

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TSELISO MATJOLA

Appellant

v.

R E X

J U D G M E N T

Delivered by the honourable Acting Chief Justice Mr.
Justice J.L. Kheola on the 14th day of October, 1986.

The appellant appeared before the subordinate court of first class at Mafeteng charged with assault with intent to do grievous bodily harm; it being alleged that on the 1st day of June 1986 and at or near Ha Motanyane in the district of Mafeteng the said accused did unlawfully and intentionally assault Samuel Khang by hitting him with an axe and an iron rod on the body with intent to do grievous bodily harm.

The appellant pleaded guilty to the charge. The public prosecutor gave a summary of the facts of the case as disclosed by the evidence in his possession. The facts were that on the day in question the complainant was sleeping in his house when the accused arrived armed with an axe and an iron rod. The accused suddenly attacked the complainant and started hitting him with the iron rod. The complainant warded off the blows with his arms. Then the accused changed his weapons and struck the complainant with the axe on the head causing a large laceration. The

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complainant sustained a fracture of the 4th finger on his left hand. The accused left the scene of the crime immediately after he struck the complainant with the axe.

The accused admitted the facts stated by the public prosecutor and was found guilty as charged and sentenced to twenty-four (24) months' imprisonment without the option of a fine. He is now appealing to this Court against sentence only on the ground that the sentence was too severe and gives one a sense of shock.

The trial court was apparently under the wrong impression that because dangerous weapons were used, the accused had to be severely punished irrespective of the seriousness of the injuries inflicted with those weapons. According to the statement of the facts by the public prosecutor the complainant was not admitted into hospital but was treated as an out-patient. The size of the laceration on the head is not stated and no mention is made of the sort of treatment the complainant received. When a court is faced with a case of assault with intent to do grievous bodily harm medical evidence is of vital importance because it gives the court a clear picture of the extent of the injuries. In the present case I have no doubt in my mind that the accused had the necessary intention to cause grievous bodily harm and that he was properly convicted. However, the summary of the medical evidence is so vague that it is impossible to make a proper finding regarding the extent of the injuries. Judging from the fact that the complainant was treated as an out-patient one is justified in coming to the conclusion that the injuries were not serious nor dangerous to life.

The accused is a first offender and when he was asked whether he had anything to say in mitigation of sentence he said he had nothing

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to say. Ignoring numerous decisions of this Court the magistrate hurriedly imposed a sentence of twenty-four months' imprisonment. Section 295 (2) of the Criminal Procedure and Evidence Act 1981 provides that before passing sentence, the court may receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed. The magistrate ought to have elicited from the accused some relevant information that would enable him to pass a proper sentence ('Matsepang Motlenane v Rex, CRI/A/94/84 dated 20th December, 1984 (unreported).

Mr. Mda for the appellant pointed out other mitigation factors such as that the appellant cooperated with the police in the investigations of this case; he pleaded guilty as a sign of remorse; the injuries inflicted by the accused were not serious and that the accused is a married man with three minor children. He works as a nightwatchman and earns a salary of R120 per month.

Taking into account all the factors I have attempted to summarize above I allowed the appeal on the ground that the sentence was too severe and evokes a sense of shock. The sentence imposed by the lower court was set aside and substituted with one of M150-00 or four (4) months' imprisonment.

J.L. KHEOLA
ACTING CHIEF JUSTICE.

30th December, 1986.

For Defence - Mr. Mda
For Crown - Mr. Seholoholo.