

**IN THE HIGH COURT OF LESOTHO**

In the matter between:-

**REX**

**V**

**TRP MOKETE MOKHOBO**

**JUDGMENT**

**Coram** : **Hon. K.J. Mafoso-Guni**  
**Dates of Hearing** : **17/08/11, 10/08/11, 19/08/11, 18/11/11, 05/06/12,**  
**11/06/12, 13/06/2012**  
**Date Delivered** : **28<sup>th</sup> May 2012**

*Charge .....Murder*  
*Essential elements thereof .....*  
*Unlawful and intentional causing of the death of another human being.*

**Summary**

*The accused assaulted his wife. He was using a gun. He was seen by the two eye witnesses, hitting his wife with the bud of the gun. These two eye witnesses left the scene of the crime when the assault commenced. They went to look in vain, for help at two different police stations for the purpose of saving the wife's life which according to them was in imminent danger because the accused had now pulled the gun on his wife. The accused claims that the wife accidentally shot herself while trying to disarm him.*

*Held: Where the accused was using a gun to assault his wife, and the wife dies from the gunshot wound, it must be inferred that the accused shot the deceased.*

## ANNOTATIONS

### CITED CASES

**Thabiso Lejoetsa 1911 – 73 LLR. 177**

**S V Sigwahla 1967 (4) SA 566 (A) 569**

### STATUTES

### BOOKS

**C R Snyman – CRIMINAL LAW, Third Edition page 401**

### **CHARGE:-**

[1] The accused is charged with the crime of murder. It is alleged that upon or about the 20<sup>th</sup> October 2008 and at or near Lithoteng in the city of Maseru, the accused did unlawfully and intentionally kill one MAKANANELO MOKHOBO. The accused denies the charge. The accused alleges that MAKANANELO MOKHOBO accidentally killed herself. This being the accused's defence the crown set out to prove beyond doubt as required by our law that MAKANANELO MOKHOBO was in fact shot dead by the accused. Being obliged to prove the accused's guilt, the crown adduced evidence from five (5) witnesses. This accused and the deceased are husband and wife. As such, they lived together at the rented out rooms in LITHOTENG, very near the LITHOTENG Police Station where this accused works as a police officer. His wife – now deceased worked as HUMAN RESOURCES Manager at LESOTHO FUNERAL SERVICES (Pty) Ltd's main office here in MASERU.

### **MATTER IN THE COMMON CAUSE**

[2] There is no dispute between the parties that the deceased – MAKANANELO MOKHOBO is dead. The question is who killed her. How? When? And Where? She was married to this accused. It is the matter in the common

cause that she died from a gunshot wound. The post mortem examination report which was produced before this court by consent of both parties and admitted as such shows this court that the death of the deceased was due to cardiac temponade. The heart had a bullet wound penetrating from the right atrium to the left atrium with cardiac temponade.

- [3] On the 19<sup>th</sup> October 2008 there was a function at the place of work of the deceased person. The LESOTHO FUNERAL SERVICE – her employer then was officially opening a new branch at HA RAMPAI a place between HLOTSE and BOTHA-BOTHE towns. The LESOTHO FUNERAL SERVICE (PTY) LTD’S members of staff from the LESOTHO FUNERAL SERVICE HEAD QUARTERS here in MASERU, amongst them the deceased, left MASERU at about 8 am for BOTHA-BOTHE. They were travelling to BOTHA-BOTHE by the company motor vehicles such as a bus and a combi and or such motor vehicles which could conveniently convey them from place to place.
- [4] The festivities perhaps as expected went on for a greater part of the day at the official opening of the Lesotho Funeral Service’s new branch. The members of staff of the Lesotho Funeral Service arrived back at MASERU around about midnight. The company motor vehicles were used to convey the members of staff to their various places of residence.
- [5] It is also a matter of common cause that on arrival of the deceased at her residence, the deputy General Manager of the company – Lesotho Funeral Services (Pty) LTD – Mr Mapesela also alighted from the motor vehicle which had brought the deceased back home. The deceased person had been knocking at her residence’s door – requesting her husband – this accused to open and let her come into the house without success. Mr Mapesela joined her in knocking at the door. They were shouting and requesting the accused to open the door and allow his wife – the deceased to come in. Mr Mapesela

who is PW2 shouted thus:- “*ntate Mokhobo, ke 'na Mapesela ke tlisitse mosali oa hao.*” Fairly translating as “Mr Mokhobo I am Mapesela. I have brought your wife home!” or words to that effect.

