

IN THE HIGH COURT OF LESOTHO

In the matter of:

REX

v

LETIMA MATANKOLE

Delivered by the Hon. Mr. Justice M. P. Mofokeng
on the 16th day of May 1980

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LETIMA MATANKOLE (hereinafter referred to as the accused) is charged with the murder of one Lebusa Maphotong (hereinafter referred to as the deceased) in that upon or about the 29th day of October, 1978, and at or near Qhalanyo in the district of Butha-Buthe, the said accused did unlawfully and intentionally kill the said deceased. The accused has pleaded not guilty to this charge.

The following facts are common cause:

- (i) that on the morning of the 29th day of October, 1978 the deceased was at his home in a village at Kao Ha Qhalanyo Sello in the company of his wife;
- (ii) that in the early hours of the morning on the said date the deceased took a purgative to encourage bowel motion. Some time during the morning the deceased informed his wife that he wanted to go out into the veld to dig for some herbs or medicine. He asked his wife to give him an iron rod (referred to as exhibit 6 at the trial) which the deceased would use to dig for the said herbs or medicine;
- (iii) that the deceased's wife handed over to the deceased exhibit 6 for which he had asked. After he had been given exhibit 6 the deceased left his home and took the direction of the communal grazing area. That was the last time the deceased was seen alive by his wife.
- (iv) that some time during the day the deceased's wife received a report concerning the deceased from the deceased's younger brother. The deceased's younger brother also made enquiries about the whereabouts of the deceased. Apprehensive that her husband,, the deceased, could be in trouble as a result of the purgative he had taken earlier on, the wife of the deceased went out to look for him.

She followed the direction which the deceased had taken when he left home. At a place not far from the village, but not visible from the village, she found the body of the deceased. He was lying prostrate on his back and he had many injuries on his face. The headman of the village and many other people were also present at the place where the deceased's body was found. These people stood at some distance from the body of the deceased. The deceased's wife returned home and left the other people, including the headman, guarding the deceased's body. At that stage it was apparent to anyone that the deceased was dead;

(v) that the headman and other villagers remained guarding the body of the deceased until the arrival of the police from Kao Police post in the evening of the 29th October, 1978. They further remained with the body after the arrival of the police until the morning of the 30th October, 1978. The inspection of the area in the vicinity of which the deceased's body was found was conducted by the police in the presence of the headman and other villagers. The police also examined the body of the deceased in their presence and that Sgt. Shale noted, correctly, his observations about certain injuries not listed by Dr. Palsenberg. The body of the deceased was later conveyed in a police vehicle to Butha-Buthe where a post-mortem examination was performed on the body by Dr. Palsenberg on the 1st November, 1978. The body of the deceased sustained no further injuries other than those observed when it was found while it was conveyed between Kao and Butha-Buthe;

(vi) that the post-mortem examination conducted on the 1st November, 1978 revealed the following - death was due to severe brain damage, caused by an impression of the frontal skull base and the eye sockets. The zygomatic bones (cheek bones) as well as the nasal bones were also fractured. The brain could be seen from the outside. The doctor further observed two lesions measuring 6cm and 3cm on the scalp.

It is also common cause that the accused reported to the chief or headman that he had left him (the deceased) fallen above the headman's field. He also made the same report to the police at Kao Police post. The accused further asked the headman to protect him from the deceased who was holding terrible rods and terrible knives. He further did not explain to the headman why he had left the deceased and came back to report to him. Nana, with due haste, rushed to the place described to him and shortly thereafter came back with a report that the deceased was dead.

It was after this report that the headman and other people from the village went to the scene of the killing. The headman did not observe any injuries on the accused nor did the accused tell him about any injuries he had sustained during the alleged fight with the deceased.

The police at Kao police post did not observe any injuries on the accused except one minor scratch on the accused's right hand. The scratch was observed after the accused had been stripped and examined closely by Trooper Posa.

It was also common cause that there was a long standing dispute between the accused and the deceased. The said dispute was caused by a misunderstanding between the accused and the deceased about certain building stones, the ownership of which was disputed by them. The dispute concerning stones had been reported to the headman and to the police as well. Civil action had been instituted in the Local Court but the deceased died before the dispute could be determined by the Court.

