

CRI/S/1/82

CRI/S/5/82

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

PUSETSO RAMOSITLI
KHABO PHOKA

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 6th day of August, 1982.

These two cases have been treated together because exactly the same principle of law is involved.

In the first case, the accused is charged with the offence of housebreaking with intent to steal and theft (and one other offence which is not clear on the face of the charge sheet). The accused pleaded not guilty but was eventually found guilty on both such offences. There is reflected, on the typewritten record, what purports to be the list of the accused's previous convictions with no signature or thumb-print of the accused. (A practice which this Court can hardly recommend in any circumstances whatever). The accused, after addressing the court in mitigation, was committed to the High Court for sentence presumably in terms of s. 293 of the Criminal Procedure & Evidence Act 1981.

In the second case, the accused is charged with the crime of rape. He pleaded guilty but notwithstanding the prosecution elected to lead evidence. Accused elected to remain silent. After addresses by the prosecution and the

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accused (who was given an opportunity to do so but elected to say nothing) a verdict of guilty was returned. Accused did not say anything in mitigation of sentence. However, he was committed to this Court for sentence again presumably (this is not stated in the record) in terms of s. 293 of the Criminal Procedure and Evidence Act (supra).

Firstly, the practice laid down by the Court of Appeal in the case of Macaphalla and Another v Rex, 1971-73 L.L.R. 39 at 40, has not been followed. In that case Maisels J.A. (as he then was) said :

"We think therefore that the practice should be laid down that, when a magistrate acts under section 288A, (now s.293(1) of the Criminal Procedure and Evidence Act 8 of 1981) he should give reasons for convicting the accused and these reasons should form part of the record in the case." (My underlining).

The reasons for this being that

"it is clearly in the interests of justice that this should be done and assistance that it would be rendered to the High Court, and in appropriate cases to the Court of Appeal, it should be borne in mind that the accused ought, for his own purposes, to have these reasons available to him." (at 40E).

In both cases before me the reasons why the accused have been convicted have not been given.

S.293(1) permits a subordinate court to commit a person, who was tried by it, to the High Court for sentence. S.294(4) stipulated that any sentence passed by the High Court when the matter has been referred to it in terms of s.293(1) that the person so sentenced shall be deemed to have been tried and convicted by the High Court. Now an accused person can be tried in the High Court for a Criminal offence when he has been so committed to that court by a subordinate court. The only exception is in terms of s.144. However, the committal must be valid. (Rex v Mahooana, 1979 L.L.R.; Rex v Rampine

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and Another, 1979 L.L.R.). It is one of the requirements of the s. 293(1) that the reasons why the subordinate court is of the opinion that greater punishment ought to be inflicted than it has power itself to do so, shall be "recorded in writing of the record of the case." It is, therefore, in my view, obligatory for the said reasons to be in writing and also form part of the record. If that requirement of the law is not complied with then the committal of the accused cannot be lawful and is invalid. If, therefore, the committal is not valid, the High Court is not seized of the matter and it ought to be returned whence it originates.

To sum up then, in these two cases, two things have happened: Firstly, the practice laid down by the Court of Appeal in Macaphalla and Another's case, viz. that reasons for conviction should be given, has been totally ignored. Secondly, an important provision of the law governing the committal of an accused for sentence by the High Court has not been complied with i.e. reasons have not been given in writing as to why the subordinate court was of the opinion that a greater punishment ought to be inflicted on the accused. For these reasons I hold that the committal is not lawful nor regular. (Rex v Matete, 1979 L.L.R.; Rex v Mahooana (supra)).

J U D G E.

For the Crown : Kamalanathan