

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CRI/T/00

57/08

In the matter between:

REX

CROWN

AND

BOKANG

ACCUSED

MOFANA

Neutral Citation: Rex v Mofana [2022] LSHC 89 Crim (20 April 2022)

CORAM: RANTARA-ACTING JUDGE

DATE OF HEARING: 23RD FEBRUARY 2022, 08TH and 20TH APRIL 2022

DATE OF JUDGMENT: 20TH APRIL 2022

SUMMARY

CRIMINAL LAW: *Accused charged with murder- serious flaws in investigation of the case- circumstantial evidence leaving more than one possible inference- crown relied on hearsay admission made by another co-suspect-*

ANNOTATIONS:

STATUTES:

Criminal Procedure and Evidence Act No.9 of 1981

CASES:

Potsanyane and another v R (C of A (CRI) No 10/09) [2010] LSCA 20

Mohajane & Anor v Rex 1985-1989 LAC 14

R v Blom 1939 AD 188

Shiburi v The State (205/2017) [2018] ZASCA 109

S v V 2000 (1) SACR 453 (SCA)

S v Shackell 2001 (2) SACR 185 (SCA)

S v Mafiri 2003 (2) SACR 121 (SCA)

BOOKS:

RANTARA- ACTING JUDGE

- [1]** Accused is facing a charge of murder, it being alleged that upon or about the 7th April 2006, at or near Tloutle Roma in the district of Maseru, the said accused did unlawfully and intentionally kill one **THABA SEMPE**.
- [2]** In proving its case, the Crown called one witness and presented eight (8) admitted statements including a post mortem report. The admitted statements are that of 'Manthati Lenono, 'Mafusi Qhobosheane, Liau Thakholi, 'Mamosiuoa Mohanoe, Mosiuoa Mohanoe, Thabiso Pheko, Chief Ntlhaba Shale and a post- mortem report.
- [3]** The post-mortem report (**AD '7'**) by a Senior House Officer Tlhoele conducted on 12/04/06 recorded that the cause of death of the said Thabo Sempe is severe head injury secondary to assault with a blunt object. The severe head injury had an open skull fracture at occipital area and left temporal area, the fracture measuring about 8cm.
- [4]** The statement of 'Manthati Lenono (**AD '1'**), is to the effect that on 07/04/06 at around 1900-2000hrs, she was at home with 'Mafusi Qhobosheane. Her house is next to the river. She then heard a scream coming from the river and the

person was calling for help saying 'jooe please help these people are killing me". They both went closer to the river but saw nothing except hearing a sound of beating. She blew her whistle and the villagers came. She showed them where the screaming was coming from and they proceeded there. The villagers found a corpse, which they said it is that of Thabo. The chief was informed and Roma police arrived.

- [5] The statement of 'Mafusi Qhobosheane (**AD '2'**), Mosotho female aged 34 years then is to the effect that on 07/04/2006 at around 6:00-7:00 PM, she was at her sister's place, 'Manthati Lenono (**AD '1'**). As her sister was accompanying her and just outside the sister's house, they heard a scream of a man and a sound of a beating (poo poo). They walked to the water tap and heard that the scream is coming from the river. They heard that person saying, "Please help I am dying". They went back to her sister's place where she asked her sister to blow a whistle to raise an alarm. She proceeded to her place to see if her child is there and did find the child there. She went back to her sister's place and found many people gathered there. The men then went to the river. They used matches light to look for the person who was crying. They saw a man inside the water with face down and they could not identify him. She and her sister rushed to the chief and from there they went to 'Mamosiuoa (AD '4') to borrow her cellphone to inquire

about 'Manthati's child as he/she was expected to arrive. Upon arrival at 'Mamosiuoa's place, they told her what happened and 'Mamosiuoa said her son has also not arrived but his blanket was brought by her younger son. The three (3) of them then proceeded to the scene and by the help of cellphone torches, 'Mamosiuoa identified that person in the water as her son. She identified the clothes he was wearing. The chief was also there and Police officers arrived.

