CRI/A/58/83

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

SOBHUZA SOPENG Appellant

v

R E X Respondent

J U D G M E N T

Delivered by the Hon. Acting Chief Justice, Mr. Justice M.P. Mofokeng on 17th day of October, 1983

The appellant (who will be referred to as the accused) was charged in the Maseru Subordinate Court with assault with intent to do grievous bodily harm it being alleged that on the 12th day of August 1983 he unlawfully and intentionally assaulted the complainant by hitting him with fists on the face and with the intention to cause him grievous bodily harm. Accused pleaded not guilty but was eventually found guilty and sentenced to undergo imprisonment for a period of three (3) months.

The evidence is briefly to this effect that on the day in question complainant drove his vehicle to the outpatient department section of the hospital commonly referred to as Casualty. As he had recently been discharged from the same hospital he was rushing to collect his prescriptions. The time was between 4.30 p.m. and 5 p.m. As he rushed to the entrance he heard a voice call his name. He could not wait otherwise he would be late. All he could do, was to wave back without looking to see who the person was who called. As he waited for his medicines, the accused arrived. As soon as he had received the said medicines, the accused asked him if he knew him. He answered in the affirmative. He further asked him if he knew one Mrs. Chabalala and that she was his wife but before he could

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answer the accused started raining blows all over his head and face. He drove him down the passage to the Casualty. The complainant was bleeding through the mouth. They went out into another section of the hospital that is where payments are made. Eventually they got outside. Accused was still assaulting him continuously. He was at the same time being insulted. Accused forced him into his car. He had tried to resist eventually he gave in. By this time complainant's wife and his friend who were in the car were with them. The wife was trying to beg the accused to leave assaulting her husband who managed to throw his car keys at them.

Accused car went to the Charge Office and then to the Police Headquarters. In accused's office he was insulted and was ultimately instructed to sit in the passage outside. He obliged. After some time accused came out in possession of a firearm and said he was going to kill the complainant. He was instructed to go away. Accused stood behind him as he said so. Nevertheless complainant left. His version that he was being beaten by the accused as they emerged from the hospital precincts and further assaults and that he bled is borne out by many Crown witnesses. He did not deny before Mr. Tsasanyane and in fact threaten that he was still going to thrash the "boy" as he disparingly referred to the complainant, a married man. The medical doctor who examined the complainant on the same day found lacerations on the lower and upper lips, a haematoma on the occipital region. The wounds, were not dangerous to life but the force used was "considerable" and the injuries were caused by a blunt object. It was suggested to the doctor by the accused that the complainant might have fallen. The doctor rejected that and said blunt objects such as fists for an example might have caused similar injuries. He gave reasons for that statement.

Accused denies the Crown's version. He says that he met the complainant at a counter. He "caught hold" of him by the"shoulder". He instructed him to get into his (accused's) motor vehicle but he "resisted". He then "commanded" him to get

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in which he did. He does not explain the nature of the command which appeared to be so suddenly effective. He went via the charge office as he had an arrested person in the car as well. From there they proceeded to the Police Headquarters where the accused apparently has an office (for he is a high ranking officer). Outside his office he made complainant to stand and he "reprimanded him never to repeat that act". Then "I asked for his full names and addresses". Under cross-examination he conceded that because of his rank in the police force he has "great responsibility to the nation". He saw the complainant and his brother's wife in a car. Further details he obtained from secondary sources. He gave a somewhat startling answer to the effect that he did not know whether or not the complainant went into the motor vehicle with his (complainant's) will. He was asked if he had arrested the complainant to which he answered in the negative. He was then asked if he had requested him to enter the motor vehicle to which the answer was in the affirmative. He did so as an ordinary man.

The accused further called Mrs. Manamolela who describes herself as a "major" in the police force. Through her, he merely wished to establish that the charge against him is a deliberate fabrication because the investigating officer (who is his senior in the department) hates him. That might be so. The obiter to decide which case shall be prosecuted and before which court is the sole prerogative of the Director of Public Prosecutions. It has not been alleged that he displayed, in any manner whatever, manifestation of bias towards the accused.