The depositions of P.W. 4, P.W. 5, P.W. 7 and P.W. 8 at the preparatory examination were admitted by counsel for the accused and they thus became evidence at the trial. A medical examination was conducted by Dr. Palsenberg at Butha-Buthe on 1st November, 1978. The doctor observed a nearly healed 1cm wound under the left arm of the accused.

In his defence the accused stated that on the material day he had been set upon by the deceased while on his way back to the village from tethering his donkey at the communal grazing area. The accused stated in evidence that while on his way home he met the deceased. The accused was armed with a stick (exhibit 1) and the deceased had with him exhibit 6. The deceased said to the accused words to the effect that we have met today. The deceased went on to state that the accused employed a person to use his stones for building. He came towards the accused and as he did so he said he would be taking the accused away on that day. The accused further deposed that the deceased said to him he (the deceased) had taken away 'Matsotang who had behaved in a similar manner like the accused. The accused knew that the said 'Matsotang was no longer in the village but he did not know what had happened to her. When the deceased said that he was taking the accused away on that day he (the accused) understood, the deceased, to mean that he was going to kill him. He parried three blows aimed at him by the deceased and in return he only delivered one blow at the deceased's head with a stick. He hit the deceased on the head. They both fell to the ground. The deceased got up before the accused and the accused rolled down a slope away from the deceased. The accused got up not less than ten paces away from the deceased. On rising from the ground he took to his heels trying to run away from the deceased. The deceased threw stones at him but not a single stone found its target. While running away the accused got tired and the deceased caught up with him. He tried to deliver a blow at the accused but the accused warded off the blow and at the same time delivered a blow at the deceased's head with a stick.

As he delivered the blow his stick fell and the deceased came up to him and grabbed him with his hands. When he grabbed him he (the deceased) still had exhibit 6 in his hands. While grappling with the accused the deceased landed a blow with exhibit 6 and he and the deceased struggled until they went down. They rolled for a distance of about two paces. they struggled, the accused got on top and under the deceased pulled a stone and hit the deceased with it on the forehead. When he hit the deceased with the stone, he was holding it with one hand. After hitting the deceased with the stone, he left him lying on the ground and went to report to the headman whom he asked to protect him. While struggling with the deceased, he did not sustain any injuries as he rolled on the uneven, rocky surface. Further the accused, prior to hitting the deceased with a stone, did not observe any blood on the deceased following the two blows he had inflicted on the deceased with a stick.

It is also admitted, on behalf of the accused, that the deceased died as a result of the injuries inflicted on him by the accused. However, the accused says when he caused the deceased the said injuries he was acting in self-defence.

The accused has described, in great detail, what transpired when he and the deceased met until he got to the police post at Kao. He did not tell anybody about the fight he had had with the deceased. He merely just said that he had left the deceased fallen near a field. When he got to the headman, he sought protection from the deceased who was armed with terrible iron rods and knives. He further said that the deceased was coming behind him. No terrible knives were found on the deceased. Before his horrible deed could be discovered, the accused ran away to the police. However, when he got to the police he does not seek protection but instead he requests a medical form because, as he puts it, the deceased had assaulted him. The police officer at that stage observed no injuries on him except a small scratch on top of the hand. The police became suspicious when they saw drops of blood on the balaclava and on the stick without noticing where the blood could have come from on the person of the accused. The blood could only have come from the person whom the accused alleged had fought with him. The accused had no wound which could have bled. He was actually undressed and examined. It is strange that the accused did not tell both his headman and the police how the fight took place.

The accused ^{says} that he was injured on the right arm (towards the elbow) and was "incapacitated." However, he was not only able to grab a heavy iron-stone which lay underneath the deceased but was also able to deliver a blow while he was still on top of him, that it caused the extensive injuries which were found by the doctor when carrying out a post-mortem examination of the body of the deceased.

He tried to demonstrate how he performed the feat of causing such injuries on the deceased but this was a dismal failure. The doctor did not exclude the possibility that more than one blow was inflicted with an instrument such as a stone. One blow could also have been delivered provided there was also additional force as a result of sufficient speed.

