

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

THEBE MAHAPA

APPELLANT

v

REX

RESPONDENT

J U D G M E N T

Delivered by the Honourable Acting Judge, Mr. Justice M.L. Lehohla,
on the 18th day of August, 1986.

The Appellant in this case appeared before the Magistrate's Court at Mafeteng, charged with assault with intent to do grievous bodily harm.

He pleaded guilty to the charge and confirmed the Public Prosecutor's outline of the case and was properly convicted. His appeal is against sentence only.

The facts in brief show that complainant's son Paulus Khotle was herding cattle on 18-4-86. He drove them home in the afternoon. When the cattle were about to enter the kraal, accused started chasing after Paulus. Complainant intervened and asked why accused was chasing his son. Thereupon accused came at complainant, drew a sword and fetched him a gashing blow with it on the forearm. Complainant was sent for medical treatment and was not admitted to hospital. The injury is described as a cut wound fracture on the left forearm. Accused surrendered himself to the police ten

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days later, was cautioned and charged.

The Appellant is a first offender. In mitigation of sentence, it is recorded "the accused asks for clemency".

In his reasons for Judgment, the learned Magistrate stated that "In using a lethal weapon such as a sword, shows that the accused in fact intended to cause grievous bodily harm on the person of the complainant or even to bring about his death".

Indeed the outline of the case by the Public Prosecutor disclosed enough evidence to show that accused had intended committing the offence charged, i.e. assault with intent to do grievous bodily harm. The weapon used was a lethal one, namely a sword.

But in imposing sentence it does not seem that Appellant's personal circumstances were taken into account. Nothing in the records reveals that he has a family to support. No probing into his means of livelihood has been done. While on the one hand the mere fact that he is a first offender does not entitle Appellant to expect kid-glove treatment from the courts, yet on the one hand in assessing the totality of his personal circumstances that fact cannot be ignored.

Before this Court, he reiterated his remorse for

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having caused the injury, a factor borne out by his readiness to plead guilty despite what in argument before me appeared to be a case of self-defence or a claim of right to impound the cattle in obedience to the ^{chief's} / orders. I mention this only in passing because it is not in issue as such.

Appellant submitted that he is married. He has children whom he has to find in food and clothing.

It is significant that the Court a quo in its reasons for judgment indicated that accused in using a lethal weapon had intended "..... even to bring about his death." Yet the facts outlined did not bring to surface any such notion. It cannot, in the circumstances, be said the Court a quo was not influenced in imposing sentence by this notion in the absence of any mention into what factors it took into account regarding accused's personal circumstances. The nature of the injury warranted treatment of complainant as an out-patient. It is not stated how serious the injury was.

Regard being had to the concessions made by the Crown that the Court a quo did not give due weight to factors not revealed in the record it is clear that omission of such factors amounts to a misdirection warranting intervention by this Court. NTHONGOA & ANOTHER vs. R. 1880(1)LLR at 197 and Mojela vs Rex 1977 LLR at 321.

Consequently the appeal against sentence is quashed

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in
and/its place is substituted the following' Accused is
sentenced to six months' imprisonment or M60 fine.

M.L. AEHOHLA
A C T I N G J U D G E

19.8.86.

For Appellant : In Person

For Respondent : Mr. Mokhobo