When the accused first saw the complainant and Mrs. Chabalala together, he said nothing. Instead he went on a fishing expedition and obtained hearsay evidence concerning the complainant. Their meeting at the hospital in my view was no coincidence. The accused must have known that complainant would be there at that particular point in time. I say so because he does not seem nor does he give any reason for his presence at the hospital at that particular time. However,

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even if I am wrong, the formation of an intention can be made on the spur of the moment. It needs no ceremony to be made. It can also be inferred from subsequent acts of the accused. His assaults were vicious and hard. They were concentrated on the most vulnerable part of the body. His utterances before his senior Colonel Tsasanyane show clearly that the assault was with intent to do grievous harm.

"It is a painful task for the Court to call its officers by labels such as liars and the like adjectives. But some law enforcement officers who in the words of Cotran, C.J. in the case of R. v Thabo Monaleli, Review Order 42/1982 "should have known better" persistently perform such wanton acts that leave the courts utterly speechless." //The accused is described as a Captain. He says he "commanded" a person to do an act. Surely he knows what it is to give a command. At the rank where he is he has issued many commands. But he says he had requested that same person to do the same act. Command is not a synonym of request. One has to obey a command on sufferance of pain if you disobey (Court Marshall). One can accept or refuse a request. There is no semanticism of the English language involved. The accused used a word which is used frequently in his profession. It is in his vocabulary. He was just trying to mislead the Court which is a very distasteful thing to say about an officer of one's Court. But when the moment has arrived these things must be spoken so as to be corrected.

There are eye-witnesses who saw the assault take place. They are honest to say they did not see how it all started but they saw when the two people emerge. There is a ring of truth about their version of what they saw, corroborated to a certain degree by the evidence of the accused himself in trying to evade the simple truth. You reprimand a person and after a good lecturing, as a final act, you then say: "By the way, who are you and where do you live? Surely that does not make sense.

There is no merit in this appeal whatever.

In his own words the accused has conceded that he has

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"great responsibility to the nation". Cotran C.J. said in R. v Thabo Monaleli (supra): "He shot a person for no reason, in cold blood, at virtually point blank range". Here, the accused chased, pushed assaulted a member of the general public in a public place, full of people who were victims, perhaps of assaults and awaiting the police to act with utmost dispatch and apprehend their assailants. Instead, they see a law enforcement officer, himself, doing the work of thugs. A true administrator of the law (a police officer is but a part of that huge organisation) encourages the general public to respect (and take their complaints to) the law and that self-help is not allowed by law. Now what do they say when they see a senior police officer, an administrator of the law in their eyes taking the law into his hands? A police officer resorting to the doctrine of self-help the consequences of which he knows pretty well from practical experience? We all hang over heads in shame.

We have had a spade of cases recently in this Court involving police officers doing quite irresponsible acts. Unless the Commissioner of Police rectifies this situation and soon, there will be a tragedy.

The sentence imposed upon the accused by the Court a quo is hopelessly inadequate. It is a traversity of justice. A police officer who lost his appeal in this very Court is serving a sentence of nine(9) months imprisonment. (Takalimane v R, CRI/A/35/83). It is true that in that case a firearm had been used. But then it was at the Officers' Mess and there were only two or three people left. There should, where possible and circumstances permitting, be uniformity of sentences. The assault on the complainant was vicious and ot:en. The complainant had recently been discharged from the hospital. He was threatened with death. He saw the firearm in the hands of the accused, who took the law into his hands (self-help) which is frowned upon by the Courts. The list is not exhaustive. The sentence imposed by the Court a quo is

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hereby set aside (s.8(1)(d) of the High Court Act No.5 of 1978) and it is substituted by the following :

"Nine (9) months imprisonment".

ACTING CHIEF JUSTICE
17th October, 1983

For Appellant : Mr. Nthethe
For Respondent: Adv.Nku