

IN THE HIGH COURT OF LESOTHO

CRI/T/125/13

In the matter between:

REX

CROWN

AND

LEHLOHONOLO KHOTSO

ACCUSED

Coram : Nomngcongo J

Date of Hearing: 7th September, 2015

Date of Judgment: 5th February, 2019

JUDGEMENT

- [1] The accused is charged with murder. It is alleged that upon or about the 17th day of February 2012 and at or near Ha Morolong in the district of Berea. The accused did unlawfully and intentionally kill one Nts'iuoa Mohlaoli Mosobela (herein after referred to as deceased).
- [2] To prove its case the crown led viva voce evidence of two witnesses Nthethe Makhotla and Rethabile Thakholi. (PW1 and PW2 respectively)
- [3] PW1 testified that on the 17th February 2012 he arrived from school at a shop where he found the deceased dancing with PW2. It was around 7pm

. There he played snooker. PW2 and deceased then took his school bag and went home with it. Done with the game of snooker he went to PW2's home with a view to collect his school bag. There he found at the door, the deceased and the accused standing. He passed them and went inside the house. He says he had not seen the accused at the shop. Pw2 and the deceased followed him into the house laughing. Deceased asked them what they were laughing at and they replied that their hearts felt like it

[4] It is there that the accused said he would kill the deceased. The deceased said he should kill her if he was her father. The accused then took out a knife and started playing with it. This caused the witness to ask him to stop playing with a knife as doing so was dangerous. He then put it back into his pocket only to produce it out again and to continue playing with it around the deceased. The witness tried once again to talk him out of the dangerous game of playing with a knife but he would not listen. He used that knife to remove the rosary that was hanging on deceased's neck. He put the rosary in his pocket after that he stabbed the deceased on the neck with it. Deceased staggered and fell among the pots in the house, accused then looked at those present and said that if they dared say that it was him he would kill them. He took the key from the door and locked them in. Pw1 tried to assist the deceased to sit up. Accused returned at this point and said to Pw1 and Pw2 that he did not know why he was not killing them too as he knew that they were going to talk. Pw1 said they would not say anything. He left again locking them inside once more. Pw1 made good her escape through the window, after remarking to Pw2 that deceased had departed.

[5] Pw2 Rethabile Thakholi corroborated Pw1 in every detail.

Cross examination of these witnesses was perfunctory and its net effect was that accused was playing with deceased and he stabbed her purely by accident and he did not intent to kill her.

- [6] The following formal admissions were made and read into the record.
- (a) D/P/C Thamae N0.50390 who received a knife from one Moeketsi Majoro.
 - (b) Moeketsi Majoro who received a knife from the accused and handed it over to police.
 - (c) Thabo Mosobela who identified the body of the deceased to the doctor who performed the post mortem on the deceased.
 - (d) N0.9009 D/P/C Khalema who attended the scene of crime and arrested the accused.
 - (e) The post mortem report which showed that that death was due to the presence of a large cutting wound or stab wound on the left side of the neck which led to internal bleeding.
- [7] The accused gave evidence in his defence. He narrates how he, deceased Pw1 and Pw2 went to the latter's home between 11 and 12 o'clock at night. He says Pw2 went into the house with Pw1 while he remained outside with the deceased. He says he played with a knife and then put it back into his pocket. He pulled it out again. Deceased pushed him back and it was at that point that he says he scratched her on the chest. He says she backed off and sat down on her buttocks. He says after he had cut her, to use his words Pw1 and Pw2 called their grandfather Thakholi. After that he went to his home. He did not realise that deceased had died. He say she was his newly found girlfriend. He says he only learned from his brother who arrested him that his new found girlfriend was dead.

- [8] Before that he had drunk alcohol and smoked dagga and it is submitted on his behalf that on account of that he could not have had the necessary intention to kill.
- [9] The fact of taking alcohol and dagga is mentioned very briefly in the evidence of the accused. Although it was put to Pw1 under cross examination that he had drunk six bottles of beer and ended up not knowing what was happening, this was not said in evidence. Surely if the accused puts forward as his defence drunkenness he would have elaborated on this in his defence. If he was so drunk, he seems to remember all the other events of that day up to the stabbing which he euphemistically describes as scratching on the chest again. When it was put to Pw1 that accused was drunk he said he did not realize it. It was not put to Pw2 that accused was drunk. All in all accused did not behave in a way that would give those around him the impression that he was drunk. If he had been they would have noticed it and when he was reprimanded for engaging in a dangerous game of playing round the body of the deceased with a knife they could have mentioned the added danger of his drunkenness. I come to the conclusion that drunkenness, if there was any was not such that he did not know what was happening so as to negative an intention on the part of the accused (**SEE R V MOSELI AND ANOTHER 1981(2) LLR 335**)
- 10] The accused does not deny in his evidence that he removed a rosary from around deceased's neck with a knife and that he had remarked to the deceased that he would kill her to which she replied that he should kill her if he thought he was her father. The accused then actually produced a knife from his pocket and stabbed her on the neck killing her instantly. He had made good his threat to kill her. This was preceded by an act of defilement-the removal of a rosary from her neck with a knife.

[11] Asked by the court why the accused was carrying a knife that day accused said that he was accustomed to carrying one about himself, as he was often asked to assist in slaughtering pigs. So then he was no stranger at snuffing out life of live animals. When he directed a blow at the neck of the deceased with enough force to cause internal bleeding resulting in virtually instant death. He knew or must have known the result of his act. In my view the requisite intention to kill has in law, been established beyond reasonable doubt whether or not he desires to cause death (**SEE S V MIN 1963 (3) SA 188 (A) AT 10 F. NKOLI V R 1990 – 1994 LLR 113.**)

[12] Last I cannot but remark at the accused callous euphemisms in this court when he described the blow to the deceased as a scratch to the chest and that afterwards she sat down on her buttock when the witnesses had said that she had fallen down among the pots (see the Nkoli case (supra) at 123 B)

[13] I find the accused guilty of Murder as charged.

My Assessor Mr Lekomola agrees. He initially sat with Mr Matete who has since passed on. May his soul rest in peace.

T. Nomngcong

Judge

For Crown : Adv. Thaba

For Accused: Adv. Nthontho