- [6] It is also not seriously disputed that this accused did not open the door because he did not hear the knock and/or the request to allow his wife in. The parties further seems to agree that the accused when he eventually opened his door and permitted his wife and those with her to enter the house, he was very angry. This accused has his reasons for being angry. He also has different causes of his anger. There are other apparent causes of his anger. Those can be deduced from his evidence and may also be gleaned from the surrounding circumstances of this case.
- [7] That anger built up and culminated into verbal altercation between the accused and his wife, the deceased at times, Mr Mapesela. This verbal altercation at times it became physical. This accused definitely did not want his wife - the deceased, there at home. He ordered her and physically pushed her to go at the same time as he made the verbal order. This accused was chasing out of their home the deceased together with her colleagues who had accompanied her home. Mr Mapesela intervene at various stages. Calmness though only momentarily was restored at various stages of the altercation.

### **EVIDENCE OF CIRCUMSTANCES SURROUNDING THE DECEASED'S DEATH**

- [8] The first two witnesses of the crown those who accompanied the deceased person to her place of residence left in a hurry while the altercation between the accused and the deceased was still going on. In fact it had gone out of hand to such an extent that Mr Mapesela's attempts to bring order and calmness into that household appeared to be an exercise in futility. There was a serious danger to the deceased's life. The threat to the life of the

deceased was so serious that Mr Mapesela felt obliged to go to the nearest Police Station to report the matter with the purpose of saving the deceased's life which appeared to be in an imminent danger. This accused had pulled a gun and he was using it to assault his wife – the deceased.

[9] At the LITHOTENG POLICE STATION – the first police station at which the matter was first reported and also the nearest to the accused's place of residence, Mr Mapesela pointed out to the police officers thereat that their colleague Mr Mokhobo is not happy to the extent of assaulting his wife with whom the two witnesses [Mr Mapesela and Mojabeng] had been to a function. The police officers appeared to Mr Mapesela not to pay serious attention to the matter. Therefore he tried very hard to convince them that the life of the deceased person is in imminent danger. He pointed out to those police officers that the accused has already pulled out the gun. The police officers insisted that they **cannot** go there. They said they know how he is when he is drunk. Accused works as a police officer at this particular police station. Have they seen him in that condition at work or elsewhere? They did not say. They told Mr Mapesela that they too are afraid of the accused why? He did not ask them. They too seemed not to have volunteered the reasons for their fear. Seeing that he was getting no help from this police station and perhaps fearing more for the life of the deceased person but still hoping to save it, Mr Mapesela left LITHOTENG POLICE STATION. He drove at high speed to yet another police station. It appears he had not given up on his endeavour to save the deceased person from that danger.

[10] The POLICE STATION WHICH he drove to this time was MASERU CENTRAL. This is the main Police Station in the city of Maseru. There he explained again to the officers he found manning the police station what danger the deceased person's life is in. Those police officers were not also convinced or perhaps not concerned as can be deduced from their utterances. They ordered Mr Mapesela off their premises and threatened to lock him up

if he continues to make noise there. This accusation of making noise was merely to support their threat to lock him up. They sounded desperate to get rid of him: But he persisted. He pleaded with them. He even made suggestions that the accused being their colleague will respect them. He further suggested that they can call for a back up. This he had suggested even to LITHOTENG Police who claimed to be afraid of the accused. He asked the said police officers at MASERU CENTRAL POLICE STATION if they will go when someone has died. To this, they responded thus: “it does not matter if he kills her after all she is his wife.” This witness’s view was that prevention is better than the cure. His efforts were directed at the prevention of the commission of the serious crime. He got no help from the police. He was disillusioned. Shouldn’t the prevention of the crime be the priority of the police force? Especially now that they are found wanting in skills of investigations. How many murders in this city alone have remained unsolved in recent years? e.g. The murder of the Prime Minister’s son, the murder of Mr Sekonyela – Business man – bus transport operator, Mr Sekhonyana of BNP, Principal Secretary - Ministry of Agriculture and also The Americans at Mr Malie’s B & B and so on – just to mention a few. This type of behavior by the police is appalling.