The accused says he rolled on a stony surface for a longer distance than the deceased and yet apart from the little scratch the policeman saw, he had no other injuries. Besides the injuries mentioned by the doctor, there were injuries on the deceased's back. These were noted at the time Sgt. Shale inspected the body of the deceased. It is strange that the accused had no similar injuries.

Both the headman and the police observed no disturbances at the vicinity of the area where the deceased's body was found. If, as the accused stated, they had been rolling on the ground with the deceased before he inflicted the fatal injuries with the stone, one would expect some disturbances near the body.

The accused insisted that the injury he received in the hands of the deceased was on the right hand towards the elbow. However, the doctor found no such injury. He found a small hoeing wound under the left arm. He insisted that the doctor had examined the wrong hand. He did not draw the doctor's attention to the correct hand he knew to have been injured because, as he put it, the doctor spoke a language he did not understand.

The accused told this court a strange piece of evidence. It is stranger than fiction. He said that the blood from the wound (which the doctor did not find) did not stain the long-sleeved skipper he was wearing. Of course there was no such wound.

Without going into greater details of the accused's evidence, it is obvious that he told this court a tissue of lies. He is such a liar that even the gullible could not believe his story, (let alone it being classed as "may reasonably be true") about what transpired between him and the deceased. It is false beyond reasonable doubt. However, in fairness to Mr. Makhene, he conceded as much. The evidence of the accused is manifestly false. However, in our jurisprudence an accused person is not convicted merely because of the falsity of his evidence. It is one of the factors to be taken into consideration when the totality of the evidence is assessed. The onus lies on the Crown to prove its case beyond reasonable doubt. Rex v. Ntoi, CRI/T/39/77 (unreported) at p. 19).

The witnesses for the Crown were honest witnesses who endeavoured to tell the court a truthful account of what they knew concerning the killing of the deceased and their dealings with the accused. The following may be said in respect of certain witnesses:

Sgt. Shale gave a truthful account of his observation in respect of both his examination of the body of the deceased at the scene of the killing and also the examination of the area at which the body of the deceased was found. He kept a detailed account of his observations in his police note book. He was a fair and impartial witness who did not withhold evidence which was favourable to the accused. Although he tended to be slow in his thought process, it cannot seriously be said that he was a dishonest witness. His observation in regard to injuries visible on the accused on the material day are corroborated by that of the headman and Trooper Posa. There is further no suggestion that he was mistaken in his observations concerning injuries he saw in the deceased on the 29th October, 1978. It cannot be said that he attempted to mislead the Court in any manner.

The headman, Qhalanyo Sello was an impartial witness. He gave his evidence in a clear and lucid manner. He made no attempt to hide any fact to the Court, regardless of whether such a fact was favourable to the accused or to the deceased. He was an independent witness. He further did not attempt to hide his disgust at the deceased's action in removing certain stones from the accused's site. He had no motive to tell lies against the accused. His demeanour in the witness box was impressive and beyond reproach. He did not evade any questions he was required to answer. His evidence was of a very high quality and it was in all respects superior to the evidence of the accused. It will be noted further that in so far as the injuries he observed on the accused on the material day, his evidence is corroborated by that of Sgt. Shale and Trooper Posa.

The evidence of Trooper Shale is consistent with the evidence of Sgt. Shale and Qhalanyo Sello in all material respects in regard to the injuries he observed on the accused on the 29th October, 1978. His evidence was truthful and he did not go out of his way to try and falsely implicate the accused. He may only be criticised in that he could not at times answer questions directly. He tended to answer certain questions/ⁱⁿ a roundabout and negative way. This, however, was not an indication that he was being untruthful as this is a trait which is peculiar to him.

The evidence of the deceased's wife, 'Matubatsi Lebusa, was notwithstanding that she had an interest in the matter, fair. She did not suppress the fact that there was a dispute between the accused and the deceased. She is the only one who volunteered evidence that two weeks before the deceased's death there had been a heated exchange of words between the accused and the deceased. Her immediate reaction after she had been asked by her husband's younger brother about the whereabouts of the deceased was a natural reaction of somebody who showed concern for her husband thinking that he may be having problems.

as a result of the purgative he had taken in the morning. She was not shifty in the box and her evidence was given in a convincing manner.

