

# IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

**CRI/T/46/2006**

In the matter between:-

**REX**

**AND**

**MOKHALAJOE RAMPA**

**1<sup>ST</sup> ACCUSED**

**MOHLAULI JONKOMANE**

**2<sup>ND</sup> ACCUSED**

## **RULING**

**Coram** : Hon. Mahase J.  
**Date of hearing** : various dates  
**Date of ruling** : 18<sup>th</sup> April 2013

### *Summary*

*Criminal Procedure – Charge of murder – Circumstantial evidence – Provisions of the Criminal Procedure of Evidence Act No. 9 of 1981 – Section 175(3)*

ANNOTATIONS

CITED CASES:

- **R v. Ramakatsa 1978 (1) LLR 70 at 73**
- **R v. Herholdt and Three Others 1956 (2) S.A. 722**
- **R v. Mathebula 1997 (1) SACR 10**

STATUTES: **Criminal Procedure and Evidence Act No. 9 of 1981**

BOOKS: **None**

- [1] The brief facts of this case have been clearly summarized in the written submissions filed on behalf of the crown and the defence.
- [2] Briefly, both accused appeared before this Court being charged with the crime/offence of having unlawfully and intentionally killed one 'Mankabeleng Mofoka upon or about the 1<sup>st</sup> June 2004 and at or near Thoteng ha Ramohajane in the district of Maseru.
- [3] The deceased had allegedly attended a ceremony held at the Mofoka Police Station but she never returned back to her home. Her badly injured lifeless body was, on the next day discovered by some passer-by lying in field.
- [4] Of course, the matter was subsequently reported to the chief of the area who happens to be the husband of the deceased, and eventually to the police.
- [5] The police in turn attended the scene of crime and also ultimately took the corpse to the mortuary in Maseru. The corpse did not sustain any other injuries from the scene of crime to the mortuary.
- [6] Ultimately and on the 8<sup>th</sup> June 2004, a post mortem was conducted upon this corpse. The result and observations of the medical doctor who performed the post mortem are spelt out in exhibits A herein. Same are incorporated herein.
- [7] The crown adduced oral evidence of two witnesses, to wit PW1 the husband of the deceased and that of PW2 the person from whom the gun allegedly

used to kill the deceased was found. A2 had this gun handed to police. His evidence being that he was given this gun and asked to keep it safely by A2.

[8] A disturbing feature in this case is that PW2, A1 and A2 knew about this gun, which allegedly belonged to A1. This gun was interchangeably used by the accused and PW2 whenever they stood guard at the communal kraal.

[9] Incidentally, PW2, A1 and A2 were using the house of one lady 'Mamojapelo Jonkomane, where they slept together. On the 4<sup>th</sup> June 2004, the gun in question was handed over by A2 to PW2 for safe keeping. This is some three days since the death of the deceased.

[10] Strangely PW2 got to know about the death of the deceased in the afternoon of the 4<sup>th</sup> June 2004. I pause to observe that this is some three day, after the corpse of the deceased was discovered.

[11] Be that as it may, he also got to know that the police had been at A2's home looking for the gun in question. He also got to know then that the accused had since been arrested in respect of the deceased's death.

[12] Subsequently and at the advice of A2's father, PW2 went to Mofoka police and handed this gun to the police. He had at all material times kept the gun in question at a place known only to himself in the house in which they slept. He had the gun handed to one police officer Letsie.

[13] Very unfortunately that gun was never exhibited before court because it has gone missing from the Mofoka Police Charge Office. The ballistic report

confirms that this was a 7.65 mm gun/pistol, which was found to be in good working condition.

- [14] The statements of other crown witnesses were admitted as evidence and their contents were read into the court recording machine so that same could form evidence herein. They were marked exhibits “A” up to “F”. The crown then closed its case.
- [15] The defence subsequently moved an application for discharge of the accused in terms of the provisions of section 175(3) of the Criminal Procedure and Evidence Act No. 9 of 1981.
- [16] Reasons in support and against same have been clearly spelt out by both counsel in their respective written submission.
- [17] Counsel have both ably and correctly stated and articulated the law with regard to an application of this nature. Refer to their written submissions in this regard.
- [18] It is a matter of common cause that in proving its case against the accused, the crown has relied upon circumstantial evidence because none of the crown witnesses has testified that they have witnessed the fatal shooting of the deceased by any of the accused. That probably explains why the defence did not cross examine any of the crown witnesses.
- [19] The only ground upon which the crown is opposing the application for the discharge of the accused at this stage and for reasons spelt out in their

written submissions, is because PW2 has testified that the gun in question was for A1 and that it had been handed to A2 for safe keeping by PW2; and further on because the live bullet as well as the spent bullet shells found at the scene of crime match the calibre of this gun, to wit a 7.65 mm. The crown does however not challenge evidence that this gun was found not with or upon any of the accused persons.

[20] On the other hand, the defence argues that the crown has failed to make out a prima facie case upon which a reasonable man might properly convict and says in a nutshell that the crown is also relying on inadmissible hearsay evidence, which evidence does not link in any way the accused to the commission of the alleged offence.

[21] Both counsel have argued that the duty of the Court at this stage is to consider whether the evidence adduced by the crown if believed, might be sufficient to satisfy a reasonable man acting carefully that the accused may be guilty of the crime covered in the indictment.

[22] Put conversely, the test to be applied is whether on the fact of it the crown has established a prima facie case against the accused. However, credibility of witness at this stage is not considered.

[23] This Court has been referred to a number of cases and authorities in support and against this application.

[24] It is the evidence of the crown that the said 7.65 mm pistol whose serial number had been rubbed off was handled to the police by PW2 in whose

possession it has been. In other words, this weapon, which was allegedly used to kill the deceased was never found in the hands of A1 or A2. It is still not clear why the police/crown decided to prefer a charge against A1 and A2 in this case.

[25] Further on this issue, there is no suggestion or evidence to the effect that any of the accused or both of them were the last people seen with the deceased on that day (the 1<sup>st</sup> June 2004) or immediately before she was found dead. There is absolutely no evidence suggesting that they (accused) had attended the ceremony at the Mofoka Police Post together with the deceased.

[26] It is for the foregoing reasons that this Court has come to the conclusion that the crown has not established a prima facie case for the accused to answer. They are accordingly discharged and acquitted.

**M. Mahase**

**Judge**

For Crown : Adv. L. Mahao

For Accused : Adv. M. Mphakoanyane