

IN THE HIGH COURT OF LESOTHO

In the matter of:

REX

VS

TAILERE MPITI

JUDGMENT

**Delivered by the Honourable Mr. Justice B.K. Molai on
27th day of February 2002**

The accused is before me on a summary charge of murder, it being alleged that, on or about 5th February, 1998 and at or near ha Potiane, in the district of Maseru, he unlawfully and intentionally killed Masiu Manaka.

When the charge was put to him, the accused pleaded not guilty. Mr. Mahase, 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.

Four witnesses were called to testify in support of the crown case. The defence did not call any witnesses but the accused himself went into the witness box and gave evidence, in his defence.

The Court heard the evidence of P.W.4, ex-Trooper Rakharebe, who, in as far as it is relevant, testified that he had been a member of Lesotho Mounted Police Service until 3rd September 2001 when he resigned from the service. He remembered that on 5th February, 1998 he was stationed at ha Ramabanta police post. On the day in question he was at his duty station when he received a certain information.

Following the information he and two other police officers immediately proceeded to the village of ha Potiane. They were travelling in a police vehicle. On arrival at the village, they went to a certain house where they found the chieftainess of the village, the accused, a large number of villagers and a dead body which was identified as that of the deceased. After he and his companions had introduced themselves, and explained their mission, to the chieftainess, P.W.4 proceeded to examine the dead body of the deceased for injuries. It was lying on the forecourt and bandaged on the head as well as around the chest. He observed that the dead body had a wound on the chest between the breasts and another wound on the back of the head.

Following what the chieftainess had told him and the other police officers, P.W.4 cautioned and asked the accused for an explanation. He did give the

explanation, in particular he explained about two knives which were placed on the dead body of the deceased. One was a brown okapi knife. Another was an old okapi knife with a broken handle. According to him, P.W.4 took possession of the two knives which had since been in the police custody. He was shown two knives which he confirmed were the ones he had been talking about. By agreement of both the crown and the defence counsel, P.W.4 handed the brown okapi knife and the old okapi knife with a broken handle as exhibit "1" and exhibit "2", respectively.

P.W.4 further told the court that, after examining the deceased's dead body for injuries, he and the other police officers transported it, together with the accused person, to Ramabanta police post, where the accused was cautioned and charged as aforesaid. P.W.4 accompanied the dead body of the deceased from ha Potiane to Ramabanta police post and then to the mortuary at Queen Elizabeth II hospital, here in Maseru. It sustained no additional injuries.

'Mathato Potiane testified as P.W.3 and told the court that she was the chieftainess of ha Potiane, in the district of Maseru. Between 1:00p.m and 2:00p.m. on 5th February 1998 she received information following which she immediately proceeded to the home of one Mokhothu Piti, in the village. On arrival she found a large number of villagers already gathered there. The deceased was lying dead on the forecourt of Mokhothu's home. Exhibits "1" and "2" were placed on the deceased's dead body. The accused was sitting next to the dead body. When P.W.3 asked him what had happened, the accused replied that he had

fought with the deceased. According to her P.W.3 did not ask the accused any further questions. Instead she sent for the police who shortly thereafter came to the scene. In her presence, the police examined the dead body of the deceased for injuries. She too observed that it had sustained one wound on the chest and another one on the back of the head. P.W.3 told the court that, after they had examined the deceased's dead body for injuries, the police officers took possession of exhibit "1", exhibit "2" and a copper rod. They then carried away the dead body of the deceased together with the accused. She did not accompany the deceased's dead body when it was being transported away by the police officers. She was not, therefore, in a position to tell the court whether or not it sustained additional injuries whilst it was being transported away from the village of ha Potiane.

It is common cause that a post-mortem examination was subsequently conducted on the dead body of the deceased. A post-mortem examination report was, by agreement, handed from the bar as exhibit "A" and part of the evidence, in this trial.

According to exh. "A", at about 11:15 a.m. on 10th February 1998, a medical doctor performed an autopsy on a dead body of a male African adult at the mortuary of Queen Elizabeth II hospital, here in Maseru. The dead body was, identified before the medical doctor as that of the deceased (Masiu Manaka) by Tjamela Manaka. The external examination of his dead body revealed that the deceased had sustained a stab wound in the middle of the chest and another wound

on the left side of the head. On opening the body, the examination revealed that the injury on the chest was a 3cm deep x 3cm long stab wound which had penetrated the sternum and cut the right side atrium of the heart. The injury on the left side of the head was a 1cm deep x 3 cm long laceration which did not, however, reach the skull. From these findings the medical doctor formed the opinion that the deceased had died as a result of the stab wound on the chest.

