Hon. Mofokeng J.

CRI/A/89-90/82

IN THE HIGH COURT OF LESOTHO

In the appeal of :

JULIA TAU — Appellant

v

R E X — Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai on the 4th day of May, 1983.

The appellant and one Jacubus Jozua Reynders were charged and convicted of the crimes of

(i) Assault with intent to do grievous bodily harm and

(ii) Kidnapping before the Subordinate Court of Maseru.

The allegations were as follow :

Count I "In that upon or about the 15th day of February, 1981 and at or near Ha Thamae in the district of Maseru the said accused one or both of them did unlawfully and intentionally assault one Sessie Lerotholi and Phillipina Thamae by beating them with a sjambok or canes on their bodies and threatening them with a gun, with the intention of causing them grievous bodily harm."

Count II "In that upon or about the 15th February, 1981 and at Marakabei in the district of Maseru, the said accused did each or one or both of them unlawfully and intentionally deprive Sessie Lerotholi and Phillipina Thamae of their liberty by imprisoning them in a house for a period of eight days."

Initially the appellant and her co-accused pleaded not guilty to both counts but after the Crown had adduced the

evidence of the two complainants and a police officer, they admitted to have assaulted the complainants and accordingly changed their plea of not guilty to that of guilty on Count I which plea of guilty was accepted by the prosecutor. As has been pointed out, the appellant and the co-accused were, at the close of the trial convicted as charged on both counts. They were each sentenced to one year imprisonment on count I. A fine of M200 or one year imprisonment in default of the payment of the fine, was imposed on each of the accused on Count II. The sentences were to run consecutively.

The appellant and her co-accused appealed against the whole judgment but the co-accused subsequently withdrew his appeal and the appeal is now proceeding in respect of the appellant only. The grounds of appeal were a long list which can, however, be summed up in that the convictions were against the weight of evidence and the trial magistrate failed to consider mitigating factors for purposes of sentence.

It was common cause that the appellant and her co-accused, hereinafter referred to simply as Reynders, lived together as wife and husband, although it was not clear whether they were legally married to each other. They owned a residential house at Upper Thamae on the outskerts of Maseru Township. Reynders operated a trading store at a place called Marakabei, right in the heart of the mountains, where he and the appellant spent most of their time. While appellant and Reynders were at the trading store at Marakabei, their house at Ha Thamae remained under the care of appellant's sister, one 'Maboetseng.

The two complainants, one of whom (Phillipina) is a relative of appellant, also stayed at Ha Thamae where they shared a room not very far away from appellant's house.

The evidence of the two complainants was that on one occasion the appellant and Reynders were as usual away at Marakabei when their house remained with Maboetseng. During

3/ that time .....

that time 'Maboetseng also had to go out for work at a place called Nazareth about 30 km outside Maseru. Apparently, her work at Nazareth was to take Maboetseng a few days. Before leaving for Nazareth Maboetseng left the key of the kitchen door of appellant's house with one of the complainants (Sessie Lerotholi).

On the early morning of 14th February, 1981 at about 4.00 a.m. and during the absence of Maboetseng, the complainants had the occasion to pass next to appellant's house when they noticed that the door of the living-room was left open and the lights in some of the rooms were on. The complainants immediately went to the house to find what was happening. They found that there was nobody in the house but noticed that a radio-gram which used to be in the living-room was no longer there. Phillipina at once went to report at the police charge office while Sessie Lerotholi remained keeping watch over the house. After reporting to the police Phillipina returned to the house where she and Sessie awaited for the arrival of the police. The police did eventually come and searched around the house. After the police had completed their work, the complainants locked the door of appellant's living-room by means of a key which they had borrowed from a next door neighbour. When later on Maboetseng returned home from Nazareth, the complainants gave back to her the kitchen key of appellant's house presumably with the explanation of what had happened at the house during her absence.

On the following day 15th February, 1981, at about 8.00 a.m., the two complainants were called to appellant's house where they found the appellant, Reynders, Maboetseng and a male servant of Reynders waiting for them. After the complainants had entered into the house Reynders told them to produce his property which he had found missing from the house.