- [6]** The statement of Liau Thakholi (**AD '3'**), Mosotho male aged 19 years then is to the effect that on Friday 07/04/2005 in the evening after he kept his cattle in the kraal, they ate with one, Thabo Sempe (deceased) whom they herd livestock together. Deceased after eating, asked him to accompany him to Tloutle ha Shale to ask for tobacco from Mapule (surname forgotten). They did went there and met Mapule. Deceased and Mapule smoked tobacco and when they are done, they went back home. It was in the evening then and on the way, they met a group of men dressed in red blankets and white gumboots, covering their faces and smoking. Those men were standing by the path and they passed them. They did not identify those men. Some distance they passed a second group of men smoking and with the same attire as the first group. After they passed the second group, they met one Thabiso Tabola (nicknamed Sekhorane). He was not covering his face and he (Liau)

identified him. Thabiso Tabola is from Tloutle ha Shale and he was wearing a blanket and holding a battle stick. Thabiso asked them to wait saying “hei lona banna emang moo”. They waited for him and he asked them to wait for them, as they want to walk together with them to a night vigil at ha Mpiti. The two groups of men they passed came hurriedly. Deceased said they must go and they walked away. Thabiso Tabola then started throwing stones at them. The two groups of men also started chasing them and throwing stones at them without saying anything. They ran away until they parted ways with Deceased. It was late in the evening and the moon was up. He (Liau) ran home and after that he heard an alarm raised. He went to where the alarm was raised and he found that the deceased person is Thaba. Thaba was thrown inside a gorge with running water. Roma Police arrived and took Deceased to a mortuary.

- [7] The statement of ‘Mamosiuoa Mohanoé (**AD ‘4’**), Mosotho female aged 34 years then is to the effect that it was around 1900-2000hrs when Mosiuoa Mohanoé arrived and gave her Deceased’s blanket saying it was given to him by one Thabiso Tabola (Sekhorane). He told her Thabiso said Deceased is coming. She took that blanket and there was nothing suspicious about it. Deceased was her herd boy. She was still at home when she heard a whistle blown as to raise an alarm. Her sons rushed there, later came back, and

told her Thabo Sempe is deceased. She rushed there. She indeed found that Thabo Sempe is late. He was lying inside a gorge with running water. Roma police arrived and took deceased to the mortuary.

[8] Statement of Mosiuoa Mohanoe (**AD '5'**), Mosotho male aged 15 years then is to the effect that on Friday 07/04/2005 in the evening around 1900-2000hrs, he was sitting at home outside eating his food. One Thabiso Tabola called him to the path where he was standing. He went to him and Thabiso gave him deceased's blanket saying deceased has gone somewhere. He took the blanket home and told his mother about that blanket that he got it from Thabiso Tabola. He later went to a nearest shop and he heard an alarm-call that someone fell in the water. He went to the scene where he found that deceased Thabo Sempe fell in the gorge with water at Lirapaneng. Later Roma Police arrived and took the deceased.

[9] Statement of Thabiso Pheko (**AD '6'**), Mosotho male aged 34 years then is to the effect that on 09/04/06 there was an alarm raised about a blanket seen at the gorge where Thabo Sempe was killed. The chief instructed him to bring that blanket. It was a brown Seanamarena blanket and he found it next to where deceased Thabo Sempe was found. He took

that blanket to the chief, Chief Bereng Seeiso Maama who referred it to Roma Police. He did not know the owner of that blanket.

[10] A letter of Chief Ntlhaba Shale (**AD '8'**) written on 08/04/06 to the Roma Police Commander is to the effect that he refers Accused No.1 and one Paul Lefuma as Paul Lefuma told him that he and accused (Bokang Mofana) assaulted Thabo Leshoella who was found dead on 07/04/06.

[11] The brown Seanamarena blanket and two sticks (Mohloare and Lesapo stick) were also presented as part of evidence and marked **EXH '1'** and **EXH '2'** respectively.

[12] PW1 No. 10218 D/P/C Pitso testified that he has been a member of LMPS since 1988 when he was stationed at Roma Police Station. He is now an Inspector stationed at CID office. On 07/04/2006 at around 21:00 HRS he was on duty at Roma Police Station when Chief Maama Bereng of Tloutle ha Mpiti phoned and reported that some people engaged in a fight at ha Mpiti and one Thabo Sempe is deceased. He proceeded there to the scene and found several people gathered there. He was shown the body of Thabo Sempe, which was lying in a small pool of water. They took him out and examined him.