- [11] It was now around 02.00 hours. Both these two witnesses who were coming from the festivities of the whole day were very tired in that early morning of the 20<sup>th</sup> October 2008. The events in this last lap of the marathon which ended their day of joy with such sourness, was more exhausting to their bodies and spirits. They left MASERU CENTRAL POLICE STATION. PW1 was dropped at her residence back in LITHOTENG and Mr Mapesela finally drove to his own residence.

### **TIME FACTOR**

- [12] As the first two witnesses, Ms Mojabeng Matsoso and Mr Mapesela were driving out of the accused person’s premises, they heard the deceased person cry, “*ntate Mapesela, ntate Mokhobo ose a ntse a nkotla.*” Translated “Mr

Mapesela, Mr Mokhobo is already assaulting me.” The deceased person called Mr Mapesela to come back. There was never a time when the accused and his wife – the deceased were far from each other by more than an arm’s length during the whole episode at their gate within whose proximity the couple was left. At the time Mr Mapesela and Ms Mojabeng Matsoso were at the gate, just about to depart the accused and the deceased persons were both at the gate – fighting over it. One was closing the gate while the other was opening it. This episode went on until Mr Mapesela came out of the car in order to restrain them. There was a moment when the gate remained open. While the accused and the deceased were manhandling each other away from the gate. Seeing the opportunity Mr Mapesela jumped into the motor vehicle and drove off – leaving the accused and deceased person still manhandling each other.

- [13] My feeling is that at this juncture Mr Mapesela might also had some concern about his own safety. That is why he sped off to the Police Station to get help. Because he did so after the deceased person had invited him to come back into the house to see the bullet hole where the accused hit the wall while trying to shoot her. The accused was holding her while she was trying to go back into the house to show Mr Mapesela the bullet hole on the wall.
- [14] After struggling for so long without apparent success to try to convince the police officers at two different police stations that there is a great need for their services, great need for their intervention, great need for their protection and great need for their assistance in the prevention of the commission of the serious crime, at the accused’s residence where his wife’s life was in imminent danger, there was a late, much too late police response. The evidence of PW5 No 824 PC Khobatha shows that he and the other Police Officer were on patrol when they received a radio message to go to Lithoteng at the residence of one Police Officer who has a conflict with his wife. They proceeded thereto. He was on patrol with Trooper Ramakhutle.

- [15] On arrival in the neighbourhood of the accused person's residence, these two police officers found another police officer already having just arrived there on foot. This policeman is the one who in fact led these two police officers from THAMAE POLICE STATION to the accused person's residence. Presumably this policeman found at the scene, and apparently familiar with the surroundings was from that POLICE STATION nearest to the scene of the crime – LITHOTENG POLICE STATION. The three police officers proceeded to the accused person's residence.
- [16] The accused was found by these three police officers in the company of another person who was presumed to be his landlord. Accused told the court that immediately when the wife shot herself "accidentally" he went to the landlord to ask for assistance e.g. transport to convey the wife to the hospital. We cannot determine the exact moment when the wife – now deceased was shot. There was plenty of time between the departure of deceased's colleagues and the arrival of these police officers. There was enough time even to create a desirable crime scene. Remember Mr Mapesela and Ms Mojabeng Matsoso left the accused and his wife near the gate. In fact the deceased was returning into the house where she had invited Mr Mapesela to come to see the bullet hole on the wall which was made when the accused tried to shoot her previously.
- [17] If her body is found [500] five hundred or so meters away from their place of residence, how and when did she get there? The body was found lying prostrate – showing that was how she fell after she was shot. The police arrived at the scene [more or less at the same time]. i.e. Police from LITHOTENG POLICE STATION AND THAMAE – who were called to provide a back up perhaps by MASERU CENTRAL or LITHOTENG POLICE STATION.