According to the complainants, they denied knowledge of the property and before they could even make any explaination

Reynders got hold of a plastic sjambok with which he started beating them up all over the body. Reynders admitted to have beaten up the complainants with the sjambok and said that was because they had laughed at him when he demanded his property from them. Complainants denied to have laughed at Reynders. According to the complainants, both the appellant and Maboetseng joined Reynders and assaulted them (complainants) with fists and open palms. At some stages, however, Reynders handed the sjambok over to appellant and Maboetseng who also used it on the complainants. Appellant admitted to have joined Reynders in the assault on complainants but that she used only her fists and open palms and not the sjambok.

Whether or not appellant used her fists and open palms and not the sjambok does not really matter. The important thing is that she was aware that Reynders was assaulting the complainants with the sjambok and she clearly associated herself with what he was doing. They all had no right to take the law in their own hands and assault the complainants. She was clearly a socius criminis and equally liable for the criminal conduct of Reynders on the doctrine of common purpose.

Complainants' evidence went on to disclose that during the assault they were stripped naked by their assailants so that they remained with their panties only. It may be mentioned at this stage that complainants are women of over 20 years of age. A naked body of a woman of that age must be a shock to see and it is simply beyond my comprehension how any descent person could even contemplate the thought of strippinng naked women of complainants' age. It is indecency in its extreme.

While the flogging of the complainants continued, Reynders was from time to time threatening that he would shoot them with a pistol which he openly had in his possession. He tried to deny this but in their evidence the complainants were positive that he did. The complainants told the court that during the assault on them there was a time when Reynders disappeared from the house and on his return he was in the company of four (4) strange men whom he described as C.I.D. members. In the presence of the appellant and Maboetseng he instructed

those men to beat up the complainants so that they should produce his goods. The four men joined in the assault on the complainants. They were kicking the complainants with their booted feet and whipping them with the sjambok which Reynders and the appellant had been using. There is nothing to suggest that the appellant did anything to dissociate herself with the instructions given by Reynders on those four men. Appellant and Reynders conceded that the four men did assault the complainants in their house but denied that the men were brought by Reynders. According to their story appellant and Reynders had been away from the house and on their return they found the complainants already stripped naked in one of the rooms in the house and the four strange men assalting them in an attempt to pursuade them to produce the missing property. Appellant told those men to stop assaulting the complainants but all in vain. The men were eventually stopped by Reynders.

The trial magistrate accepted as the truth the explanation given by the complainants and rejected as incredible the story advanced by appellant and Reynders that they had nothing to do with the four men and what they did to the complainants in their house. On the evidence, the learned magistrate was perfectly entitled to do so for it is ridiculous to suggest that the four men could have come uninvited to appellant's house and joined in the assault on the complainants telling them to produce the missing goods. How could they have known that there were goods found missing from appellant's house and that the complainants were the persons held responsible for the disappearance of those goods? Indeed, Reynders and appellant conceded that they did not even report to the police that they had found those four men in their house assaulting the complainants who were admittedly stripped naked. There is no doubt whatsoever in my mind that on the evidence appellant and Reynders associated themselves with the assault perpetrated on the complainants by the four men - the so-called C.I.D. members.

6/ The ingenious ....

The ingenious suggestion that the four men who took part in their criminal act were the C.I.D. members was,in my view,a vicious attempt on the part of Reynders and appellant to blot the reputation of the Police Force in this country and the trial magistrate rightly rejected it with the contempt it deserved.

The brutality of the assault on the complainants Phillipina and Sessie is evidenced by their photographs - Exhs (A(i) -(c)and B(i) - (c), respectively, taken on 24th February, 1981 (9 days later) by P.W.3, D/Tpr. Smatlane who testified that even on that day the scars and weals on the backs, buttocks, thighs and breasts of these women were still visible as clearly reflected on those exhibits. The medical doctor who examined and treated the complainants on 25th February, 1981 were also consistent with the evidence that the assault on the complainants was brutal. According to the medical evidence, complainants had sustained multiple longitudinal lacerations and abrasions both on the upper and lower extremities,breasts, back and buttocks. In the opinion of the doctor, the injuries could have been inflicted with an instrument such as a whip and a considerable degree of force must have been used. One of the complainants, Sessie Lerotholi, had also sustained an injury on her left eye which injury was consistant with the use of a whip..