Deceased had a deep wound on the head and he suspected that the skull was affected. He eventually conveyed the corpse to the mortuary. The following day on 08/04/06 while on duty, two men he did not know arrived and gave him a letter from chief Shale addressed to Roma Police. He read the letter and it was in relation to this incident. The letter was handing over two people said to have confessed that they caused the death of Thabo Sempe (deceased). He introduced himself as an investigator of that case to those men and cautioned them before requesting their explanations. Their explanations were unsatisfactory and they told him the cause of the fight was that accused borrowed deceased a stick and he was refusing to return it. They assaulted deceased with sticks, which they handed to him. It was a mohloare and lesapo sticks. He preferred a charge of murder to them. The following day, 09/04/16, a brown Seanamarena blanket was brought to him send by chief Shale said to be identified as that of accused. He filled the LMPS 12 for the blanket and sticks, which he presented to court and the court, ordered that police keep them pending trial. He proceeded to ascertain how the blanket is related to accused. The blanket was identified by one Tabola as that of accused. In his report he said he made it at 12:13 HRS when it was 21:13 HRS vis-a-viz the time the radio message was made. When accused arrived, he had a small wound on the head, which he said he sustained during that

fight. The men who handed themselves are Bokang Mofama (accused) and Paul Lefuma who is now late. He handed over the sticks as part of evidence.

[13] Under cross-examination, he said to his recollection, he did not include that he observed a small wound on accused in his report. He denied that such observation is self-created, as he had no wound when he arrived at the police station. He does not agree with accused when he denies that he told him he was engaged in a fight. He said though accused did not specify which stick belongs to whom he himself knows that. He denied that accused were send to as messengers to hand over these sticks found at the scene of crime in that it is not what the chief's letter say. He does not recall if the chief's letter specify which stick belong to between those men. He does not recall as to who brought the blanket to the police station but that person told him the blanket belongs to accused. Though he does not recall who brought the blanket, it is not Thabiso Pheko. Thabiso Tabola is the one who told him during investigation that the blanket belongs to accused and he made a statement. The blanket links accused to the commission of this crime. He did not call accused to identify the blanket because maybe he was already remanded. He engaged with accused about the contents of the chief's letter though he did not include that in his report. He does not agree with accused that when they were send to hand

over these sticks, they were informed that deceased engaged in a fight with Thabiso Tabola.

[14] Under Re-examination, he said Thabiso Tabola is one of the witnesses but he did not see him in court. He cannot deny that Thabiso Tabola, the other chief and Chief Shale are deceased and that is why their statements are not tendered as part of evidence. This is the crown case.

[15] At the close of crown case, accused elected not to lead evidence in his defence and closed his defence in terms of S. 175(4)¹ that provides:

“At the close of the evidence for the prosecution, the judicial officer shall ask the accused, or each of the accused if more than one, or his legal representative, if any, **whether he intends to adduce evidence for his defence** and if he answers in the affirmative....”

This is a constitutional right and if the accused decides not to adduce evidence, he cannot be compelled to do so². The Section is thus in conformity with the Constitution.

CROWN SUBMISSIONS:

¹ Criminal Procedure and Evidence Act No. 9 of 1981

² Section 12(7) of the Lesotho Constitution

[16] Adv. Mokuku submitted that the evidence from the submitted statements have established that a crime of murder of Thabo Sempe is committed. What was lacking is identity of his assailants. On that, the evidence of PW1 unmasked the identity of the two culprits as they surrendered before him on 08/04/06. They were not arrested and not accompanied by anyone in authority when they surrendered and after being warned of their rights, made extra judicial admissions before PW1. The said admissions placed them at the crime scene during the assault of Thabo Sempe. They further voluntarily and freely handed to PW1, the weapons they used in assaulting deceased. Before court, accused admitted admissions including the letter of the chief. He submitted that the crown made out a prima facie case of murder and accused be found guilty.

DEFENCE CLOSING SUBMISSIONS:

[17] Adv. Tlapana submitted that the only evidence that the crown relies on in connecting accused to this murder is that of PW1 who testified that accused reported themselves at Roma Police Station armed with a letter from the headman of Ha Shale whose effect was to hand over accused. However, the letter was not read back to accused and it refers to a murder of one Thabo Leshoella. Therefore, this letter is inadmissible since its voluntariness could not be

easily ascertained. On the issue of Seanamarena blanket, PW1 does not recall who brought the blanket to the Police Station but that Thabiso Tabola is the one who told him the blanket belongs to accused and he did not even quiz accused about the blanket before marking it as an exhibit. Further that accused handed two sticks to him with explanation that they are the sticks they used in fighting the deceased, however he did not say which stick belong to who.

