

IN THE HIGH COURT OF LESOTHO

In the Appeal of:-

'MALEBOHANG LESOLE

Appellant

v.

R E X

J U D G M E N T

Delivered by the Hon. Acting Chief Justice
J.L. Kheola on the 9th day of June, 1986.

The appellant and another person appeared before the magistrate's court for the district of Berea charged with malicious injury to property, it being alleged that upon or about the 20th September, 1985 and at or near Ha Mokonyana in the district of Berea, the said accused did each or one or both of them unlawfully and intentionally destroy a knitting machine the property or in the lawful possession of 'Malydia Lesole with intent thereby to injure the said 'Malydia Lesole in her property. The appellant pleaded guilty to the charge and after a separation of trials was ordered the public prosecutor stated the facts of the case in terms of section 240(1) (b) of the Criminal Procedure and Evidence Act, 1981.

The facts of the case were that on the 20th September, 1985 the complainant went to 'Mashati's village. Before she left her house she

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locked the door and gave the key to one 'Manthabiseng who was the second accused in the court below. She returned to her village late in the afternoon and collected her key from 'Manthabiseng. When she came to her house the door was unlocked and her knitting machine had been broken to pieces. The matter was reported to the police and the appellant was arrested. During the interrogations the appellant "alleged that she knew something about the breaking of the machine."

The words I have underlined are the basis for the verdict of guilty returned by the learned magistrate. It seems to me that those words are vague and ambiguous. The appellant did not admit that she broke the machine; she merely said that she knew something about the breaking of the machine. This could have meant that she saw the person who broke it or that she was present when the machine was broken but took no part in the breaking. What I am showing is that the statement of facts by the public prosecutor does not disclose the commission of the offence with which the appellant is charged or any other offence of which he could be found guilty.

It has been stated by this Court on numerous occasions that if the facts stated by the public prosecutor do not disclose the commission of an offence with which the accused is charged or any other offence with which he may be found guilty, the magistrate must return a verdict of not guilty despite the fact the accused has accepted the facts as true (see R. v. Motjola 1977 L.L.R.1, Rex v. Mokhathi Taeli, Review Order No.27/84 (unreported), Rex v. Khalema and another, 1981 (1) L.L.R.97).

It came as no surprise to me when Miss Nku, counsel for the Crown, intimated to the Court that the Crown did not support the conviction. She submitted, inter alia, that the statement that the appellant made that "she knew something about the breaking of the machine" was made to police

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officers during interrogations. A confession made to a policeman is inadmissible unless it was subsequently reduced to writing before a magistrate (Section 228(2) of the Criminal Procedure and Evidence Act, 1981). I agree with this statement of the law but I must point out that the appellant's statement was not a confession; she did not unequivocally admit guilt. In a case where the outline of the case by the public prosecutor consists of inadmissible evidence the accused must be acquitted.

For the reasons stated above I came to the conclusion that the conviction and sentence of the court below should not be allowed to stand. The appeal was allowed.

J.L. KHEOLA
ACTING CHIEF JUSTICE

2nd July, 1986.

For Appellant - Mr. Mofolo
For Crown - Miss Nku.