

IN THE HIGH COURT OF LESOTHO

In the Matter of :

'MATSEPANG MATLENANE                      Appellant

v.

R E X

J U D G M E N T

Delivered by the Acting Mr. Justice J.L. Kheola  
on the 20th day of December, 1984.

The appellant was charged before the magistrate's court for the district of Butha-Buthe with assault with intent to do grievous bodily harm. It is alleged that on the 10th April, 1984 she unlawfully and intentionally assaulted 'Mantsoaki Letsoela by stabbing her with a knife on the shoulder and on the right ribs with intent to cause her grievous bodily harm.

The appellant pleaded guilty to the charge and in terms of section 240(1)(b) the public prosecutor accepted the plea and stated the facts disclosed by the evidence in his possession. The appellant admitted the facts. She was found guilty as charged and sentenced to six (6) months' imprisonment. She is now appealing to this Court against both conviction and sentence.

The facts of the case are as follows: Prior to the 10th day of April, 1984 the appellant had complained to her husband about an illicit love affair he had with the complainant. Her husband said she had not caught him red-handed with the complainant. On the 10th April, 1984 the appellant armed herself with a knife and went to Butha-Buthe township. On her arrival there she found her husband in the company of the complainant, another man and a woman. They were standing near the buildings of the Department of Cooperatives and chatting. When

2/ the appellant ....

the appellant appeared, her husband turned and faced in a different direction. She told him that she had 'caught him', he remained silent. She then accused the complainant of being in love with her husband. When she denied the allegation, the appellant got hold of her and stabbed her on the right ribs. She ran away but the appellant chased her and stabbed her on the left shoulder blade with a knife. A policeman who was standing nearby arrested the appellant and charged her accordingly.

The medical evidence was that the two stab wounds were not dangerous to life and that only light force had been used to inflict them. The complainant was admitted on the 10th April, 1984 and discharged on the following day.

The trial court found that at the time the appellant found her husband in the company of the complainant and two other people, they were standing and chatting and they were neither committing any adultery nor kissing each other. The learned magistrate was of the opinion that the appellant could have resorted to other remedial measures other than stabbing the complainant with a knife. He held that the appellant took the law into her own hands. I agree. If the appellant had come upon the infidelity of her husband suddenly and immediately attacked the complainant the Court would have to consider the question of provocation. The complainant and the husband of the appellant were not doing anything suggesting infidelity.

Mr. Mofolo for the appellant has argued that to say that a woman finding her husband in compromising circumstances should have had a choice of alternatives is going against the rules of nature. With respect, I do not think that the appellant found her husband in any compromising circumstances. It is true that the husband behaved in a suspicious way when the appellant found him in the company of the complainant. This was due to a guilty

3/ conscience because .....

conscience because his wife had previously accused him of having a love affair with the complainant. At that time the complainant was not standing with the husband of the appellant alone in a secluded corner of the township away from other people. If the courts of law are going to show mercy to women who attack other women on mere suspicion that they are in love with their husbands that will encourage women to take the law into their hands. There is no evidence that the appellant ever complained to the complainant about the alleged love affair and warned her to stop it. She did not even behave in a suspicious manner when she saw the appellant. This may be an indication that she was not in love with the appellant's husband.

The appeal on conviction is dismissed.

Now on the question of sentence, I have been asked to set it aside because it 'evokes a sense shock'. It is trite law that the passing of sentence on an accused person is pre-eminently in the discretion of the trial court. However, that discretion must be exercised judicially and not arbitrarily (Nthongoa and Another v. Rex, 1980 (1) L.L.R. 196). The unfortunate thing in this case was that the appellant was not represented by a legal practitioner at the trial and she failed to draw to the attention of the learned magistrate mitigating factors in her favour. However, the learned magistrate did his best to elicit some relevant information from the appellant. She said she had 'no premeditation, she was provoked and the complainant said she (appellant) was also in love with her (complainant's) husband'. The learned magistrate rejected lack of premeditation on the ground that when she left her home the appellant armed herself with a knife. I agree with the learned magistrate. However, it must be remembered that the appellant had previously warned the complainant and her husband to desist from their love affair but they denied that they were in love. I am

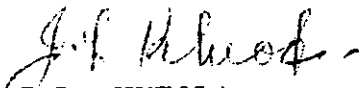
4/ of the opinion .....

of the opinion that when the appellant found them together away from home she concluded that it was by prior arrangement and the provocation must have been unbearable.

In her grounds of appeal the appellant has stated that she has a one year, seven months old child who requires her constant attention.

Taking all the factors into consideration, I am of the opinion that a custodial sentence without the option of a fine was too harsh and it substantially differs from the sentence this Court would have imposed. The medical evidence shows that only light force was used to inflict the injuries and that the injuries were not dangerous to life. However, it is not without some reluctance that I have decided to set aside the sentence of the trial court.

The appeal against sentence succeeds and the sentence of six months' imprisonment is set aside and substituted with one of R50.00 or 3 months' imprisonment in default of payment of the fine.

  
J.L. KHEOLA  
ACTING JUDGE

20th December, 1984.

For Appellant : Mr. Mofolo  
For Respondent : Mr. Seholoholo.