Hon. Mofokeng J.

CRI/A/19/83

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOHOOANE SEKOTO — Appellant

v

R E X — Respondent

REASONS FOR
J U D G M E N T

Filed by the Hon. Chief Justice, Mr. Justice T.S. Cotran on the 19th day of May, 1983

The appellant pleaded guilty to the crime of rape before the Resident Magistrate at Leribe. He was sentenced to three years imprisonment. He is appealing against his sentence. On the 5th May 1983 I dismissed the appeal. My reasons follow.

The main grounds of appeal were that the appellant was

(1) a first offender and by pleading guilty had shown remorse, (Nthongoa and another v R 1980(1) LLR 196 at 198, and Lebitsa and another v R 1980(2) LLR 404 at 406 and

(2) that the magistrate had slavishly followed, and even incorporated into his judgment almost verbatim, the comments of a High Court Judge (Rooney J) in Raleting v R. CRI/A/25/1982 - dated 6th July 1982 unreported) in which the Judge had enhanced the sentence imposed by the same magistrate (from 18 months to 3 years) on a gang of youths who had raped, in succession, a girl of 14, the argument being that the facts of this particular case were different, and justify, at the very least, suspension of part of the sentence. (R. v Pessadt 1944 NPD 357 at 358).

The facts as admitted by the appellant were briefly these :

On the 28th January 1983, the complainant, a girl of

/17, was.......

17, was apparently stranded for lack of public transport from Maputsoe to Leribe (and then to a village called Mahobong) to deliver a letter from her parents to a certain Sekoati Sello. She asked the appellant for a lift in his car. He made several detours from her actual destination. His intentions were far from honourable. On the Thaba Phatsoa road he stopped his vehicle, invited the complainant to have sexual intercourse with him, and when she refused dragged her to the road side, and at knife point, raped her. She was virgo Intacta.

The appellant in mitigation submitted that the complainant by accepting a lift in his car had "enticed" him to do the act. However there is no evidence whatsoever that the girl wanted any more than a lift. I hope the day will never come where a request for a lift by girl in need of transport can be construed as a carte blanche to the man that the girl is of easy virtue and should submit to an act of intercourse.

The general rule (Lebitsa and another v R. 1980(1) LLR is that sentence is primarily a matter for the trial Court. However "where the trial Court has misdirected itself or imposed an unreasonable sentence the appellate tribunal is at large". I may add that the appellate tribunal will also interfere if the lower court took into account, or failed to take into account, as the case may be, other material factors.

The learned magistrate took into consideration the appellant's age. He was 29 and thus no chicken. He took into account that the appellant was a first offender (which was a favourable factor) and also that he pleaded guilty, but concluded (not unreasonably) that that a plea of guilty did not necessarily show remorse. He assessed the violent and shameful conduct of the appellant and the circumstances surrounding the rape and the prevalence of this type of offence in his district.

The sentence of three years imprisonment has not caused me a sense of shock. I saw no justification whatever in

/interfering

interfering with it and as I intimated earlier the appeal was dismissed.

CHIEF JUSTICE
19th May 1983

For Appellant : Mr. Sooknanan
For Respondent: Miss Moruthane } with copy of the Judgment