

IN THE HIGH COURT OF LESOTHO

In the matter of :

KHETHOLLO SEHAHLE

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 8th day of November, 1982.

The appellant, together with two others who have not noted an appeal, was charged before the Subordinate Court of Qacha's Nek with the crime of assault with intent to do grievous bodily harm. It is alleged that on the 14th June 1982 acting in concert, they wrongfully, unlawfully assaulted 'Mamzımkhulu Phenduka (hereinafter referred to as the complainant) by hitting her with sjamboks all over the body, putting her into a bale and tying it to the roof of a house, by tying her foot with a rope to the roof and pulling it until she was suspended in air, with the intention of causing her grievous bodily harm. Appellant and his co-accused, pleaded not guilty but were found guilty as follows:-

- (i) Appellant "as charged" and sentenced to serve a term of imprisonment of four (4) months.
- (ii) Accused 2 and 3 of assault common and were each fined M20.00 or in default of payment to undergo imprisonment for a period of one (1) month. The whole of the sentence is suspended on

/certain

certain conditions.

Complainant gave evidence which, briefly, is to the following effect :

On the alleged date in the charge sheet, the complainant was with accused 3, Thamae Mokoteli, Mofoka Khali (P.W.2) and Nepo (was accused 4 but absconded) at her home. These men informed her she was called by the chief i.e. Appellant. She was then with her husband. He allowed her to go with them. On the way, they called at Mokoto Mohale's place. Appellant, who had now joined them, opened the door. A number of men, also, entered and so did the complainant. Appellant asked her for an explanation about her clothing. She proceeded to describe the clothes. He asked her about a blanket she had given an explanation. She said she had left it at home. He asked her why she changed clothes when he sent for her. She said she had not. He said he knew her very well to be a deep person. He asked her if she knew him. He stood up and said "you will tell the truth." He hit her with the sjambok first on the legs and then said she should put off her blanket, which she wore, and whipped her all over the body and said that she would "tell the truth." There was a lamp which was lit in that house. Napo also whipped her with sjambok and kicked her. Mofoka Khali (P.W.2) intervened. Appellant then said he would tell her why he was whipping her: "because you have broken into Mohlanka's house." He further said "I should produce shoes, pair of trousers, money and cosmetics." She denied these allegations. Then appellant started whipping her all over the body with a sjambok. Mofoka Khali was present. Appellant said that he will "fasten me with a plastic rope." And he did.

/The complainant

The complainant continues :

".... and hoisted it on (the) roofs; after fastening my hands, he fastened my left foot to my hands and raised me, the right foot was hanging in the atmosphere and (he) whipped me. Accused 2 and 3 were present and seated and did nothing. He whipped me until I said lost property was there at my home. He unfastened me and let me down."

Then accused 2 and 3 accompanied her home. Her husband was woken up and told that she had made a full confession. They told him that she had been whipped at Mokoto's place and that she was coming to hand over the stolen property. He asked her and she replied :

"I said I have not taken any, is just because I had been whipped."

The messengers refused to conduct a search for the alleged goods, at the request of her husband. They said she had played the fool. They took her back to the house in which they had left the appellant and the rest of the men.

~~Appellant put her in a bale and closed its opening with a~~
rope and wires. He had said he would put a cat inside. The bale was pulled around in the house. She was suffocating. She managed to open a hole with one foot. It was through this that she was able to detect her assailants. She recognised their voices. After all, they were fellow-villagers. She was also kicked by accused 2 and 3. The rope, tied to the bale, was passed over the rafters and pulled as a result of which she was lifted together with bale and she was swinging. The assaults continued. She was now tired and she cried. She escaped from this bale and found Mokotso present. Appellant ordered her to leave for her home.

In cross-examination appellant suggested that he was not present when she was being assaulted. Mofoka Khali (PW.2)

/corroborates

corroborates most of her story. That appellant was present when she was inside the bale and was in that bale when Mokoto Mohale (P.W.3) arrived is not disputed. He corroborates the complainant. He heard her screams. In any event, the appellant conceded that he assaulted the complainant although he lied and said it was with a strap from a jokeskei: He conceded that he had no right to whip anybody. He conceded that he never took complainant to the police. That appellant assaulted the complainant by hitting or whipping her with a sjambok is corroborated by Mofoka Khali.

Appellant gave evidence under oath and told a pack of lies and at the end he was forced to concede that he was guilty. In his own words he said :

"I now agree that I am guilty of assaulting P.W.1 not in the way that it is alleged."

He was not man enough to make a clean breast of it. Complainant, in my view, has been amply corroborated and the trial Court believed the evidence of the witnesses I have mentioned. It is obvious that the explanation of the accused is false and in the end he was forced literally to make a confession in open Court.

In the result, the conviction is confirmed but the sentence is a traversity of justice. A woman cannot be abused in this manner and those responsible be made to get away with it. All people are equal before the law. They must be treated equally without any fear or favour. Chiefs occupy a position of high esteem and must not abuse that position. In Courts of law, corporal punishment is applied very rarely to males but never to females. A chief who indulges in such sadistic acts must not expect mercy from

/the Courts

the Courts. The remarks I made recently in the judgment of David Lelingoana v Rex, CRI/A/60/82 dated 5.11.82 apply in this present case with even greater force and a sense of urgency. The situation is intolerable and calls for prompt action.

The sentence imposed by the learned magistrate is set aside and it is substituted by the following :

"Two years' imprisonment."

The Registrar is requested to forward a copy of this judgment to the Ministry of Chieftainship Affairs.

J U D G E.

8th November, 1982.

For the Appellant : In Person

For the Respondent : Miss Surtie