I believe their evidence. The accused's evidence, on the other hand (as shown earlier in this judgment) is bristled with serious contradictions and inconsistencies. In the words of the Crown counsel he was a poor actor and unconvincing one at that. It is not, therefore, surprising that his pretence was soon realised by both his headman and the police.

There is overwhelming evidence that the deceased died as a result of the injuries inflicted by the accused despite the latter's reluctance to admit it. The next inquiry, therefore, is whether there is evidence that the accused killed the deceased intentionally. To put it in another way; has the Crown succeeded in negating the defence of self-defence put forward by the accused? The inquiry at this stage was neatly put by DAVIS, A.J.A. in the case of Rex v. Ndlovu, 1945 AD 369 at 386 when he said that the onus which is on the Crown may be discharged;

"either by direct evidence or by the proof of facts from which a necessary inference may be drawn.

One such fact, from which (together with all the other facts) such an inference may be drawn is the lack of an acceptable explanation by the accused.

Notwithstanding the absence of such an explanation, if on review of all the evidence, whether led by the Crown or by the accused, the jury are in doubt whether the killing was unlawful or intentional, the accused is entitled to the benefit of the doubt. That doubt must be one which reasonable men would entertain on all the evidence, the jury should not speculate on the possible existence of matters upon which there is no evidence, or the existence of which cannot reasonably be inferred from the evidence." (My underlining)

(see also S v. Mini, 1963 (3) S.A. 188 (A) at p. 195H - 196F).

In convicting on the basis of circumstantial evidence there are two main aspects to be considered, namely,

- (a) the facts proved, and
- (b) the proper inference to^{be} drawn from those facts.

(See R v. BLOM, 1939 AD 188 at pp 202 - 3. Hoffman, S. A. Law of Evidence, pp. 423 - 4).

The intention of the accused where there is no direct evidence may be established in various ways such as

- (a) The nature of the weapons used to inflict the fatal injuries.
- (b) The location of such injuries.
- (c) The degree of violence used to inflict such injuries.

(Rex v. Lecholotsane and Another, CRI/T/43/78 at p. 14 Rex v. Retere and Others, CRI/T/48/78 at pp. 20 - 1 (both unreported). The list is not exhaustive.

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According to the medical evidence "brutal force must have been used" to inflict the injuries observed. The brain could be seen from the outside. The doctor did not exclude the possibility that more than one blow could have been delivered. According to the evidence before this Court, there were more than two stones which appeared to have been used. I believe that evidence. The deceased, therefore in my view, was hit on the face more than once. The doctor in his evidence exclude the possibility that the deceased could have sustained the facial injuries when falling on a stone. The injuries were concentrated on the most vulnerable part of the head. They were, moreover, inflicted by a dangerous weapon, namely, a heavy iron rock. When this stone was thrown at the deceased, it was thrown from a distance further than the accused tried to show in his clumsy demonstration. This would account for the massive fractures of the facial bones.

The evidence which has been accepted does not show that there were any signs of a struggle at the scene of the crime. The accused had no injuries. If indeed the scratch on the top of the hand was caused by the blow with exhibit 6 when accused parried it (as defence counsel suggested), one would have expected a more serious damage. It needs no medical knowledge to say that the small bones of the hand would have been broken. If the deceased held exhibit 6 in his right hand, it is almost impossible that he would have caused the injury on the right arm of the accused because they faced each other. From the nature and locality of the injuries on the face, the only inference which this Court can draw is that the deceased lay helpless when the fatal injuries were inflicted.

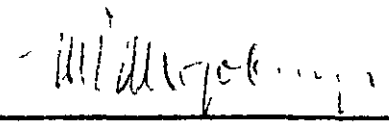
From the totality of the evidence, the only inference to be drawn is that the accused murdered the deceased.

My assessors unanimously agree with all my findings.

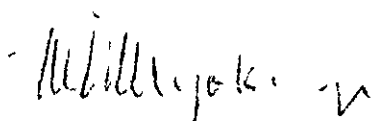
The Court is greatly indebted to Mr. Mdluli for his thorough preparation. He has made the task of this Court much easier.

For the Crown: Mr. G. S. Mdluli

For the Defence: Mr. Makhena


J U D G E

The Court having found extenuating circumstances, accused was sentenced to undergo imprisonment for a period of 13 (thirteen) years.


J U D G E