CRI/A/80/85

IN THE HIGH COURT OF LESOTHO

In the Appeal of -

'MANKHOPOTSENG KHABO Appellant

v.

R E X

JUDGMENT

Delivered by the Hon. Acting Chief Justice J L. Kheola on the 26th day of May, 1986.

The appellant appeared before the Mafeteng magistrate's court charged with assault with intent to cause grievous bodily harm. She pleaded guilty to the charge After the public prosecutor had stated the facts of the case as disclosed by the evidence in his possession the appellant accepted them as true and correct. She was sentenced to six (6) months' imprisonment without the option of a fine She is now appealing to this Court against sentence

The facts of the case were that on the 25th day of November, 1984 the complainant was leaving her home when she saw the son of the appellant beat her dog She went to the appellant's home and asked her shy she did not stop her son from beating the dog Before the complainant replied the appellant struck her on the head and on the right arm with

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something she had in her hand. Medical evidence was to the effect that the complainant had sustained a 2x3 cm laceration on the scalp and a 1x5 cm laceration on the occiput.

May I again ask magistrate to warn public prosecutors that the outline of the case must disclose all material facts which will help the court to return a proper verdict. In the present case medical evidence did not disclose what kind of weapon could cause such injuries - was it a sharp or blunt object? What degree of force was used to inflict such injuries? Were they dangerous to life? These facts would have assisted the magistrate in considering what sentence to impose

As early as 1977 my late brother MOfokeng had already started hammering into the heads of magistrates the idea that sentencing of a convicted person is matter that needs very careful consideration of all mitigating factors In Mojela v Rex, 1977 L L.R 321 at pages 324-25 he said

> "It is true that a first offender cannot as a matter of right expect that his sentence will be suspended. Indeed, depending on the circumstances of a case the court may be completed to impose a sentence of imprisonment (sometimes a very long sentence of imprisonment). But whenever possible, however, a first offender should not be send to prison. Ordinary a suspended sentence will be beneficial to the accused. Sending a first offender to prison and for a short period does not benefit the first offender nor the community. Administratively it is more of a nuisance than a benefit because the authorities concerned with reformation of the offender have absolutely no time to perform their special task. Instead, the first offender only has time to mix with undesirable characters in prison to his detriment and that of the society. It is generally acceptable in this modern age to assist the firstoffender, wherever possible, not to send him to prison especially for a short period."

In the instant case the appellant is a first offender. She is a young woman with two small children. Her husband is a migrant labourer in

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the mines of the Republic of South Africa. She pleaded guilty as a sign of remorse. The injuries she inflicted on the complainant do not appear to have been too serious. I do not think that if the magistrate had elicited relevant information showing mitigating factors, he would have sent this poor woman to prison without the option of a fine. It is gratifying to note that most of our magistrate's now take a very active part in eliciting relevant information showing mitigating factors in all cases where the accused is not represented by a lawyer. Only a few magistrates still write things like. "Mitigation - N.T.S." "Clemency".

It seems to me that in the present case the magistrate did not exercise his discretion judicially and misdirected himself by not taking into consideration any of the mitigating factor

The appeal is allowed and the sentence imposed by the trial court is set aside and substituted with one of M60 or 3 months' imprisonment.

J.L KHEOLA
ACTING CHIEF JUSTICE

3rd July, 1986

For Appellant - Mr. Mda

For Crown - Miss Nku.