EVALUATION OF EVIDENCE:

[18] The proper approach in evaluating evidence is to weigh up the strengths and weaknesses, probabilities and improbabilities in all evidence presented to decide whether the balance weighs heavily in favour of the crown as to exclude any reasonable doubt about the accused's guilt³.

It is trite that in criminal cases, the burden of proving the case beyond reasonable doubt is upon the crown. The accused on the other hand has no duty to prove his innocence. A court is not entitled to convict unless it is satisfied that the explanation of accused is not only improbable, but is beyond reasonable doubt false⁴. The issue for determination is therefore whether the crown has established the guilt of accused beyond reasonable doubt. It having been common cause that deceased, Thabo Sempe was on

³ S v Chabalala 2003 (1) SACR 134 (SCA) @ 15

⁴ See S v V 2000 (1) SACR 453 (SCA) para 3; S v Shackell 2001 (2) SACR 185 (SCA) para 30; S v Mafiri 2003 (2) SACR 121 (SCA) para 9.

this fateful day, assaulted in the evening by unknown people per his cry that some people are killing him and asking for help. Also the two women (**AD '1' and AD '2'**) who heard him and the sound of beating. Now the issue remaining is whether this murder was committed by accused before court.

[19] The evidence is that on this fateful day, deceased went to Tloutle ha Shale to ask for tobacco from one Mapule and Liau Thakholi (**AD '3'**) accompanied him. On their way back, they met and passed two groups of men smoking and covering their faces, therefore Liau Thakholi did not identify them. Those men were wearing red blankets and white gumboots. Some distance, deceased and Liau Thakholi met one Thabiso Tabola (Sekhorane) who asked them to wait for him, as he want /they want to walk with them to a night vigil at Ha Mpiti. Thabiso Tabola is also from Tloutle ha Shale. While waiting for him, the two groups came hurriedly to them and they decided to go. As they walk away, Thabiso Tabola started throwing stones at them and those groups of men threw stones at them too. The two groups of men were not saying anything, just throwing stones at them. They (deceased and Liau Thakholi) ran home until they parted ways. Liau managed to get home safe and after a short while, he heard an alarm about a dead person. In attending to it, he found that it was the deceased. The said Thabiso Tabola brought deceased's blanket home at around 1900-

2000hrs, around the same time deceased was found dead and 'Mamosiuoa's (deceased's employer) evidence **(AD '4')** is that there was nothing suspicious on the blanket. The villagers found deceased by the gorge with running water and he was lying with his face down. This was after 'Mafusi Lenono and 'Manthati Qhobosheane **(AD '1' and AD '2')** heard a sound of beating and a scream of a person asking for help as there are people killing him. They are the ones who raised an alarm and alerted other villagers as well as the chief. The admitted post-mortem report recorded the cause of death as severe head injury secondary to assault with a blunt object. The severe head injury had an open skull fracture at occipital area and left temporal area, the fracture measuring about 8cm.

This is evidence that a crime of murder was committed on deceased. The issue for determination then is whether there is evidence before court proving beyond reasonable doubt that accused is the perpetrator of this murder.

[20] The crown in this task of proving accused involvement, relied on the referral letter of chief Shale alleging admission by accused and late Paul, the sticks handed over and the blanket alleged to have been identified by Thabiso Tabola as that of accused.

[21] It is an issue of common cause that the people who assaulted deceased to death were not seen and thus no direct evidence as to who assaulted deceased. Deceased was heard crying by **AD '1'** and **AD '2'** for help that people are killing him, not mentioning their names and their number. The crown's evidence in this issue is thus circumstantial. It is settled law that a court may convict based on circumstantial evidence, provided that the following requirements set out in R.v Blom⁵ are met;

- (a) *Whether the inference sought to be drawn is consistent with proven facts.*
- (b) *Whether the proven facts are such that they exclude all other possible inferences.*

The settled principle is that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. They should be complete and there should be no gap in the chain of evidence. In summary, for a conviction based on circumstantial evidence, the circumstances proved must exclude all other possible inferences.