**[18]** The accused person says that his wife – the deceased person shot herself accidentally while he and she were struggling over the possession of this lethal weapon – the gun. Is it possible? Yes.

Is it probable? May be, May be not.

Could it have happened?

The correct answers to these questions will be gleaned from the surrounding circumstances of this case. The simple “Yes and No” will not suffice. The evidence of the accused person as regards the departure of Ms Mojabeng Matsoso and Mr Mapesela is materially different from the evidence of those two witnesses. According to this accused he was the first person to leave his premises, followed by the motor vehicle in which Ms Mojabeng Matsoso and Mr Mapesela were riding. The accused claims that he left first because he wanted to go and buy cigarettes. Could he? Did he? No, not according to the evidence of PW1 and 2.

**[19]** It was long after midnight. Being the resident of that area, the accused person should know when do the local shops open and shut. There is evidence of PW1 Ms Mojabeng Matsoso – the resident in that neighbourhood that there are no shops in that area that are open at those bewitching hours. Furthermore the evidence of the two witnesses, Mojabeng Matsoso and Mr Mapesela shows that the accused and his wife were left together there at their residence inside the yard. The assault on the wife having already commenced. It is therefore not correct that the accused was the first person in that group of four [accused and deceased persons and the deceased’s colleagues] to go out of the gate and leave the premises.

**[20]** It is the evidence of the accused that he went into his inner room – leaving his wife and her colleagues seated in the living room. He put on a shirt and took a gun. He loaded and corked it while standing at the door way – coming out of his inner room. As he corked his gun, the bullet fell out. He picked it up and put it back in and corked it. It is accused person’s evidence that whenever he arms himself with a gun, he loads and corks it. He makes

it ready to fire because he always considers that he might not have time to load and cork when a need to use a gun arises. The two witnesses that is Mojabeng Matsoso and Mr Mapesela also support the evidence that the accused was armed with a loaded and corked gun – ready to fire. Mojabeng saw the accused load and cork his gun. Mr Mapesela became aware of that fact a little while later.

[21] There is evidence that the accused was observed hitting the wife – now deceased with the bud of that gun when both of them were fighting over the control of the gate. One was opening the gate while the other was shutting it. At the same time they pushed and/or shoved each other from the gate. According to Mojabeng that was not a pretty sight. It was rough and forceful pushing around.

[22] The accused was very angry with his wife – deceased person for arriving home so very late. The time was long after midnight. His displeasure was evident in the questions he put to his wife and the manner in which he questioned her. The remarks he made after he was informed by the wife that it is correct that they were just arriving then from the function, was a clear demonstration by him of lack of conviction.

[23] Immediately when the wife – [deceased person] and her colleagues came into the house Mr Mapesela greeted the accused person. People normally exchange greetings when they meet for the first time after a long time. But the accused person did not respond accordingly to Mr Mapesela's greetings. Instead he turned on to his wife and asked her angrily where did she come from. Mind you, this accused told this court that his wife had told him in the morning or even prior to that that her employer [Lesotho Funeral Services (PTY) LTD] is opening officially a new branch at HA RAMPAI. This accused told the court that his wife left home at 7 am for that function. He gave her his cellphone, bank debit card and their family car etc. in order to

facilitate her attendance of that function. The question, “where do you come from was merely an expression of anger rather than a genuine enquiry especially when it is asked by a person who ignores the greetings from a long lost friend. Mr Mapesela had not met nor talked to the accused person since the couple’s wedding to which Mr Mapesela was invited. He must be a really friend of this couple. He was not just nobody. The deceased had insisted that Mr Mapesela takes her home, now that they were coming back so late, because her husband will not believe her but would rather believe Mr Mapesela. They had hoped. As it turned out he believed neither.