P.W.1, Molise Molise, testified, in a nutshell, that he worked as a gardener at ha Matala, here in Maseru city. His home was, however, at Makhalaneng ha Potiane where the accused and the deceased also lived. They were, therefore, his co-villagers. On the day in question (5th February 1998), he left his place of work and went home, at ha Potiane. On arrival at his home village, P.W.1 called at the home of Mokhothu Piti who was his brother-in-law. There were many people in the house as there was beer selling. The accused and the deceased were among the people who were sitting in Mokhothu's house. Shortly after P.W.1 had entered into the house, the deceased asked him for tobacco. According to him, P.W.1 told the deceased to go with him outside the house so that he could give him the tobacco. P.W.1 then went out and sat outside the house waiting for the deceased to come and join him. The reason why he went out was because P.W.1 found it too hot and stuffy inside the house.

Whilst P.W.1 was sitting outside and waiting for the deceased, the latter did emerge from the house. Instead of coming to where he (P.W.1) was waiting for him, the deceased went to pass water some distance away. He was holding, in his

hand, a copper rod he usually carried as he walked about in the village. Shortly thereafter, P.W.1 noticed the accused also emerging from the house in which beer was being sold. He was not holding anything in his hands.

On his way from where he had been passing water, the deceased met with the accused and jokingly said to him, "*jantam!*" P.W.1 did not know what "*jantam*" meant but that was the word the deceased always jokingly uttered to everybody he met in the village. As the deceased was facing towards him at the time he uttered the word "*jantam*" P.W.1 could see that he was even laughing. P.W.1 could not observe the expression on the face of the accused because the latter was, at the time, facing away from him. However, P.W.1 noticed the accused violently pushing away the deceased and, at the same time, uttering the words: "Don't say I am "*jantam!*" He (P.W.1) noticed that the accused was holding a knife in his hand. He threw several blows, at the deceased, with the knife. The deceased was warding off the blows with his rod and at the same time moving backwards.

According to him, P.W.1 shouted at the two men to stop what they were doing. He himself could not go and intervene in the fight between the accused and the deceased because he was a sickly person. He had, in the past, suffered a stroke. He, however, screamed for help which did not come immediately. The accused eventually managed to stab the deceased who suddenly dropped to the ground. The accused then picked up the deceased's rod with which he hit him only once on the head before throwing it away. Thereafter the accused left for his

home in the village. The villagers, who had by then come out of the beer house, carried the deceased's corpse to the shade next to the house.

Shortly thereafter, P.W.1 noticed the accused leaving his home and going in the direction towards the veld where herdboys were looking after animals. He (P.W.1) and some of the men went to the accused in the veld and told him to go with them back to the home of Mokhothu. He agreed. On arrival at Mokhothu's place, the accused was told to hand over the weapon he had used on the deceased. He took P.W.1, and some of the men, to his house from where he brought exh. "2".

According to him, P.W.1 had seen the knife which the accused used on the deceased. It was a brown okapi knife and not exh. "2". When that was pointed out to them, the men who had gathered at Mokhothu's place told the accused to go back and bring the real knife he had used on the deceased. He did go back, still accompanied by men. P.W.1 himself was not, however, amongst the men who accompanied the accused to his house on that second occasion. When he returned with those men, the accused did bring the knife he had used on the deceased. That was exh. "1". P.W.1 confirmed that both exh. "1" and exh. "2" were placed on the deceased's corpse next to which the accused was ordered to sit.

According to him, P.W.1 then left for the neighbouring village of ha Rabolotsi. He had brought, from Maseru, a letter which he was to deliver to a certain person in that village. It was whilst he was in the village of ha Rabolotsi, on the same day, that the police came to him. He made a statement which the police wrote down. The statement was, however, not read back to him before he

was asked to attach his signature thereto.

