CRI/A/53/84

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

BETHUEL LETLAPA MOTOHO

V

R E X

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice
J.L. Kheola on the 22nd June, 1984.

On the 14th February, 1984 the appellant appeared before a magistrate of Maseru charged with two counts of theft. The charges read as follows :

Count 1

That the accused is guilty of the crime of theft. In that upon or between the 17th day of November, 1983 and the 25th day of November, 1983 at or near Police Headquarters in the Maseru district, the said accused did unlawfully and intentionally steal a cheque No. 1 - 043910 amounting to R2,000.00 the property or in the lawful possession of Commissioner of Police.

Count 11

That the said accused is guilty of the crime of Theft. In that upon or between the 11th day of January, 1984 and the 14th day of January, 1984 at or near Police Training College in the

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district of Maseru, the said accused did unlawfully and intentionally steal a cheque No. 1- 053696 amounting to R7,557.00 the property or in the lawful possession of Commissioner of Police.

The appellant pleaded guilty to these charges. Having accepted the plea the public prosecutor stated the facts of the case disclosed by the evidence in his possession.

The facts were that the appellant was working at the Police Headquarters as an accounts clerk. Between the 17th and 25th November 1983 he came across a cheque form No. 1- 043910 for an amount of R2,000. He took the cheque and gave it to one Isaac Hatla who is a policeman. Isaac Hatla took the cheque and went to the Maseru branch of the Standard Bank and presented it. After appending his signature he was given the money. He thereafter gave the appellant an amount of R500 as his share.

Between the 11th and the 14th January, 1984 the appellant went to the Treasury to fetch cheques which he was to take to the Police Training College. Amongst those cheques he took cheque No. 1 - 053696 for an amount of R7,557 and gave it to Isaac Hatla who went to the Maseru branch of the Standard Bank and cashed it but he did not give the appellant anything this time.

These cheques were in the possession of the Commissioner of Police and he had not allowed the appellant to take them. Thereafter the appellant was arrested and gave an unsatisfactory explanation about the cheques. The two

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cheques were handed in as exhibits.

The appellant admitted these facts. He was found guilty as charged and sentenced to 15 months' imprisonment in Count 1 and to 2 years' imprisonment in Count 11. The appeal was originally against sentence only but at the hearing of this appeal on the 14th June, 1984 Mr. Phakoane for the appellant applied that they be allowed to appeal against conviction as well. The application was granted.

Mr. Phakoane argued that the facts stated by the Crown did not disclose an offence because (a) they did not disclose the nature of the relationship between Isaac Hatla and the appellant; (b) the explanation given by the appellant was not disclosed to the Court. It was for the Court to decide whether it was unsatisfactory or not. He referred me to the case of Mokhutsoane v. Rex 1980 L.L.R. 142 in which it was held that "the golden rule is that created by section 126(1) of the Criminal Procedure and evidence Proclamation (now section 127 of the Criminal Procedure and Evidence Act 1981) i.e. the offence with which an accused is charged must be set forth in such a manner and with such particulars as may be reasonably sufficient to inform the accused of the nature of the charge."

I do not think that the present case bears any similarities with Mokhutsoane's case. The appellant is charged with the theft of two cheques numbers 1 - 043910 and

1 - 053696 for the amounts of R2,000 and R7,557 respectively. The particulars of the charge were very clear and that is how the appellant understood them. The statement of facts by the Crown further made it quite clear what the appellant had done. In the course of his duties as an accounts clerk the appellant came across the two cheques and decided to steal them. Working in concert with Isaac Hatla the appellant had the two cheques cashed. From the first cheque of R2,000 Isaac Hatla gave him only R500 and from the second cheque of R7,557 Isaac Hatla decided to give the appellant nothing. It is immaterial that the appellant was cheated by his companion in the sharing of the loot because lucri faciendi causa is not an essential of theft.

Mr. Phakoana's submission that the evidence does not disclose the relationship between the appellant and Isaac Hatla cannot in any way affect the verdict reached by the trial court. The relationship does not really matter. All we know is that Isaac Hatla was a policeman and there is no evidence that he was senior to the appellant, nor that he ordered the appellant to give him the cheques against his (appellant's) will. The evidence shows that the appellant willingly entered into the scheme of stealing the money working in concert with Isaac Hatla.

I also find that there was no need for the public prosecutor to disclose to the Court what explanation the appellant gave as we are not dealing with a case where a person is found in possession of recently stolen goods and

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is unable to give a satisfactory account of such possession. In such a case the explanation must be disclosed because the Court must decide whether the explanation is unsatisfactory. In the present case the Crown had enough evidence to prove that the appellant stole the cheques and the money. As the appellant pleaded guilty to the charges it can reasonably be assumed that the explanation was that he stole the chequs and the money. Such a confession is an unsatisfactory explanation. There was no suggestion at all that the explantion was an exculpatory statement.

The appeal on conviction is dismissed.

The appeal on sentence is based on several grounds. The first one being that the trial court failed to take into account the personal circumstances of the appellant, namely, that the appellant is a first offender, that he pleaded guilty, that there is a civil claim he has to face. that he has dependants and that he is a young man of 25 years of age. It is not absolutely correct that the trial court did not consider all the above factors. On pages 4 and 5 of the judgment all but one of these factors were considered and taken into account before passing sentence. The only factor that was not specifically mentioned is age. It is true that the appellant is a young man but it has not been shown that his companion Isaac Hatla is a much older man than the appellant and that it was through his influence that the appellant entered into this unlawful scheme of stealing. For this

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reason there was nothing special about the appellant's age as a person of 25 years of age is an adult.

Mr. Phakoane submitted that where the trial Court has taken into consideration factors which it ought not to have taken the Appellate Court must intervene. (R. v. Makosholo Review Case No. 349/82, unreported). He contended that there was no evidence that the appellant was put in a position of trust. I disagree with this submission. An accounts clerk is an employee in a position of trust.

It was also argued that the trial Court took into consideration that the money was the property of the Government of Lesotho and yet there was no evidence to that effect. This is not quite right because the two cheques were drawn by the Accountant-General on behalf of the Government of Lesotho and payable to the Commissioner of Police (first cheque) and to Commander P T.C. (second cheque). The fact that the two officers are named in their official capacities clearly shows that the money was intended to be used for official purposes. Section 133 (2) (d) of the Criminal Procedure and Evidence Act 1981 provides that in a charge for an offence committed in connection with anything in the occupation or under the management of any public officer, the thing may be described as belonging to the officer without naming him.

A sentence of 3½ years for the theft of R9,557.00 has not struck me as being too harsh.

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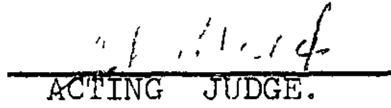
The appeal on sentence is dismissed.



ACTING JUDGE.

22nd June, 1984.

For the Appellant Mr. Phakoana

For the Crown : Mrs. Bosiu