CRI/T/35/82

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

SHADRACK MOEKETSI NDUMO
MOLEFI RAMPHALILE
NYAMANE KHOLOANE.

J U D G M E N T.

Delivered by the Hon. Mr. Justice B.K. Molai
on the 11th day of May, 1983.

The three convicted persons were indicted before this Court on a charge of contravening the provisions of Section 16(1) of the Internal Security (General) Act No. 6 of 1982 :

"In that upon or about the 16th and 17th September, 1982 and at or near the Teyateyaneng Reserve and Maseru Township, all the said accused acting in concert and jointly or one or the other of them did knowingly and unlawfully possess or had under their control explosives, to wit :

1. two parcels of plastic explosives
2. five wire detonators
3. four other detonators
4. three plastic explosives contained in 3 separate surf soap boxes.
5. fifteen electric detonators and
6. six slow charge detonators,

under such circumstances as to give rise to a reasonable belief that they did not possess the said explosives for a lawful object or purpose."

In summing up the facts of the case Mr. Kamalanathan, who appeared on behalf of the crown in this matter

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this matter, told the Court that No. 1 accused was an Anglican Priest in charge of St. Agness church at Teyateyaneng. No. 2 accused was a teacher on the staff of Cana High School in the Berea district. No. 3 accused was the owner of a cafe at Qoaling in the Maseru district.

The three accused acting in concert and jointly procured explosives referred to in the indictment. Acting on information received that the accused were in possession of the explosives and were going to use them for unlawful purpose, the police carried out investigations and traced some of those explosives to the house of No. 2 accused and the rest to the cafe of No. 3 accused. The police took possession of those explosives which have since been in their custody.

The three accused were subsequently arrested. No.2 accused on the 16th September, 1982. No. 1 and No.3 on the following day, the 17th September, 1982.

When the charge was put to them all three accused pleaded guilty which plea of guilty was accepted by the prosecution. A verdict of guilty as charged was returned by the court without hearing any evidence in terms of the provisions of s. 240(1)(a) of the Criminal Procedure and Evidence Act 1981 which reads as follows :

> "(1) If a person charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on that charge, and the prosecutor accepts that plea the court may -
>
> (a) if it is the High Court, and the person has pleaded guilty to any offence other than murder, bring in a verdict without hearing any evidence; "

3/ The accused ....

The accused now stand here to be sentenced. The difficulty which this Court has to encounter is that there is no evidence on which to base its assessment of the sentence. However, Mr. Hodes, who represents all the accused, has addressed the court in mitigation on their behalf. In his able address he has invited the court to consider a number of factors some of which are relevant to each of the accused's particular circumstances while others are of general application to all of them. They have all been given their due consideration but I propose to refer to just a few of them.

It has been pointed out that the accused have pleaded guilty. If I understand it correctly the argument is that this may well be a sign of remorse on the part of the accused. They have also saved the Court's time by shortening the proceedings which may well have taken a considerable time. In my view this may properly be taken for purposes of sentence. Moreover, one of the aims of punishment is to deter the accused persons from a repetition of the kind of conduct with which they have been convicted. If, however, it is believed that the accused themselves have already repented and there is therefore no likelihood of their ever repeating the sort of criminal conduct against which they have been convicted, the Court must remember that in the words of Shakespeare, justice must be tempered with mercy.

One other factor which the Court was invited to consider on behalf of the accused was that they were first offenders and as such a custodial sentence would not be appropriate for them. As authority for this proposition the Court was referred to a decision in the case of S. v. D'Este 1971(3) S.A. 107 at p. 109 where Eksteen, J. is reported as having said on the issue:

> "It has (however) been a consistent practice of our courts not to send a first offender to gaol without the option of a fine for the contravention

of statutory offences such as the one presently under consideration."

