

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

NKETLANE RAMAKATSA
DAVID THABO MOAHLOLI

1st Appellant
2nd Appellant

V

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 17th day of December, 1982.

The two appellants were charged before the Quthing subordinate court charged with the offence of assault with intent to do grievous bodily harm. It is alleged that they hit Bochabela Makhate (hereinafter referred to as the complainant) on the head and face with stones. They pleaded not guilty but were eventually found guilty "as charged" and sentenced to pay a fine of M100.00 or in default of payment to undergo imprisonment for a period of six (6) months. They have now appealed to this Court against conviction. The second appellant is absent and warrant of his arrest has been authorised. He is referred to in this judgment as co-accused.

The facts are briefly as follows :-

The complainant first met the appellants on the day in question i.e. 15.7.81. On that day, at about 4.00 p.m he was at a bus stop. He was awaiting to board a taxi to his home having just arrived from the Capital City Maseru. Both appellants came to him and first appellant (Nketlane Ramakatsa

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and referred to as the appellant) was the first to speak. He asked him where his home was. He was answered. He was asked if he knew chieftainess 'Maliako and her son Joshua who had complaints against him and that he had defamed them and had been responsible for Joshua's arrest, that he impersonated to be a magistrate. He denied. Appellant's co-accused (David Thabo Moahloli) had also, at the same time asked same questions. Appellant's co-accused pushed his fingers into the eyes of the complainant who tried to avoid them with his hands but they both stopped him.

In the presence of the appellant the co-accused hit him with a stone in the face. Appellant hit him with a stone on the head. He then got hold of him. They grappled with each other until they fell. In the meantime, the co-accused had moved across the road. As they fell he sat on top of appellant and they fought. The co-accused threw a stone at him which hit him all over the body. A police officer came to intervene and was taken to the charge office and from there to the hospital where he was detained.

Under cross-examination he was virtually told that on the 26.6.81 he had slept at chieftainess 'Maliako's home where he pretended he was a magistrate and was thus accorded a treatment which he otherwise would never have received and that he made certain promises which he never fulfilled. He denied all these allegations. It was put to him at great length what appellant would tell the court and the complainant denied those which he knew to be false.

'Mali Tsemene - PW.2 corroborated the complaint to a very great extent. They differed here and there. She, for instance says that stones were not thrown while complainant was still standing. She says that the complainant tried to

hit the co-accused with his hand before the fight started. However, she corroborates him on a very important point, namely that she saw him being assaulted before she left to summon help. She is the person who reported to the next witness Sgt Makoe (PW.3).

Sgt. Makoe came to the scene and saw the assault still in progress. He saw when the co-accused hit the complainant with a stone and searching for yet another one. At that stage complainant was still fighting. He separated the fighters. He arrested appellant and his co-accused.

It was put to him that the "accused" would deny that they threw stones, i.e.. in fact co-accused. He said he had seen him with his eyes.

That was the Crown's case.

The Defence closed its case too.

It may be true as 'Malineo Tsemene says that the complainant attempted to hit the co-accused with his hand. He had been subjected to a most vicious form of attack by two unknown, arrogant and vipuruous lack of manners young men. They were so young to be his sons and they were publicly insulting and humiliating him. It was understandable that under those circumstances he behaved as he did. The appellant and his co-accused were the aggressors, they provoked the complainant while he stood quietly going legitimately about his business. In the process they, acting in concert, caused him injuries with the stones they used.

The version of what the 'accused' would say was put to the complainant and he vehemently denied it. However, the 'accused' never, in fact, did give such a version under oath and be subjected to cross-examination. The trial court

/accepted

accepted that it was denied by the complainant and that was the end of the matter. I will go no further than that at this stage. It was alleged during cross-examination that

"Q. I also put it to you that the accused 2 did not push his fingers into your eyes?"

A. He did so.

Q. I put it to you that you did not tell the prosecutor that because the accused 2 never did so?

A. He did so."

Complainant had said, in his evidence-in-chief:

"The accused 2 then and there pushed his fingers into my eyes."

The cross-examination, to say the least, was unwarranted and it was meant to mislead the complainant.

It was finally put to the complainant that the "accused" would deny that "they ever assaulted him" to which he replied: "They did." It was then said to him that under cross-examination he had given a different version of how he was assaulted. I wonder. I have read the record. Perhaps that was the defence's wish which, fortunately never materialised.

It was put to 'Malineo Tsemame that the fight was separated by 'Malebohang Mpobole and she denied. However, it is significant that not the slightest suggestion was made to Sgt. Makoe that he was a liar and that he did not separate the fighters but that 'Malebohang Mpobole did.

At the close of the Crown's case there was a prima facie evidence calling for an answer from the accused but they exercised their right not to do so. That prima facie evidence has become conclusive because it was a strong and convincing evidence. When the accused closed their case,

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therefore, the Crown had proved their case beyond reasonable doubt. They were properly convicted.

The appeal is hereby dismissed.

J U D G E.

17th December, 1982.

For the Appellant (1) : In Person

For the Respondent : Adv. S. Peete.