

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

'MAMANOELI LETSOPHA 1st Appellant
'MAMATELA LEBONA 2nd Appellant

V

R E X Respondent

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice
J.L. Kheola on the 12th November, 1984.

The appellants appeared before the Resident Magistrate of Leribe charged with contravening section 7(1)(F) of the Internal Security (General) Act No.6 of 1982; in that upon or about the 30th day of June, 1983 and at or near 'Muela in the district of Leribe, the said accused did unlawfully support or benefit the members of Lesotho Liberation Army with intent to overthrow the Lesotho Government by force with subversive intention.

Alternatively, they were charged with contravening section 9(1) (b) of the Internal Security (General) Act 1981, in that upon or about the 30th day of June, 1983 and at or near 'Muela in the district of Leribe, the said accused did unlawfully being aware of the presence of members of Lesotho Liberation Army fail to disclose that information as soon as is reasonably practicable to a member of the police force.

The first appellant was found guilty in the main charge and sentenced to five (5) years' imprisonment. The second appellant was found guilty of the alternative charge and sentenced to pay R300 or to undergo fifteen (15)

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months' imprisonment. They are now appealing against both convictions and sentences.

It is common cause that on the 29th June, 1983 1st Appellant was at her home in the company of Lecheko Mohale (P.W.3) who was her lover. At about 9.00 a.m. a certain man armed with two 9 mm. automatic pistols and one big gun arrived. He was also carrying a bag. He asked the 1st Appellant whether that was the home of Ntate Letsopha and whether her name was 'Mamanoeli. At first she denied this but when the stranger became angry she admitted that her name was 'Mamanoeli and that was Letsopha's home. He told her that her visitor was waiting for her in the fields and he had a very heavy luggage and wanted her to assist him carry it. She asked who the visitor was; the stranger said he was Clementi Theko. She knew Clementi very well because he was her lover before he left the country. She also knew that Clementi was a terrorist. The stranger decided to go away and fetch Clementi together with his luggage.

After the departure of the stranger the 1st Appellant asked P.W.2 to leave as Clementi was a very dangerous man. P.W.2 complied and went to a nearby mountain where he had a very good view of Letsopha's houses. At about 10.00 a.m. the two men arrived with their luggage. It contained 9 handbrenades, 9 primas, 198 rounds of ammunition for 303 rifles, 158 rounds of ammunition for AK47 rifles and 300 rounds of ammunition for 9 mm. pistols. The two men left immediately after depositing their luggage in the house of the 1st Appellant. Before they left they showed her the place where she was to dig a hole and bury the explosives and the ammunition.

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It is further common cause that after the men had left P.W.2 returned to the house of 1st Appellant. She told her that the two men were terrorists and that they had left the explosives and ammunition in her house. That night P.W.2 assisted 1st Appellant to bury them. She says he volunteered to help her. He says she threatened to tell the terrorists to kill him if he refused to help her. On the following day the 1st Appellant received a letter from the 2nd Appellant informing her that Clementi and the other terrorist were at her house and wanted to see her. She immediately left for the home of the 2nd Appellant. After she had left P.W.2 reported the matter to one Moeketsi who advised him to go to Maputsoe police station and report the matter. P.W.2 did as advised and a team of policemen left for the home of the 2nd Appellant. During the arrest of the two terrorists Clementi managed to ignite a handgrenate and there was an explosion and police immediately started shooting with their rifles. Clementi died and some police officers were injured by the explosion.

It is further common cause that on the 30th June, 1983, the two terrorists had been drinking very heavily; while they were at the home of the 2nd Appellant the terrorists were dressed in a normal manner and displayed no weapons or explosives which showed that they were terrorists. During their drinking about a number of villagers visited the home of the 2nd Appellant and drank beer with the two men who were strangers in the village.

The 1st Appellant gave evidence that she failed to report the presence of the two men known to her to be terrorists simply because she was afraid that they would kill her. She assisted them to bury their explosives and

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ammunition for the same reason that they would kill her if she refused to do so. She told the Court that the two men threatened to kill her if she reported the matter to any person. She told the 2nd Appellant when she arrived at her home that the men were terrorists.

The 2nd Appellant testified that she knew Clementi very well and when he and the stranger arrived at his house and the latter proposed love to her, she suddenly fell in love with him. It was then that they started their drinking bout and by the time the 1st Appellant arrived she was already drunk. She denies that the 1st Appellant told her that the two men were terrorists. As they were dressed in the normal way and were not carrying any guns she had no suspicion that they were terrorists.

Mr. Pitso, counsel for the Appellants, has submitted that the 1st Appellant feared for her life if she disclosed the presence of the terrorists. He submitted that this was a reasonable explanation. He referred me to the case of R. v. Chipesa, 1964(4) S.A. 472 in which it was held that where the threat is directed to what might happen in the future, the fear created by the threat is much less than if the threat is an immediate one, because the accused can and should go to the authorities for protection. In the present case the 1st Appellant parted with the terrorists at about 10.00 a.m. when they instructed her to go and bury their explosives and ammunition. She was expected to bury them during the night. The terrorists left her alone for the whole day and night. On the following day she received a letter from the 2nd Appellant which made it quite clear that at that particular moment the terrorists were far away

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from her. She decided to go to them instead of going to the police. I do not think that Chipesa's case supports Mr. Pitso's submission at all. The threat in the present case referred to the future and the 1st Appellant had ample time to go to the police or to her chief. During the night when she and P.W.2 buried the explosives she had the chance to report to either her neighbours or her chief. This sort of fear based on what would happen in the future can under no circumstances be condoned by the law. The threat must relate to immediate harm to the person's life. I come to the conclusion that the 1st Appellant was properly convicted and her appeal against conviction is dismissed.

As far as the sentence of five years imprisonment is concerned I think the learned Resident Magistrate exceeded his jurisdiction. The jurisdiction of a Resident Magistrate is prescribed in section 62 of the Subordinate Courts Proclamation of 1938 as amended. It is imprisonment for a period not exceeding four years or a fine not exceeding one thousand rand. There is no provision in the Internal Security (General) Act 1982 authorizing any magistrate to exceed his normal jurisdiction and to impose the sentences appearing in the Act. If the Legislature intended to give more powers to magistrate to exceed their prescribed jurisdictions it would have done so in no uncertain terms like it has done in section 35 of the Dangerous Medicines Act No. 21 of 1973.

For the reason stated above I set aside the sentence imposed by the learned Resident Magistrate and substitute it with one of four (4) years' imprisonment which was the maximum of the trial Court.

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The conviction of the 2nd Appellant was not supported by any evidence except a single sentence by her co-accused that she told her that the two men were terrorists. The 2nd Appellant denied this and there is nothing in the record to show that she was lying. Three of the Crown witnesses visited her home and they saw nothing suspicious about the two men which indicated that they were terrorists. If the two men had their small parcels or bags in which they had their pistols and handgrenade it would be going too far to expect the 2nd Appellant to have demanded that her visitors should disclose the contents of their bags. After all he knew Clementi very well and fell in love with the second terrorist at first sight. As Miss. Moruthoane, counsel for the Respondent, rightly pointed out there is a strong probability that she knew or was told but there is no conclusive evidence in that regard.

The appeal against conviction and sentence by the 2nd Appellant is upheld.

ACTING JUDGE.

23rd November, 1984.

For the Appellants : Mr. Pitso

For the Respondent : Miss. Moruthoane.