[24] The accused told the court that he went to the place of his late wife’s employment, there he did not see their car. Perhaps that was the starting point of the suspicion and anger built up within the accused person’s mind. The accused had told this court that one of his late wife’s colleagues – Sebatso told him that they [Sebatso and deceased] are going somewhere. Sebatso is one of this couple’s friends. According to this accused Sebatso pays them visits regularly at their residence. The deceased told him that their car is parked there. Mr Mapesela confirmed to the accused that their car as they spoke was still parked at Lesotho Funeral Services (PTY) LTD’s premises. The wife pointed out to him that that car is parked where the company cars are parked – not the usual spot where she always parks it. The accused person’s anger boiled over at this juncture. He said to his wife, “I checked on that. I cannot be cheated by small things like you! I am a member of intelligence.” Did he feel his intelligence undermined? Did he feel belittled? Did he feel stupid? We don’t know. We shall find answers from his actions. Mr Mapesela reiterated the deceased person’s assertion. He invited the accused person to come with him in his company’s motor vehicle to the accused’s wife’s place of employment and see for himself that their family car is parked there. The accused ordered his wife – deceased to leave with her colleagues there and then. The deceased refused to go away. She said, “I am going nowhere! You are my husband. I have come home. I love you!” What an expression of love and fondness! She offered him the drinks which she had brought for him. She does not drink. This accused himself told this court that his wife

did not drink alcoholic. But she always takes home to her husband the alcoholic drinks given to her at such functions.

[25] It appears that as they were ordered off the residence, Mr Mapesela, Mojabeng and the deceased together with the accused all got out of the house. When they were outside the house Mr Mapesela asked this accused to allow his wife – deceased to stay. Mr Mapesela heard the accused say, “Go with them”. Shortly thereafter Mr Mapesela heard the deceased cry out, “Jo *ntate* Mapesela, *ntate* Mokhobo has pulled out a gun. He wants to shoot me!” Mr Mapesela came back. He pleaded with the accused not to pull a gun out for his wife. He pointed out to him or drew to his attention that he as a police officer is a law person [in other words the accused persons’s behavior then was inappropriate.] The accused ordered Mr Mapesela to go with the deceased. Mr Mapesela persisted to beg, pray and cajole him until some calmness had been restored. He asked him again not to pull a gun for his wife. The accused pulled the gun again from his waist. But this time he uncorked it. It now dawned to Mr Mapesela that all along the accused had already corked the gun. He must have felt really afraid even for his own safety.

[26] Once they were back in the house the accused put the gun at his waist. The deceased was now the one asking Mr Mapesela and Mojabeng to leave. She indicated that when her husband is in that mood or condition, he is unstoppable. The accused pushed the deceased to go with them. Mr Mapesela came back once more. He claims he was coming to beg the accused to leave the wife alone and sleep so that they revisit the matter tomorrow.

[27] As she was being pushed to go with them, the deceased advised Mr Mapesela who had come between them once again to go. She pointed out to him that the accused will end up shooting him. She said to Mr Mapesela, “I

want you to come inside the house and see where the accused hit the wall while trying to shoot me. It must have there and then dawned to Mr Mapesela that this is a very serious issue where his life too was in danger. He got frightened. He told Mojabeng that they should leave. They did. They left without going to see the bullet hole. He must have been convinced that the accused person could shoot him too. Where one person is assaulting the other with a gun and that other person dies from the gunshot wound it must be assumed that the person who assaulted her using a gun, is the person who shot her.

[28] As they left now for the final time as it appears from Mr Mapesela's evidence, he heard the deceased shout, "*ntate* Mapesela *ntate* Mokhobo is already assaulting me. The assault commenced as the two colleagues of the deceased were departing. That is why Mr Mapesela being aware of the danger to the deceased person's life went from their residence straight to LITHOTENG POLICE STATION to report. What did he report to the police? "That a man is assaulting his wife. That that man has already pulled out a gun" or words to that effect. It is correct that at the time the deceased met her death her colleagues had already left the scene of the crime. But the circumstances in which the deceased and the accused were left without a doubt point at the accused as the person who assaulted her using a gun and consequently shot her to death. The shooting by the accused of his wife – [the deceased] in those circumstances was unlawful and intentional. **THABISO LEJOETSA 1911 – 73 LLR. 177.** The accused when he assaulted the deceased with the gun, must have been aware of causing her death.