In his testimony, P.W.2, Mokhothu Piti, told the court that on the day in question, 5th February 1998, he was in one of the rooms of his three-roomed house. Sesotho beer was being sold in one of the rooms. There was a time when his wife came to the door of the room in which he was and reported that the accused was fighting the deceased outside the house. Following that report, P.W.2 immediately went outside the house. He noticed that the accused was holding an unclashed knife with which he was delivering blows at the deceased who was scarring him away with a copper rod. In the course of their struggle, the accused managed to stab the deceased who immediately fell to the ground. The accused then picked up the deceased's copper rod and started belabouring him with it on the head. According to P.W.2, he and other people who had gathered around told the accused to stop what he was doing to the deceased. The accused did stop belabouring the deceased with the copper rod and left for his home. P.W.2 then went to where the deceased had fallen and observed that he had sustained two wounds. One wound was above the right breast whilst the other wound was at the back of the head. P.W.2 took his bandages with which he dressed the two wounds on the deceased. Thereafter, he carried the deceased to the shade of the house with the assistance of the men who had gathered outside his house.

In my view, if it were true that the accused was belabouring the deceased on the head with the copper rod, as P.W.2 wished the court to believe, one would expect the deceased to have sustained multiple wounds on the head. However, in

his own mouth P.W.2 told the court that the deceased had sustained only one wound on the head. In this regard the evidence of P.W.2 is corroborated by that of P.W.1 as well as exh. "A", the post mortem examination report. I think in his evidence that the accused belaboured the deceased on the head with the copper rod P.W.2 was somewhat exaggerating things.

Be that as it may, P.W.2 told the court that having dressed the injuries of the deceased and, with the assistance of other men, placed him in the shade of his house, he left for the chief's place where he reported the incident to P.W.3, the chieftainess of the village of ha Potiane. Other men went to fetch the accused from where he was sitting next to the field of a certain Thabo Tlali. After P.W.2 had made the report to her, P.W.3 immediately returned with him to his home. On arrival, they found the accused already seated next to the dead body of the deceased. Exh. "1" and exh. "2" were placed on the dead body of the deceased. Eventually the police from ha Ramabanta police post arrived. They took statements from him (P.W.2) and other people. Thereafter, the police took possession of the two knives (exh. "1" and "2") and the deceased's copper rod. The police then left with the deceased's corpse and the accused. P.W.2 himself did not accompany the deceased's dead body and he was not, therefore, in a position to tell the court whether or not it sustained any additional injuries whilst it was being transported from ha Potiane.

In his defence, the accused testified as D.W.1 and told the court that he too lived at ha Potiane. P.W.1 and P.W.2 were his co-villagers whilst P.W.3 was their

chieftainness. According to him, D.W.1 was, on 5th February 1998 working in the fields. At about 2:30p.m. he left his work in the fields and went to P.W.2's place where there was beer selling. On arrival at P.W.2's place D.W.1 entered into the house and bought himself beer. He took his beer outside the house where he sat down and started drinking it. Whilst he was drinking his beer, D.W.1 was alone as there was no other person outside the house. According to him, D.W.1 never sat in the room in which beer was being sold.

It may be mentioned, however, that in his evidence P.W.2 told the court that before going into the room in which he was sitting in his house, there was a time when he sat for a short while in the room in which beer was being sold. He positively noticed D.W.1 sitting with the people who were drinking beer in that room. The evidence of P.W.2 was, in that regard, corroborated by P.W.1 according to whom on his arrival at P.W.2's house from his place of work at ha Matala, on the outskirts of Maseru city, he briefly entered into the room in which beer was being sold. He noticed that D.W.1 was amongst the people who were sitting and drinking beer in that room. It will also be recalled that P.W.1 told the court that whilst he was waiting for the deceased to come and get the tobacco he had asked for, he (P.W.1) was alone outside the house. I am prepared to accept as the truth the evidence of P.W.2 corroborated by that of P.W.1 and reject as false D.W.1's version on this point.

In any event, D.W.1 went on to testify that as he sat and drank his beer outside the house, the deceased emerged from the room in which beer was being

sold. He came to, and greeted, him by saying “jah neighbour!” After he (D.W.1) had responded to his greeting, the deceased took his (D.W.1's) beer and drank it all. The deceased, then returned into the room in which beer was being sold. According to him, D.W.1 was not amused by what the deceased did. He, however, decided to keep quiet.