It may, however, be observed that the statute under consideration by the learned judge was the one dealing with the conveying of dagga. We are here concerned with a statute dealing with Internal Security in which possession of explosives for unlawful purpose is involved. It should not, therefore, be so difficult to realise that the case of S. v. D'Este, supra, is distinguishable from the present one. Indeed, the learned judge had earlier in that same decision pointed out that there was no rule of law entitling a first offender as a right to a suspended sentence simply because he was a first offender. A clear suggestion, in my view, that each case must be decided on its merits.

Much capital has been made of the 1970 political events and their aftermath. The Court was strenuously urged to take these into account in determining the appropriate sentences for the accused as they have allegedly resulted in people of accused's political beliefes and convictions resorting to the type of conduct of which they have been convicted. An insinuation that because they have a good or justifiable end in view the accused persons are entitled to be indiscriminate in their choice of the means they employ to attain that end. I am unable to subscribe to this line of reasoning. Even if it were accepted that the accused have a justifiable or a good end in view that can never entitle them to the use of unlawful means to attain it. In other words, if unlawful means are deployed to attain a good end such means do not become justifiable merely because they are resorted to in order to attain a good end. The cardinal principle of logic, as I understand it, is that the end does not justify the means.

5/ In numerous ....

In numerous previous cases, this Court has been urged with almost monotonous repetition to take cognizance of the 1970 political events and their consequences in order to condone, so to speak, resort to illegality as a means of achieving political objectives. It has always declined and I can find no good reason why it should not do so to-day. In Rex v. Mofelehetsi Moerane and Others 1974/75 L.L.R. 212 at p. 250E Mapetla, C.J. is reported as having said:

> "It is (therefore) the duty of this Court to express in clear and unequivocal terms its strong disapproval of resort to violence as a means of redressing grievances against the state and this should be reflected in the punishment it imposses on the accused."

Cotran, A.C.J. (as he then was) in Rex v. Moletsane and Others 1974/75 L.L.R. 316 at P. 356B put it in the following terms:

> "no court can possibly condone resort to violence in order to achieve political objectives."

In the recent case of Rex v. Ralinaleli CRI/T/39/81 (unreported), Mofokeng,J. sounded a warning:

> "it must be made quite clear that the time is approaching when the courts will have to be extremely harsh with those who seem to think that to engage in violence, in order to solve their political problems is being heroic."

With all respect, I entirely agree with the views expressed by the learned judges. Although in all the above cited cases, the accused were facing a more serious charge of High Treason, the principle applies with equal force to the case under our present consideration.

We have been reminded that the accused have been convicted of the offence of possessing the explosives contrary to the provisions of s. 16(1) and not of using them contrary to the provisions of s. 15 of the Internal

6/Security Act .....

Security Act 1982. That is fortunately so, apparently owing to the vigillance of the police. However, we know that in the past, the possession of such explosives ended up in their being planted on public buildings and essential installations with very disastrous consequences - See Rex v. Motloheloa Monne and Others CRI/T/3/82. I do not, even for one moment, believe that the accused intended keeping the explosives as though they were a kind of a sourvenir in No.2 and 3 accused's house and cafe, respectively. Had the police not been as vigillant as they have been only the Almighty knows where the explosives were going to be planted this time and with what disastrous results.

To convince oneself that the offence created under the provisions of s. 16(1) is, indeed, a serious offence calling for commensurately serious punishment, one has only to look at the penalty which Paliarment, in its wisdom, has deemed fit to prescribe upon a conviction on this kind of offence. The maximum sentence is a fine of M5,000 or 5 years imprisonment or both such fine and imprisonment. A very heavy sentence indeed.

I come to the conclusion that the following sentence is appropriate and accordingly each of the accused is sentenced : A fine of M500 or 12 months imprisonment in default of payment of the fine. A further 2 years imprisonment suspended for 3 years on condition that the accused are not convicted of any offence under the Internal Security (General) Act 1982 during the period of suspension.

B.K. MOLAI
JUDGE.

11th May, 1983.

For Crown : Mr. Kamalanathan,
For Defence: Mr. Hodes & Mr. Maqutu.