[29] It is the accused person's evidence that he took the gun, loaded and corked it – making it ready to fire. He did intend to shoot – shoot to kill. Whether or not he intended to kill his wife or the housebreaker or the robber as he claims, he intended to shoot a human being. That is unlawful. He shot and killed his wife without any justification. Murder as defined by the learned

author **C R Snyman – CRIMINAL LAW, third Edition page 401**, is the unlawful and intentional causing of death of another human being. This accused caused the death of his wife – MAKANANELO MOKHOBLO who is another human being.

### INTENTION

- [30] What was the accused person's intention when he shot and killed his wife? He has never expressed his intention. It can only be gleaned from the circumstances of this case **LEBAJOA supra**. The accused used a very lethal weapon – a gun. The accused being a police officer and a member of intelligence as he puts it, must know in fact did know that the gun is a deadly weapon. **S V SIGWAHLA 1967 (4) SA 566 (A) 569**. He must have been aware that using the gun to assault his wife will result in her death.
- [31] The accused did not want his wife to be present at their place of residence that night. He ordered her off the premises. He ordered her colleagues to take her with them as he gave them marching orders off his place of residence. As they departed, leaving her behind, they heard her shout “*ntate Mapesela ntate Mokhobo is already assaulting me!*” The weapon which he was using to assault her was a gun. At first he was observed using the bud of the gun to assault his wife. He was rebuked. He put it away as if he has acknowledged the rebuke. But he repeatedly pulled the gun on his wife that night. The accused's intention was made manifest by his actions. Throughout the entire episodes of altercation, the accused was in the fighting mood. That gun was in his possession at all times. He was armed with a gun in order to kill. The reason he gave for arming himself with a gun was that of self defence. His wife was no danger. She posed no danger to this accused. According to this accused his wife has never ever lifted a finger at him. Her husband needed no self defence against her. It seems she was for ever, in the receiving end.

**[32]** The allegation by the accused that there was a struggle for the possession of the gun between him and his wife, is an unfounded fabrication. The wife according to the accused does not drink. She was not drunk that day. She does not know anything about guns. She never handles the gun. She was observed receive a blow from her husband who used the bud of the gun. She merely shielded herself with her hands as she received the said blow with her hands. She did not hold on to that gun. She posed no danger to this accused.

**[33]** Mr Mapesela observed that she was very scared of her husband. He observed that during the verbal altercation that occurred as she was questioned where she was from by the person who knew very well where she was from. Even along the way from Botha-Bothe the deceased appeared scared and worried. The allegation that she was strong and brave enough to manhandle the accused is a fabrication which seeks to shift the blame to her. The circumstances in the credible and admitted evidence before this court show clearly that at no stage did that gun get into the hands of the deceased for her to use it.

**[34]** It is the accused person's own evidence which shows this court that his wife – deceased never ever manhandled him. How can she chase after him let alone for the distance indicated by the accused [500 meters] to go and manhandle him? This is a cock and bull story. The person who was allegedly drunk [though I am not accepting she was] but even if she was, could she chase after an intelligent police officer, who is also a member of intelligence, seize him while he was unaware and reach for the gun which he had taken on his person specifically to defend himself against the unexpected attack in the night in that neighbourhood? Was this accused now stupid or what? Was he still the member of intelligence? Of course "yes" he still is. Why was he attacked and disarmed by untrained person that he described as a small girl who cannot cheat him when it suited him to disbelieve her story that she is coming from that function of the official

opening of the branch of Lesotho Funeral Services at HA RAMPAI. Now she has suddenly turned into skillful strong person who is out maneuvering a member of intelligence who is or should be on his guard.

- [35] Now that the wife refused to leave with her colleagues, the accused person by commencing to assault her as they departed was to force her to go. By eventually shooting her to death was still the furtherance of his intention to remove her from his face.

The accused is found guilty of murder with intent to kill. The assessors agree with this finding.

