

CRI/T/0060/2018

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:-

REX

VS

TLOTLISO MOSITO

CORAM : HON. T. MATOOANE ACTING JUDGE

DATE OF JUDGMENT: 27th APRIL, 2022.

JUDGMENT

Eutral Citation: Rex vs Tlotliso Mosito [2022] LSHC 87 Crim. (27th April 2022)

The accused **Tlotliso Mosito** was charged with the murder of one **Mokherane Tjopa** at **Ha Seoli** on the 28th day May 2016. The accused pleaded not guilty to the charge.

The Crown called one witness namely **Agnes Tekane** hereinafter referred to as **PW1** On 28th May 2016 P.W1 was at a bar called **Ha Mampobole** at around 2400 hrs to 0100 am. She was in the company of one **Likeleli**. The deceased who was her boyfriend was drinking inside the bar. The bar is situated at **Ha Seoli** at a place called **Kh'oneng**.

The accused called her, telling her to organise a lady friend to accompany him and his friend to a bar at **Thetsane**. However, her friend **Likeleli** declined the invitation.

After sometime, the accused called her and asked her to come to a white vehicle which was parked at the gate of '**Mampolole's** bar. **PW1** duly went to the accused and his friend. After explaining that **Likeleli** has declined the invitation, she was ordered to go back and beg her friend to change her mind.

As she was talking to her friend, the accused arrived at the bar and dragged her by the extensions on her head (which were attached to her hair). Accused dragged her to the vehicle.

The deceased went out of the bar to follow her and the accused to the vehicle. The accused pushed her into the vehicle. The deceased arrived at the car and asked the why he was treating his wife like that. The deceased then unclasped an okapi knife and stabbed the deceased four times. At that juncture, the deceased posed no danger to the deceased.

PW1 made noise but was silenced by the Accused who threatened to stab her too. His friend then disarmed him and they both entered the vehicle and drove away.

Before the car drove away, **PW1** saw the deceased staggering and falling down after being he was stabbed. The incident happened about 4 paces from where she was sitting.

The accused, his friend and **PW1** left the scene without attending to the deceased.

The accused alighted on the way. His friend who was driving threw away the knife drove to his place of abode with **PW1**. He promised to deliver **PW1** to her relatives the following day as he had no fuel in his vehicle.

PW1 then went to Lithoteng Police Station the following day and made a statement.

PW2 was the investigating officer who had arrested the accused. He testified that the accused friend was no longer in Lesotho as he was foreigner.

The accused gave evidence on his behalf. He confirmed that he was in the company of one **Maduka** (who is a **DRC citizen**). They were using **Maduka**'s vehicle for transport. He confirmed that he called **PW1** to arrange a meeting. The accused and **Maduka** finally arrived at the bar. He went into the bar alone to look for **PW1** in the bar. He found her in the company of one lady and two gentlemen who were unknown to him. He took **PW1** by hand and led her outside.

Outside the bar, he asked **PW1** to look for a friend to accompany them as previously agreed. **PW1** went downwards towards the toilet. Accused left the place and went back to the car where he waited for twenty to thirty minutes waiting for **PW1** to return.

Accused then went back to the bar to look for PW1. He went to the bar after calling PW1 by phone a number of times, but there was no response.

At the bar, the accused met **PW1** who was about to enter the bar. He stopped her and reprimanded her about why she not responding to his phone calls.

When they reached the vehicle, **PW1** entered the car in the passenger side behind the front door. As he opened the front passenger door, he realized that there was somebody behind him.

The stranger asked why he was treating his wife that way. Before he could respond to the question, the stranger raised his arm and tried to stab him with a shiny object. When the accused turned to face him, the stranger stabbed at his left side and tore his jacket.

The accused then grabbed the stabbing hand and stabbed the deceased. While the deceased was trying to free himself, the accused stabbed him again. The deceased managed to free himself and ran away from the scene.

The accused, **Maduka** and **Agnes** left the scene. On the way to his residence, **Maduka** threw away the knife. **Agnes** refused to join him at his residence because she was afraid of him.

The outcome of this case revolves around the credibility of **PW1** and the accused himself.

Both of them were subjected to a lengthy and tedious cross examination. **PW1** was not shaken. She was a very credible witness, notwithstanding certain shortcomings which were due to the passing of time or the fading of memory.

On the other hand the accused's performance in the box was pathetic to say the least.

Under examination, a new story emerged which includes the following as examples.

(1) The court heard for the first time that:-

(a) The door of the vehicle was slammed forcibly pinning his right between the door and the vehicle.

(b) He retrieved his knife. While his hand was entangled or pinned against the door

(c) He rotated to avoid the stabbing motion of the deceased right hand.

(d) He pushed the deceased away from him by using his chest while still holding on to his right hand.

These are just a few examples of the fabricated story which emerge under cross examination which obviously was never put to **PW1**.

There is also the issue of the torn jacket which was not put to **PW2** who was the investigating officer.

PW1 testified that the deceased was stabbed four times in quick succession. Her evidence which was admitted by the accused, was corroborated by the medical evidence.

On the other hand the accused claims to have stabbed the deceased twice.

I am aware that the evidence of a single witness should be thoroughly scrutinized and the court must be satisfied that such evidence is satisfactory in all material respects. See **S v Sauls and others 1981 (3) SA 172 at 180.**

On the hand, I have taken cognizance to the fact that the accused should not be convicted just because he lied. If his story is probable he should be given the benefit of the doubt.

See **R v Difford 1937 AD 370 at 373.**

As I have indicated earlier in this judgment that it is essential for the accused to put his version of events to the Crown witnesses.

See **Lehlela v R (2000 -2004) LAC p763.**

The version of the accused painted an unbelievable scenario in all aspects. The deceased who had a knife only manages to tear his jacket when he had an element of success to his advantage.

The deceased is stabbed four times in his upper body and still manages to run away.

The only inference to be drawn is that the story of the accused is unprobable and it is false beyond reasonable doubt.

The accused stabbed the deceased four times in the upper body with a dangerous weapon (the notorious okopi knife) He may not have intended to kill directly (*dolus directus*) However, he was reckless as he could have foreseen that death could occur. He is therefore found guilty of murder.

My assessors agree.

Extenuating circumstances

- (1) *The fact that accused is found guilty of murder **dolus evenluatis**.*
- (2) *The age of the accused at the time of commission of the crime.*
- (3) *The accused may have taken offence for somebody to accost him about his girlfriend. Jealously played a part.*

The Court accordingly finds that there are extenuating circumstances

Mitigation

The accused is a first offender

He is married with 2 children and the sole breadwinner of the family.

The case has been hanging over his head for 6 years.

He cooperated with police by handing himself to the police.

However, as the Crown submitted these factors are also relevant.

The accused is charged is with a very serious matter where an innocent life has been lost. The sentence must balance the interests of the society with the personal circumstances of the accused. The appropriate sentences is 9 years imprisonment.

T. MATOOANE

ACTING JUDGE

For Crown : Mt Tlali

For Defence : Adv Fihlo