the day in question she had a stockvel with the deceased. The deceased had arrived at P.W.3's place for the stockvel at 12 noon accompanied by her sister 'Malefa. Later the accused arrived and many other people whom she did not mention by names.

According to this witness, as people were drinking inside the house, the deceased asked everyone in there to be quiet as she wanted to talk to one Motsetse. It would seem that the deceased even stopped the music because P.W.3's evidence revealed that accused asked why the deceased stopped the music, resulting in a quarrel between the accused and the deceased, but P.W.3 came between them.

It was P.W.3's evidence that the deceased was very drunk. In her evidence (P.W.3) it came out that in fact accused and the deceased were lovers, though both were each married. At around 6.00 p.m. people were leaving for their respective places till the witness only remained with accused, deceased and Mokoto. Later the accused invited the deceased to leave as he showed they were then the only ones remaining behind from Limapong. P.W.3 indicated that the deceased was very drunk but that the accused was not very drunk as he was even showing the way to the deceased.

Some time after they had left, P.W.3 told the Court that she saw the deceased coming towards her home (P.W.3's) shouting in a loud voice calling P.W.3 by her maiden name for help. According to P.W.3, Mokoto asked his son Tatolo to go to the deceased and see what the matter was. It might be that Mokoto was old or sick, because the witness mentioned something like, Mokoto sent his boy because the way to reach where deceased shouted from was up the hill or ridge.

P.W.3 informed the Court that Mokoto went and came back to report that he had found the deceased fallen. He must have touched her because, the evidence showed that, he felt that his hands were wet and as he approached the light in the house to see what he had on his hands, he observed blood. In fact the boy had tried to raise the deceased from where he had fallen hence the blood on his hands.

The blood on Mokoto's hands must have shaken both P.W.3 and Mokoto, because despite the exercise of having to go up the hill, they nonetheless rushed to where deceased had fallen. When they got there P.W.3 shook the deceased at the same time calling out her name. On touching deceased's hands she felt that they were wet. P.W.3 then asked Mokoto to strike a match and was then able to observe injuries on both deceased's hands, P.W.3 described the wound on the right hand as a cut and the one on the left hand as a deep wound. The headman Tefo was called and he came with Molupe Sello who through the help of the light from striking the match showed that the deceased had passed away.

Under cross examination when asked to describe the place where the fight took place, P.W.3 pointed out that it was an area with bushes, short bushes, some of which

were disturbed and others uprooted. When asked if the area was not rocky, she said it was not except that some place away from where the fight took place was rocky. I must say at this juncture that P.W.3's evidence corroborated that of P.W.1 on the question of the condition of the place where the fight took place and the nature of the wounds and their location. She said she saw flesh protruding from the wound on the left hand and concluded that the veins were cut.

P.W.3 also, same as P.W.1 had visited the scene on the following day and observed the scrotum wallet which she knew belonged to the accused. She had seen the accused taking out money from it at the stockvel when buying beer. About blood found at the scene, she said it was as though a cow had been slaughtered at that place.

P.W.4 D/Tpr Tobi who was P.W.5 at the Preparatory Examination, the last witness called by the Crown, in his evidence showed that, though presently stationed at Ha Mofoka, he was during 1997 stationed at Semonkong Police Post. The witness showed that he had received a report from the chief of Ha Sepolo, and following that report he proceeded to the scene of crime. His observations at the scene were not different from those of P.W.1 and 3, also on the injuries on the deceased. The witness conveyed the dead body to Police Semonkong, and according to the witness the body did not sustain any further injuries from Ketane to Semonkong. The doctor performed his post-mortem examination on the dead body there at the charge office. The witness was the one who handed in the exhibits at the Preparatory Examination stage, the exhibits being the safety pin and the wallet.

The defence had made some admissions on the evidence of P.W.6 at the Preparatory Examination stage, Tpr Molorane, whose evidence in a nutshell has been that he was the investigator in accused's case. His evidence showed that he went to accused's home on the 2nd October, 1997 in an effort to be shown the stick which the accused used. Accused at his home gave the witness a 'lebetlela' stick which he (accused) showed he used to beat up the deceased. The stick was kept as an exhibit, and was handed in at the P.E. stage as an exhibit and was marked as such.

The accused in his sworn evidence told the Court that he was on the day in question at P.W.3's place for a stockvel. I must mention on the onset that accused's evidence in fact did not differ from that given by P.W.1 and 3. He was at the stockvel with P.W.1 and 3 and others who did not give evidence before this Court, like P.W.1 at the P.E. who has since passed away and P.W.3 at the P.E. who works in the Mines, and could not make himself available.

In fact most of the material facts in this case were a common cause. To mention some such facts as,

- That accused and deceased were lovers;
- both lived in the same village,
- that on the day in question both accused, deceased, P.W.1 and P.W.3 were at the stockvel at P.W.3's place
- that deceased at the stockvel asked people to be quiet as she wanted to talk to Motsetse
- that both accused and the deceased were both drinking at the stockvel

- that the accused and the deceased left together at the stockvel
- that on their way home, the deceased and the accused quarrelled
- that the deceased was later the same evening found wounded on the way and died same day
- that accused later reported himself to the Police.