Shortly thereafter, D.W.1 also returned into the room in which beer was being sold. He bought himself another beer and, again, went outside to drink it. Whilst he was sitting alone outside the house and drinking his beer, the deceased once more emerged from the room in which beer was being sold. He came to where he (D.W.1) was sitting and, again, took his beer and drank it all. When D.W.1 protested against the deceased drinking all his beer for the second time, the latter said to him: “ Boy, have you been brought up without knowing the elders? Do you know “*leboro*”?” As he uttered those words the deceased hit him a blow on the head with the copper rod he normally carried with him, in the village. According to him, D.W.1 felt pain when the deceased hit him the blow on the head. He reacted by hitting the deceased with a fist on the ribs. The deceased then started belabouring him with his copper rod. D.W.1 used his arms to ward off the blows. In the course of their fight, D.W.1 fell to the ground but managed to get up quickly and took out his knife (exh.“1”) which he had been using to eat peaches on the day in question. He stabbed the deceased only once with exh. “1”. He did not aim to stab him specifically on the chest. When he stabbed him with exh. “1”, the deceased immediately fell to the ground. D.W.1 was frightened by the sight of the deceased suddenly dropping to the ground. He, therefore, left him where

he had fallen and went to his home.

I have already found on evidence that P.W.1 was testifying to the truth when he told the court that after he had briefly entered into the room in which D.W.1 and other people were seated and drinking beer, he went outside and waited for the deceased to come and get the tobacco he had asked for. He and not D.W.1 was sitting alone outside the house. That being so, I reject as false D.W.1's story that he was the one who was sitting alone outside the beer house. D.W.1's story that as he sat alone and drank beer outside the house, the deceased came and drank his beer was just an attempt to run away from the truth that as he sat outside the house waiting for the deceased, P.W.1 positively saw him coming out of the room in which beer was being sold. He (D.W.1) met the deceased who was returning from the spot where he had been passing water. As they met D.W.1 and the deceased started quarrelling over the latter saying "*jantam*" to the former. A fight then ensued between the two men. In the course of the fight the deceased was fatally stabbed by D.W.1.

Be that as it may, D.W.1 told the court that from his home he took exh. "2" and went to the fields. He hid exh "1" amongst the maize group. Whilst he was pondering whether or not he should go and surrender himself to the police, a certain man by the name of Sitha came and told him to return with him to P.W.2's place where he had stabbed the deceased. When they came to P.W.2's place, D.W.1 was ordered to hand over the knife he had used to stab the deceased. He handed over exh. "2". However, a certain woman shouted and said that was not

the knife D.W.1 had used to stab the deceased. He was then ordered to go and fetch the real knife he had used on the deceased. According to him, D.W.1 then took Sitha to the maize field where he had hidden exh. "1". He took it and returned to P.W.2's place. D.W.1 conceded that he was not being truthful when he handed over exh. "2" as the knife he had used to stab the deceased. He is, therefore, a self confessed liar.

After handing over exh. "1" to the men who had gathered at the home of P.W.2, D.W.1 was ordered to sit next to his victim, the deceased. He obliged. He confirmed that eventually P.W.3, followed by the police officers, arrived at the scene. When he was asked to explain what had happened, D.W.1 gave the explanation he had, in his evidence, given to this court.

In his testimony, D.W.1 further told the court that he had sustained injuries as a result of the assault on him by the deceased. The police could see his injuries, particularly the one above one of his eyes as it was bleeding profusely. They did not, however, refer him to a doctor for medical treatment. He was, instead, taken to ha Ramabanta police post where he was locked up in a cell. At the police post he reported, to the officer commanding the police post, that he had sustained injuries. The Officer Commanding the police post also did not send him for medical treatment. From ha Ramabanta police post he was taken straight to Maseru central charge office where he again reported that he had sustained injuries. He was not referred to a doctor for medical treatment. He did not, however, tell the Magistrate, who remanded him to prison, that he had sustained

injuries.

D.W.1 told the court that, on arrival at the prison, he was asked whether he had sustained any injuries, as a result of unlawful assault on him. When he, replied in the affirmative, the prison warden told him to remove his clothes so that he could see the injuries. He complied. The prison warden merely looked at the injuries but did not send him to a doctor for medical treatment. He merely received him into prison. Whilst in prison, he was, however, given medicine with which to rub his injuries. When he was eventually released on bail, his injuries had completely healed and he did not go to see a medical doctor about them.

