

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

RAMOSA SEQOQO

V

R E X

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice
J.L. Kheola on the 18th June, 1984.

The appellant was charged before the Magistrate of Mokhotlong with the offence of assault with intent to do grievous bodily harm. It is alleged that on the 18th September, 1983 and at or near Matsoku in the district of Mokhotlong the accused wrongfully and unlawfully and intentionally assaulted 'Makhotso Tsoeu by hitting her with a stick on the left shoulder and left elbow, on the buttocks, on the nose and on the left ear with intent to do grievous bodily harm.

The appellant pleaded not guilty to this charge but at the end of the trial he was found guilty as charged and sentenced to a fine of M200 or 12 months' imprisonment in default of payment of the fine. The appellant is now appealing against both the conviction and the sentence.

/'Makhotso

'Makhotso Tsoeu testified that on the 18th September, 1983 she was at the home of one Tsotang Thatho in the company of Tsotang, 'Matsamaelo Thatho, Manyali and 'Mamapoto. On his arrival the appellant attacked her with a stick and hit her on the nose without saying a word to her. He again hit her on the left ear and on the left arm. As a result of the hitting she fell down and the appellant continued to hit her with the stick on the buttocks till she fainted. She says that when she regained consciousness Tsotang asked the appellant why he assaulted her. In reply the appellant said he wanted to kill her because she was a prostitute like her mother who had died because she was a prostitute. The appellant did not cross examine this witness.

'Matsamaelo Thatho (PW.2) and Tsotang Thatho (PW.3) described the assault in terms similar to those of the complainant. They both repeated that the appellant hit the complainant without saying a word to her.

The medical evidence was to the effect that there were severe contusions on the left shoulder and elbow and buttocks, small wounds on the nose and left ear. The doctor formed the opinion that the injuries were inflicted with a stick and that savage degree of force was used to cause the injuries. Nevertheless they were not dangerous to her life.

The appellant denied that he assaulted the complainant. His version of what took place is as follows: When he

/arrived

arrived at the home of Tso tang the complainant and 'Matsamaelo were fighting, he intervened and separated them with his hands without the use of any weapon. Tso tang did not try to stop the fight but came out of his house holding a stick and a rim. He says that after he had stopped the fight the complainant went away and when she was about 50 paces away from them she said she would never stop having sex with Tso tang. He did not see any injuries on the complainant.

Mosokoli Baleng (DW.2) testified that last year in November a child came to his house and reported that the complainant and 'Matsamaelo were fighting at the home of Manyali. He rushed to the scene of fighting and found that the complainant was already bleeding through the nose. He and Tso tang tried to stop the fight but in vain. He went away and called the appellant who succeeded to separate the two women. Immediately after the fight was stopped Tso tang started playing his musical instrument called "cumba-cumba" and the two women danced to the music. Under cross-examination this witness admitted that the appellant came to the scene of the fight before him.

The evidence of Buang Sondodo (DW.3) is substantially the same with that of the appellant and DW.2.

In his judgment the learned magistrate pointed out that the appellant did not cross-examine the complainant and that her evidence remained unchallenged. I agree with him but failure to cross-examine a witness must not be overemphasized especially where an accused person is

/unrepresented

unrepresented. In Rex v. 'Mota Phaloane, 1980(2) L.L.R. 260 it was held that "it is important for the defence to put its case to the prosecution witnesses as the trial Court is entitled to see and hear the reaction to every important allegation. But failure to put his case does not always imply an acceptance of the evidence of the Crown witnesses although it may weaken criticism of those witnesses. The evidence for the defence is entitled to the same careful consideration as if the elements of the defence case had been put to the witnesses for the Crown." It is also important where it is intended to suggest that the witness is not speaking truth upon a particular point, his attention must first be directed to the fact by cross-examination, so that he may have an opportunity of examination. (Phipson, Evidence, 7th edition p. 460).

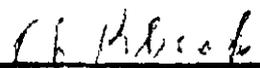
In the present case I am convinced that the trial Court gave a proper consideration to the evidence for the defence and rejected it on other grounds. The trial Court found that there were many discrepancies and contradictions in the evidence of the defence witnesses. For instance, the appellant says that when he was intervening he did not see injuries on PW.1 at such a close range. But DW.2 and DW.3 saw that she was bleeding through the nose. I find it quite improbable that the man who actually handled these women when he separated them could not see that one of them was bleeding through the nose. DW.2 says that immediately after the fight between PW.1 and PW.2 was stopped the two women started dancing when PW.3 played his musical instrument. The appellant did not see this.

/Bearing

Bearing in mind the gravity of the injuries PW.1 had sustained I find it hard to believe that immediately after the fight was stopped she was in such a jovial mood that she started dancing.

The trial magistrate had the advantages which this Court cannot have of seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has he had the opportunity of observing their demeanour, but also their appearance and whole personality. This should never be overlooked (Rex v. Dhlumayo and another 1948(2) S.A. 677). In the present case I find that there has been no misdirection on fact by the trial magistrate. He rightly believed the Crown witnesses and disbelieved the defence witnesses for reason which are apparent from the record.

The appeal is dismissed.



ACTING JUDGE.
18th June, 1984.

For the Appellant : In Person
For the Crown : Mr. Peete.

CC: Ramosa Seqoqo,
Ha Kente Lesesa,
MOKHOTLONG.