

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

THATO JEREMIA

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 14th day of July, 1982.

The appellant (hereinafter called the accused) was charged before the Subordinate court of Leribe on two (2) counts, one of assault common and the other indecent assault. He pleaded not guilty but at the close of the Crown's case was discharged on the offence of indecent assault (although the test applied was a wrong one at that stage of the proceedings. The test is not proof beyond a reasonable doubt), and at the close of the whole of the case, was found guilty of having committed the offence of assault common. He was sentenced to six months' imprisonment. He now appeals to this Court against both such conviction and sentence.

The facts have been succinctly summarised as follows, by the learned magistrate in judgment :

/"In respect

"In respect of count 1 the prosecution adduced the evidence of P.W.2 a mosotho female girl aged about 18 years she says on the 9/2/82 she paid her grandfather a visit at Hlotse Reserve and returned at sunset and when she went past the prisons Security fence she saw accused and accused asked her (complainant) to wait for him then accused gave a chase until she was trapped by a pot hole along the path and she fell, then accused got her and tried to pull off her panties but she resisted and freed herself and ran away then accused chased her once more until she reached a certain house screaming and threw herself inside it this witness says she was very frightened then one Palesa went outside the house after which she returned in the house and P.W.2 gave Palesa a report. She says she then made a report at the Charge Office she next the next morning and she was taken to the prisons compound where she identified accused as his assailant. This witness says accused appeared very drunk on the evening of the attack and she was seeing accused for the first time. In cross examination she says she saw accused's face but accused was identified as a constable by Palesa. She further states that it was dark but the street lights provided some lights. She further states in cross-examination that she was taken to the prisons to identify accused after she had seen accused at the Charge Office where accused was asked about this assault in her presence. Now comes the evidence of P.W.3 a mosotho female girl states that on the 9/2/81 she was at her home at Mankoaeng around 8.00 p.m. when she heard a scream and she made to the door of her house then P.W.2 came rushing and threw herself inside the house. She says she then advanced towards the fence surrounding the house and saw accused running out of the gate and she identified accused as the person who was chasing P.W.2. This witness further states that she saw accused well because a certain vehicle which was passing near her home provided light with its headlights and this witness said to accused "I have identified you" she then returned in the house and P.W.2 gave her a report. She says P.W.2 appeared very shocked and frightened. She further states that she had known accused prior to that night as a member of prisons department and she positively identified accused on that night and accused was the person who was attacking P.W.2.

Now comes the evidence of accused who denies that he ever attacked P.W.2 and that P.W.3 never saw him on the night in question assaulting P.W.2."

/The complainant

The complainant was a very fair witness. She did not wish to unfairly implicate the accused. Although she had seen the accused in the early dusk, she was perhaps hesitant about her identification of the accused even though, she had spoken to him. However, the accused was properly identified by a person who knew him very well; who saw him through adequate street lights supplemented by the bright lights of a car. Accused was the person who had been chasing the complainant that evening. The learned magistrate had no doubt whatever about that. He believed the Crown's version and, on adequate grounds, rejected that of the accused. He did not doubt the credibility of the Crown's witnesses. The appeal against conviction is therefore dismissed.

The sentence meted out to the accused produces a sense of shock. The assault, although on a female, was not unduly serious to warrant a term of imprisonment without the option of a fine. The accused committed the offence in his private capacity and the fact that he was a prison officer should not be brought to bear on him by way of punishment. He did not commit the offence whilst on duty. He was, moreover, a first offender. In the personal circumstances of the accused this Court is of the opinion that an alternative of a fine would not have been out of place. The sentence of the learned magistrate ought to have been one of 60 or 6 months' imprisonment half the sentence being suspended for a period of 2 years on condition that

/during

during the period of the said suspension he is not convicted of an offence involving violence to the person of another. It is accordingly so ordered. It is further ordered that the appeal deposit be refunded to him.

*W. M. Mofolo*

J U D G E

For the Appellant : Mr. G. Mofolo

For the Respondent : Mr. K. Khauoe