[22] In this case, the proven facts are that one Thabiso Tabola is the one who first threw stones at deceased and Liau Thakholi per Liau's statement. The very Thabiso Tabola is

⁵ 1938 AD 188

the one who brought deceased's blanket home saying deceased is still coming. However, these explanations were not followed up in investigation to exclude a possible inference that Thabiso Tabola, as the first person to initiate assault to Liau and deceased, caused the death of deceased. PW1 further testified that the said Thabiso Tabola is the only one who identified the Seanamarena blanket as that of accused. No further investigation to secure other witnesses to establish that this blanket indeed belongs to accused. He said he cannot recall who brought the blanket to the Police Station but that person told him the blanket belongs to accused but did not make a statement. Accused was not questioned about this blanket to confirm or deny ownership. These leaves a possible inference that this blanket could belong to any other person other than accused.

[23] Further, there is this strange behavior of Liau Thakholi. His story is that they (he and deceased) were chased and ended up running in different directions. He arrived home safe not knowing where deceased is but he did not tell anyone or raise an alarm about that attack for the villagers to assist in locating deceased. Immediately after arriving home, an alarm was raised and deceased found dead. Even at the scene of crime, he did not tell any of the people there including the chief that Ha Shale men attacked them. No evidence as to when he actually arrived and who saw him

arriving and in which situation. The said Liau further in his statement said Thabiso Tabola asked them to wait for them as they are attending a night vigil at ha Mpiti. What is strange is that none of the witnesses who made statements mentioned the night vigil. He said Thabiso Tabola first pelted stones at them and the two groups of men wearing red blankets and white gumboots joined. He did not mention any Seanamarena blanket and he was not inquired about his and deceased's dress code on that day. **AD '4'** and **AD '5'** did not say when they last saw deceased on that day and with who. This in my view, leaves another possible inference that the said Liau could be involved in this murder as the last person who was with deceased and his conduct after the attack and the investigations failed to clear his involvement.

[24] Further, there is no statement of the Chief of ha Mpiti who referred this blanket to police on how and where it was found. PW1 only went to collect deceased that night of the incident and did not do further inspection of the scene to look for clues as the said blanket is said to have been found next to where deceased was found. Thabiso Pheko (**AD '6'**) is the one who collected this blanket from the scene and took it to the chief. He just said the chief referred the blanket to police without saying who actually took it to Roma police. He did not say who saw the blanket first and who else attended the alarm raised.

[25] On the letter of chief Shale (**AD '8'**), alleged to be proof of 'confession' or 'admission' , the said letter was written by chief Shale not accused before court. The letter says Paul Lefuma is the one who told the chief that he and accused assaulted Thabo Leshoella who was found dead on 07/04/06, not accused before court. It makes no mention of the said mohloare and lesapo sticks. This evidence is, in my view hearsay and has no probative value in proofing accused's involvement in this murder. Accused's version is that they were send as messengers to hand over these sticks found at scene of crime. Accused having no duty to prove his explanation, it was for the crown to discredit it and in my view, the crown failed to do so. Again, PW1 did not follow up this referral to corroborate what accused and Lefuma might have told the chief. In his evidence, he did not testify that he engaged with accused and Lefuma about the contents of this letter, what their responses were and what he did about their explanations. Even in cross-examination, he did not say what transpired when he inquired accused about the contents of the letter as he alleged he did. If indeed, accused and Paul made such admissions, why were they not informed of a confession before a magistrate for them to make a choice. His evidence that accused said they engaged in a fight with deceased and accused sustained a small wound is contradictory to Liau Thakholi's evidence that they were

chased and ran away, not engaged in a fight and accused denies this evidence. In cross-examination, it was revealed that he did not include most of the crucial facts. The court is left in astonishment with the way suspects of this crime were referred to the police station. Under normal circumstances, the chief would refer them with his messengers if he cannot do it himself or inform police about it. This abnormality leaves accused's explanation that they were sent as messengers probable.

[26] Other parts of crown's evidence leaving reasonable doubt is PW1's evidence that he presented the exhibits to the court, not clerk of court, a procedure I am not aware of. Further **AD '1'** and **AD '2'** said they went to **AD '4's'** place to borrow a cellphone and she told them her son (deceased) has not arrived. However, she did not corroborate that. She said after an alarm was raised, her sons attended it, and came back and told her deceased is dead. She went there with her sons and did find deceased dead. The seanamarena blanket was seen two (2) days after the incident and PW1 testified that the person who brought it told him it belongs to accused. What is strange is that he cannot recall that person and he did not record his/her statement. This evidence in general is full of loopholes and leads to a reasonable conclusion that it is concocted.