Taking into account the nature of the injuries, the type of instrument used to inflict the injuries, the degree of force used and parts of the body on which the complainants were assaulted there is no doubt in my mind that the appellant and her co-assailants had the intention to cause complainants grievous bodily harm. She was therefore rightly convicted of assault with intent to do grievous bodily harm.

It was common cause that complainants were in appellant's house from 8 a.m. until 6 p.m. when according to their evidence the complainants with their hands tied up by Reynders' male servant on the instruction of Reynders himself were taken onto a van. Reynders in the company of appellant drove the van to their trading store at Marakabei where the complainants were locked up in a room apparently used for storing maize. They were provided with a bucket for relieving nature. For eight

For eight days complainants were locked up in that room for the nights. During the day they were at times allowed out to water vegetables in appellant's garden or do some other menial jobs on the premises. They could not escape and run away owing to their injuries and fear of being killed. They were eventually spotted by a relative of Phillipina, one 'Manthabiseng who reported their presence at the trading store to the police. It was only then that the police were able to come to their rescue by releasing and sending them for medical treatment.

In their evidence appellant and Reynders admitted to have driven the complainants to Marakabei in their van. They had asked the complainants whether they preferred to be taken to the police charge office or to Marakabei where their parents could be contacted about what they (complainants) had done. The complainants voluntarily opted to be taken to Marakabei where they were offered a sleeping room. At Marakabei complainants were free to go anywhere they liked.

It was not disputed that at the time they were driven to Marakabei complainants had already sustained the serious injuries described by their evidence confirmed by the medical report and the evidence of P.W.3. It is therefore unlikely that complainants could have voluntarily opted to go with appellant and Reynders to Marakabei rather than to the police charge office from where they would be able to consult a medical doctor for treatment which they naturally needed badly. It is significant that both appellant and Reynders admitted knowing that the homes of Sessie and Phillipina were respectively at Matsieng and Machache, a few kilometers from Ha Thamae and therefore within easy reach of complainants' parents. If they really intended contacting complainants' parents, appellant and Reynders could have kept complainants at Ha Thamae rather than drive them to Marakabei, right in the heart of the mountains, where for obvious reasons it would be very difficult for complainants' parents to reach. Indeed, in their own

evidence appellant and Reynders conceded that no word was ever sent to complainants' parents about the whereabouts of the complainants. It was therefore preposterous for Reynders and appellant to suggest that their intention in taking complainants to Marakabei was to contact their parents. The story of Reynders and appellant that complainants voluntarily went with them to Marakabei was rejected, and rightly so in my view, by the trial magistrate, who accepted as the truth complainants' version that they were forcibly and against their will taken to that place which is not only remote but very far from their homes. That forcible removal of complainants to Marakabei by appellant and Reynders was in itself clearly an unlawful act. Having regard to the remoteness of Marakabei and complainants' ill-health resulting from their injuries, it must be accepted that complainants were rendered incapable of leaving that area. They were therefore virtually deprived of their liberty. That constituted the crime of kidnapping which Hiemstra J. in S. v. Levy and Another 1967(1) S.A. 351 at 353 defined as

> "the wrongful and intentional deprivation of the liberty of another."

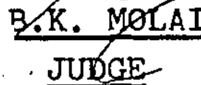
In my view there is ample evidence that the appellant acting in concert with Reynders committed this offence. There is therefore no substance in the ground of appeal that the convictions were against the weight of evidence.

The trial court was addressed on the question of mitigation and the grounds of appeal against the sentence were in effect nothing but a repetition of the very factors which the court was invited to consider. There was nothing on record to indicate that the magistrate had refused to consider those factors. He did not however, turn a blind eye on the other factor of which consideration no doubt aggravated the offences against which appellant and Reynders were convicted.

People like appellant and Reynders who will not hesitate to take the law into their own hands by punishing others for the flymsiest of suspicions must be reminded that the courts

of law will take a rather dim view of their actions. In the circumstances of this case, I am not prepared to interfer with the sentences imposed by the learned trial magistrate.

I would therefore dismiss this appeal.



B.K. MOLAI
JUDGE

4th May, 1983.

For the Appellant : Mr. Molyneaux,
For the Crown : Miss Surtie.