The accused before this Court showed that he quarrelled with the deceased because the deceased had insulted him. In this Court accused said the insults were to the effect that he badly shits as he was no longer buying soap for her (deceased). But before the Police in his statement the insults were that deceased said accused was only coming to her bringing only his penis and testicles without any soap. The salient question to ask would be why did accused give different versions as regards the insults. The only reasonable inference to be drawn would be that, the issue of insults was an after thought, that answered why he even forgot what he said to the Police only to change his version when reminded about the statement he gave to the Police. In fact he said deceased had used so many insults that he could not remember all of them. But why only remember the milder insults when giving evidence before this Court and to be only reminded about the more serious insults under cross examination.

It will be remembered that according to P.W.1 and 3, the deceased, who was in love with the accused had asked people at the stockvel to be quiet, as she wanted to talk to one Motsetse. Accused might have felt jealous and humiliated by this. He even responded by telling deceased to go out with her friend to talk and according to evidence of P.W.1 and 3, was even rebuked by P.W.3 as he (accused) became angry.

The quarrel must have emanated from there when they were alone on their way home.

There was no direct evidence of people who positively said they saw the accused fight with the deceased and inflicting injuries on her. We only had circumstantial evidence of the accused who left the stockvel together with the deceased who later was found injured and died same day. The Crown therefore relied on some satisfactory circumstantial evidence as no other reasonable inferences could be drawn from the evidence, **R v Felemane 1982-84 LLR 374**. The accused himself gave evidence and showed they quarrelled with the deceased, fought over a stick and used a knife on deceased's hands in order to force her to let go of the stick. He had however denied that he struck the deceased with that stick on the head. He must have struck her with it as he later produced the stick and handed it over to P.W.4 with an explanation about the same stick.

The Crown evidence revealed that both the accused and the deceased had been drinking on that day and that the deceased was drunk whilst the accused was only moderately drunk. This was the evidence of P.W.3 and the accused himself. I have already shown that the accused must have been provoked but by a reason different from what he wanted us to believe was the source of their quarrel. The provocation coupled with the state of mind of drunkenness had the effect of reducing the accused's blame worthiness. In the case of **Mamolumeli Molefe v R 1995-96 LLR and LB 149**, murder was reduced to culpable homicide having had regard to the consideration of provocation and drunkenness.

On looking at the circumstances of this case and considering that the deceased was drunk and also being of a weaker sex, a woman, the accused had all the time and ample chance to kill her if he had intended to. Accused could have stabbed the vital parts of deceased's body, but did not. The accused told this Court that they were fighting over his stick and that he only used his knife in order to force the deceased to let go of the stick. His explanation is indeed consistent with the kind of injuries the deceased sustained on both hands. But the accused had been negligent as he used his knife without any consideration of what might become as a consequence of his acts. The post-mortem report revealed that death was a result of severe loss of blood. The deceased met her death following the negligent conduct of the accused, as the accused after cutting both the accused's hands went away without bothering to see what the end results would be.

On the authority of **R v Mahlathe Mahlathe 1991-96 LLR 1203** I came to the conclusion that the offence which the evidence had established was culpable homicide, which is in fact a competent verdict on a charge of murder. I have thus accordingly found the accused guilty of culpable homicide, to which my assessors agreed.

Sentence

I have already found the accused guilty of culpable homicide to which my assessors agreed, the Crown having shown that the accused was a first offender.

In passing sentence, the Court has considered the mitigating factors which have been advanced by the defence in its plea in mitigation of sentence. The record had revealed through the evidence of P.W.1 that accused was not known as a violent person. The accused had been or felt provoked by either jealousy or if we were to believe his story, the insults. The accused had surrendered himself to the police after the incident as a sign of remorse. The accused further suffered a social rejection in that he was being rejected by members of his family as no one ever bothered to visit him whilst in prison. The Court has further been told that the accused has been kept in prison since 1997 to date. When asked whether or not he was ever granted bail, counsel for the accused showed that he was in fact granted bail in the amount of M500.00 but he was unable to raise that amount. Even his application for variation had been refused. This information confirmed the family rejection the accused has suffered. Accused is a married man with six children whom he has no knowledge of their reaction concerning his case as he has not met them since the incident. The Court was told further that the accused has since his imprisonment turned to be a sickly man. There would be no doubt about that since in some instances this case had to be postponed because he was so sick that he could not attend the hearing of his case. All these factors taken together worked as mitigating factors which influenced the Court in giving its sentence.

The accused, you are therefore sentenced to a term of ten years imprisonment (10) of which half is suspended for a period of three years (3) on condition that within this period you should not be found guilty of a similar offence involving negligent killing of another person with a knife. In assessing your sentence, the period that you have spent in prison should be taken into account.



A. M. HLAJOANE
ACTING JUDGE

For Crown: Ms Ntelane

For Defence: Mr Thulo

Gentlemen Assessors: Messrs Kolobe and Loko