This court takes judicial notice that where people report at our police stations with injuries, sustained as a result of unlawful assault on them, the general practice is to fill in a medical form by which such people are referred to a doctor for medical attention and report. Similarly people, who are remanded in custody with injuries as a result of unlawful assault on them, are not accepted into prison without proof that they have been referred to a doctor for medical treatment. If, at the time he came to ha Ramabanta police post, Maseru Central police station and the central prison in Maseru he had, indeed, sustained injuries as a result of unlawful assault perpetrated on him by the deceased, D.W.1 would, in accordance with the general practice, have been referred to a doctor for medical treatment and report. In his own words, D.W.1 was not referred to a doctor for medical treatment and report. If D.W.1 had, indeed, sustained injuries, as he wished the court to believe, I see no reason why he should have been treated

differently from other people. The only reasonable inference to be drawn, in the circumstances, is that D.W.1 was not being honest with the court in his evidence that, at the time he came to the police stations and the central prison, he had sustained injuries, as a result of unlawful assault on him by the deceased.

Considering the evidence as a whole, it is not really disputed that the deceased died as a result of the stab wound inflicted on him by D.W.1. The only salient question that arises for the determination of the court is whether or not in stabbing the deceased, as he admittedly did, D.W.1 had the requisite subjective intention to kill. Intention is not something that we can reach with any of our five (5) senses. It is something to be inferred from either the words or acts of the accused person. In the present case, there is no evidence that D.W.1 said he wanted to kill the deceased i.e. there are no words from which it can be inferred that, in inflicting the fatal injury on the deceased, as he did, D.W.1 had the requisite subjective intention to kill him. What, in my finding, is clear, from the evidence, is that D.W.1 and the deceased were fighting. In the course of that fight, D.W.1 did inflict the fatal injury on the deceased. Assuming the correctness of my finding, I am not convinced that D.W.1 had the time and leisure to choose the fatal spot where to stab the deceased.

In the circumstances of this case, I have serious doubt that, in inflicting the fatal injury on the deceased, D.W.1 had the requisite subjective intention to kill. It is trite law that the benefit of such doubt must always be given to the accused person. I give the accused the benefit of my doubt and come to the conclusion

that a proper verdict is to find him guilty of culpable homicide. The accused is accordingly convicted.

Both my assessors agree with this finding.

SENTENCE

Having found the accused guilty of Culpable Homicide, it now remains for the court to determine the punishment that is appropriate for him. The court is informed that the accused has no record of previous convictions. He is, therefore, a first offender. That is a factor, to be properly taken into account in mitigation of accused's punishment.

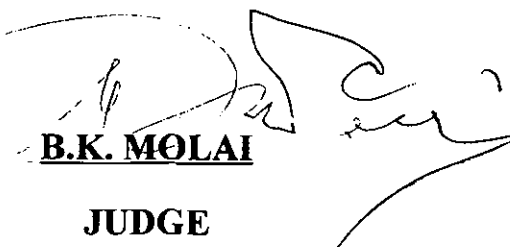
In mitigation of sentence, the court has also been invited to consider a number of factors. They have been so eloquently tabulated by the defence counsel that there is no need for me to go over them again. Suffice it to say they have all been taken into account in assessing the punishment that is imposed on the accused person. Of particular importance the court was told that the accused contributed a cow and a bag of 50kg mealie meal for the funeral of the deceased. That, in my view, was a sign of remorse on the part of the accused person.

However, the court cannot turn a blind eye to the seriousness of the offence with which the accused has been convicted *viz.* Culpable Homicide. He has deprived another human being of his life. The life of a human being is God-given

and for that reason sacred. In a civilized society like Lesotho, Courts of Law have been established. People who think others have wronged them, must approach the courts to have their differences resolved in a civilized manner. The accused is no exception to that. If he thought the deceased had wronged him, he ought to have brought him before the courts of law. He simply had no right to take the law into his own hands and kill the deceased.

In the result, I come to the conclusion that the appropriate sentence for the accused person is that he must go to gaol and serve a term of six (6) years imprisonment, half of which is suspended for three (3) years on conditions that he is not convicted of any offence involving violence on other people and sentenced to serve a term of imprisonment without an option of a fine, during the period of suspension.

The accused is accordingly sentenced.


B.K. MOLAI
JUDGE

For Crown : Miss Mofubelu

For Defence : Mr. Mahase