

CRI/T/0018/2020

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:-

REX

VS

RETHABILE MORABE

CORAM : HON. T. MATOOANE ACTING JUDGE

DATE OF JUDGMENT: 22ND APRIL, 2022.

JUDGMENT

Natural Citation:- Rex vs Rethabile Morabe [2022] LSHC 75 Crim. (22nd April 2022)

The accused is charged with the murder of '**Maitumeleng Morabe** (*the accused*) on the 18th March, 2019 day of March 2019 at **Khubetsoana** in the district of **Maseru**. The accused pleaded not guilty to the charge.

The Crown called two witnesses to give viva voce evidence. Namely **PW1 Tesena Maretlane** and retired **Police Officer Insp. Nchai (PW2)**.

PW1 testified that on the day in question one **Moketa** (*who is now deceased*) knocked at the door of her room during the night. When she opened, she was informed by the said **Moketa** that the accused had shot and killed his wife.

PW1 and one **Chibase** who was not called as a witness accompanied **Moketa** to his room. Inside **Moketa**'s room they found the accused sitting on the bed near his wife. The wife had a wound in the head area and there was blood flowing down her neck and her head was litted. The gun was on the accused lap.

From **Moketa**'s inquiry, the accused admitted that he had shot the deceased as she had caused so much pain to him in their relationship. The police were finally contacted and arrived within a short time. Among the contingent of the Police who came, there was **PW2 Sub. Inspector Nchai**. **PW1** heard the accusing admitting to **PW2** that he had shot and killed the deceased and he was prepared to go to jail for his acts.

PW2 testified that when he arrived on the scene he met one **Moketa** and the deceased at the door where the deceased was. Before he could say anything the accused admitted to him that he had shot his wife.

PW2 collected an empty shell or cartridge, a spent bullet and a gun belonging to the accused. The gun was received from **Moketa**. **PW2** conveyed the deceased to the mortuary and arrested the accused.

The gun, spent bullet and the cartridge were finally taken for ballistics tests. The tests confirmed that the bullet was fired from a gun belonging to the accused. The accused had a licence for the firearm.

The accused gave evidence in his defence which was as follows:- On the fateful day the accused received a phone call from his wife. The wife was demanding money for the child's clothes. There was a slight misunderstanding between them. At 1400 hrs the accused left **Police Training College (PTC)** where he was working as a Cook and went to a bar in **Khubetsoane**. Where he enjoyed his beer at the bar until 2200 hrs to 2300 hrs approximately.

When he left the bar, he cocked his gun and released the safety catch in order to be ready to confront any unsavoury characters on his way home.

He arrived at his residence and went into **Moketa's** room to look for matches.

He found **Moketa** in the room in the company of a lady who he realized later that it was his wife.

Moketa grabbed him and wrestled a gun from his waist. They grappled together for his gun until the gun went off. He then let the gun go and ran away. He hid himself behind the rooms until the people and the Police came to the scene.

While he was hiding he heard **Moketa** reporting to PW1 that he had shot his wife. He did not come out to set the record straight as he was afraid that **Moketa** would shoot him.

During the testimony of **PW1** and **PW2** the version of his story that was put to them differed in material aspects from his evidence in chief. For example, it was put to **PW2** that the accused was not present when the deceased was shot and he had no knowledge of the incident. Furthermore, that the deceased had access to his property, she could have shot herself or shot by **Moketa**.

It should be kept in mind that this version of events was never put to **PW1**. The version put to **PW1** was the denial of the admission only.

Thus, it means that the whole story that emerged from the evidence in chief was never put to any of the Crown witnesses.

It is a trite principle of the law that the accused version should be put to the Crown witness

See – **Lehlela vs Rex (2000 – 2004) LACP 763 at 768 G to 770 C**. In this case **Steyn P.** emphasised the importance of putting the version of the accused to the state witness.

He quoted with approval the case of **Phaloane vs Rex LAC 1980-84 Page 72 at 77**.

In the instant case the accused has given different versions when cross examining witnesses and when testifying in chief.

The Court still has to determine whether there is enough evidence to find the accused guilty. **PW1** had stated unequivocally that the accused had admitted that he is the one who shot the deceased because of the pain she caused him.

The legal question is whether the admission was admissible in evidence see **Rex vs Motsamai LAC 1990 – 94 p.634 at p.644** where the Court makes a distinction between a confession in term of **Section 228** of the **Criminal Procedure and Evidence Act 1981** and the admission made voluntarily to a an ordinary citizen.

This is a statement made freely and voluntarily to an ordinary person and it is admissible.

The remaining factor is whether the evidence of **PW1** was credible. Despite a vigorous cross examination, the witness was not shaken. In fact, her evidence was corroborated in certain aspects by **PW2**.

Lastly, the accused had failed to put his version to the witnesses. Thus, I am convinced that the version of the Crown carries the day on this aspect. I Accordingly reject the evidence of the accused as false.

The issue now becomes whether the Crown had proved the subjective intention to kill. Meaning whether death was caused by recklessness as opposed to negligence. For the distinction. See **S vs Sigwahlai (1974) (4) SA 566, Phumo vs R (1990 – 1994) LAC p140, Selibo vs R (2000 – 2004) 976 at 980.**

It has been submitted on behalf of the Crown the words uttered by the accused that: he shot his wife because she committed or painful things to him. And that he was prepared to go to jail, proved that he had the subjective intention to kill. The said words were uttered after the incident. We cannot speculate on the circumstances which prevailed at the time of the shooting, coupled with the fact that the accused had been drinking from 1400hrs up to 2200hrs and 2300hrs approximately.

Secondly, only was shot was discharged. The shot has been fatal however, it does not prove recklessness on behalf of the Accused.

Thus, I conclude that the accused was negligent he should have reasonably foreseen that the firing of the gun would cause death to the deceased. He is therefore found guilty of Culpable Homicide.

Mitigation of Sentence

- (i) I have considered that accused is a first offender.
- (ii) That he was intoxicated.
- (iii) He has a minor child to look after.
- (iv) He cooperated fully until his trial was finalized.
- (v) The offence happened about a couple of years ago. And has been hanging over his head for some time.

However, the interest of the society should be taken into. The prevalence of use firearms to commit violent crimes. Generally, violence against women and children should be curbed or deterred.

The appropriate sentence is 6 years imprisonment 1 year suspended for 2 years.

The gun should be forfeited to the state to be destroyed.

Thus, I find the accused guilty of Culpable Homicide.

My assessor agree.

T. MATOOANE

ACTING JUDGE

For Crown : Mr Tlali

For Defence : Mr Masoabi