

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

XAVERI CHEMANE MATATA

Appellant

v

REX

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S.
Cotran on the 16th day of February 1983

The appellant was charged with three offences :

1. Culpable Homicide,
2. Failing to stop after an accident c/o to s.122(1)(a) of the Road Traffic and Transport Order 15 of 1970 read with s.135,
3. Failing to render assistance to the injured person contrary to s. 122(c) of the Order read with s. 135.

He was convicted on all three counts on his own purported plea of guilty and sentenced to two years imprisonment "all counts taken as one for the purpose of sentence".

The appellant appealed against his conviction on count I on the grounds that the outline of the case by the public prosecutor did not disclose any fact from which the magistrate could infer he was negligent or reckless as to make him guilty of culpable homicide. In fact the prosecutor said nothing on this point. Mr. Peete for the Crown, rightly in my view, does not support the conviction on the principle enunciated in R. v. Monyane 1980(2) LLR 309 at 311 and numerous other cases cited therein. I do not feel disposed to order the magistrate to enter a plea of Not Guilty and proceed with the trial on this charge. There are no sound reasons in this case why I should put the appellant in jeopardy since the facts on the other two counts were

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admitted and indeed were common cause. As far as these were concerned Mr. Peete for the Crown agrees with G.N. Mofolo that to sentence an old man of 61 (now 62) to go to prison for two years is harsh and serves no useful purpose. He had spent three weeks in custody when awaiting trial.

After the accident the appellant disappeared. The police were unable to trace him and it is now established that the appellant himself was so full of remorse that he proceeded to the traffic police and voluntarily admitted to them he was involved in that particular accident 18 days previously. He explained that he panicked and was afraid that if he stopped a mob will descend on him and beat him up or kill him. Of course if this was the case he should have gone to report earlier because if fear and panic there was it must have subsided after a day or two.

Nevertheless I do consider the custodial sentence, in the circumstances, excessive and not in accordance with real and substantial Justice and it is hereby set aside and substituted by a cumulative sentence of a fine of R500 or 6 months imprisonment in default of payment. The appellant has been given time to pay the fine by instalments and the Registrar should see to it that if these are not paid timeously a warrant of arrest and committal warrant be issued.

CHIEF JUSTICE

16th February 1983

For Appellant : Adv. G.N. Mofolo

For Respondent: Mr. Peete