[27] The crown further failed to establish that the said Thabo Leshoella and Thabo Sempe is the same person. The post-mortem on the other hand recorded that the person who identified deceased is one Mosoabela Moshoella, not Leshoella. There is no identification statement of the said Mosoabela Moshoella proving relationship between deceased and the said Mosoabela Moshoella.

[28] The quality of investigation and recording of statements is of the poorest standard. It is doubtful that PW1 in obtaining the statements did that with the purpose of building a case or just obtaining them for the sake of doing it. As an example, the statement of Thabiso Pheko was obtained on 04/06/no year. The contents are vague as it is not stated who took the blanket to police, is it the chief himself or someone. The statements of Liau Thakholi, Mamosiuoa Mohanoe, Mosiuoa Mohanoe and Thabiso Thakoli were obtained by PW1. However, the handwritings on the face of them are very different. PW1 further in cross-examination did not recall several crucial facts. Accused in cross-examination put to him that when they were send to present the sticks as messengers, they were told deceased engaged in a fight with Thabiso Tabola and PW1 barely denied it. PW1 in my view, did not conduct investigations at all as he claims. He

just acted as conduit pipe collecting and passing whatever was given to him as it is. He did not follow up about Ha Shale men who have red blankets and white gumboots as testified by Liau Thakholi and if accused is one of those men. The description of assailants by Liau Thakholi and that which PW1 claims accused and Paul gave him have no nexus at all.

This sheer negligence leads to inefficient investigation of criminal cases and eventually miscarriage of justice. The prosecution as the sieve need to take serious consideration of this issue.

[29] It is common cause that this is a 2006 incident and it was possible for him not to recall everything. Under such circumstances, the expectation is that the crown must refresh the witness memory before court and this was not the case here. These have tainted the credibility of PW1 as a witness and his competence as an Investigating officer.

[30] This very poor evidence was unfortunately considered as sufficient evidence to prove accused's guilt beyond reasonable doubt by the prosecution and accused accordingly indicted of murder. The statements of Thabiso Tabola and the two chiefs were not presented in that they have passed away. Mind boggling indeed. If we have investigating officers and prosecutors who act as conduit pipes, we are going to keep experiencing inefficient justice

system serving no justice to victims and accused persons alike. All these entirely weakened the crown case. This is a 2006 incident and the case has been hanging on accused's shoulders since then. Deceased's family has also been given a false hope that justice is going to be served on perpetrators of this offence. The courts have sternly warned that cases should not be initiated in absence of a minimum of evidence. In **Michael Luxaba v State**⁶, the court alluded that a person should not be prosecuted in the absence of a minimum of evidence upon which he might be convicted, merely in the expectation that at some stage he might incriminate himself. There should be reasonable and probable cause to believe that the accused is guilty of an offence before prosecution is initiated.

[31] In closing submissions, the crown said the extra judicial admissions placed accused at the crime scene when such alleged admission was not in the chief's letter and PW1 never said accused admitted the alleged admission. He said there is no evidence to the contrary that the extra judicial admissions established the identity of the perpetrators who handed the murder weapons freely and voluntarily when accused denied that and his version is that they were send as messengers by the chief to present the sticks found at scene of crime which PW1 as an investigator failed to do. It

⁶ S v Luxaba 2001 (2) SACR 703 (SCA) above

is not clear why he signed his written submissions as Respondent's Counsel when he appeared for the crown.

[32] Accused in this case is indicted of murder. Murder is an offence comprising of three essential elements, which the crown is under a legal duty to prove each of them beyond reasonable doubt, for an accused to be found guilty. It has to prove that; there is a death of a human being, such death having been unlawfully and intentionally caused and lastly the participation of accused in causing such death. In my view, the evidence presented by the crown failed to reach the standard of proof required. No evidence on record from which to draw the only inference this accused caused the death of the deceased to justify the verdict of murder or even culpable homicide.

In the result, accused is found not guilty and acquitted.

**RANTARA P.
ACTING JUDGE**

FOR THE CROWN: Adv. Mokuku

FOR ACCUSED: Adv. Tlapana