### **SENTENCE**

- [36] Although the accused told this court that he was not angry with his wife, his actions on that night, indicate that he was very angry. He did not immediately open the door when the wife knocked and asked him to let her in. His refusal to open the door immediately upon hearing the knock is an indication of anger. The deceased was joined by her boss – Mr Mapesala who had accompanied her home, to knock at the door and windows while at the same time they pleaded verbally with the accused to open the door and let the deceased into their home

- [37] When he eventually opened the door the accused was so angry he could not even pretend or disguise his anger. When he was greeted he ignored the greetings and turned to his wife who he asked “where do you come from?” He knew very well where the wife came from. The wife was brought home by her boss – Mr Mapesela who told the accused where they were from. His wife also immediately confirmed what Mr Mapesela said.



- [38] The accused pushed the deceased – as he ordered her to go away with her colleagues. The accused to emphasis that fact that he did not want his wife home that night, he ordered her colleagues to go away and take her with them.
- [39] The accused commenced to assault the deceased while her colleagues were still there. Mr Mapesela intervened. The altercation verbal and physical went on between the accused and his wife for more than one hour there at their place of residence. Mr Mapesela pleaded, with the accused until he calmed down. His anger kept blowing up again after he had been calmed down. The accused refused to calm down completely that is why in the end Mr Mapesela – realizing that his efforts to stop the accused from assaulting his wife – the deceased, was in fact an exercise in futility, he left them in order to go and look for police assistance. The accused had allowed his anger to get such tight grip of him he lost control of himself completely.
- [40] He is a police officer. As such he is called upon to prevent the commission of crimes. The members of the public call upon him to behave responsibly. This is not just a call; it is in fact a demand which a policeman is expected to honour. That is why Mr Mapesela appealed to the accused as a man of law. He used the accused's position and title in order to appeal to his utmost senses. As a police officer he is part and parcel of the police force – the law enforcement agency and must behave accordingly. He should have protected his wife – the deceased against the commission of the crime which at the end deprived her of her dear life. As the husband he should have been the protector – not the perpetrator of the crime against his wife.
- [41] It is bad for the accused to have killed his wife. It is worse than taking her life to turn around and shift the blame on her. The accused claims that his wife killed herself. He knows very well that his wife's death was not accidental. It was a deliberate and intentional act by him. The killing of the deceased by the accused was a demonstration of his power over her. When she and her boss agreed that “yes they are just arriving then from HA

RAMPAI"! The accused person's response was that he cannot be cheated by a small thing like her – meaning his wife. The accused pointed out then and there that he is a member of police intelligence. The act of pulling out his trump card was precisely to show or prove his superiority. He had certainly got the end of the stick. It is the evidence of this accused person that his wife – now deceased, has never ever challenged him. She never manhandles him.

- [42] The accused's wife was not in anyway trying to compete with him in his status or position. She was merely pointing at the truth. I am not sure whether the accused was suddenly struck by an inferiority complex. But his response indicates that he felt a need to show his superiority.

In mitigation of sentence Mr Nthabi – defence counsel pointed out that the accused is the first offender. This was confirmed by the crown counsel.

- [43] Your Legal Representative argues that you did not premeditate to commit this offence. Your actions on that night are however to the contrary. The accused went to the wife's place of work to check on her and their family car. He claims he did not find her. He did not see their family car. He refused to accept that it was parked there. But strangely enough he again refused to go and ascertain that fact. He was convinced that his car was not there. He argued that he checked and he did not see it. He must have checked while she was still at HA RAMPAI. He must have checked only where it is usually parked. Perhaps he then started to put his anger on the heat, so that by the time she arrived his anger was boiling over.

- [44] It is also argued that the accused used only one bullet. The number of bullets is not very material especially where it ended the life of the victim. She is dead shot with one bullet. Does it lessen your blame worthiness?

Perhaps, but I doubt it. I have also taken into account as it was pointed out to this court, that you support your unemployed mother. You did not even make a mention of the deceased's mother who according to the crown counsel has attended the trial from start to finish. She needs answers to the questions she has about the death of her daughter. She needs to have a closure. I can only pray and hope that she finds a closure. Who will support her? I take it you make no mention of her because you do not care for her. You care only for your own mother.

**SENTENCE:** Count 1 – 25 years imprisonment

Count 2 – 6 months imprisonment

Both sentences to run concurrently

**K.J. GUNI**  
**JUDGE**

For the Crown : Mr Fuma  
For the Accused : Mr Nthabi