

IN THE HIGH COURT OF LESOTHO

In the matter between:-

THABISO RABOJANE

Appellant

and

R E X

REASONS FOR JUDGMENT

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 8th day of September, 1989

The appellant was charged with two counts of assault with intent to do grievous bodily harm. He pleaded not guilty to both charges but was found guilty of common assault in Count 1 and guilty as charged in count 2. He was sentenced to pay a fine of M40-00 or four months' imprisonment and six (6) months' imprisonment respectively.

He is now appealing to this Court against sentences only on the following grounds:-

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1. The sentence of M40.00 or 4 months' imprisonment for an assault with fists where a minor degree of force has been applied is too severe and induces a sense of shock.
2. The sentence of six months without the option of a fine where the only injury caused is a small incised wound on the wrist is out of proportion with the gravity of the offence charged.
3. The Honourable Resident Magistrate having given the Appellant an option of a fine in the one count ought to have given the same consideration in the other count otherwise the option of a fine served no reasonable purposes since appellant still has to serve a term of imprisonment although a fine has been paid.

The facts of the case were that on the 15th May, 1987 Puleng Mafisa was in her house at about 7.45 p.m. The appellant arrived there. He asked Puleng to allow him to sit on the bed but Puleng refused and said that he must sit on a bench. He sat on a bench and introduced himself to her. He proposed love to her but she told him that she had a lover and did not want to have any other lover. They both went outside and found Puleng's lover waiting for her outside.

The appellant suddenly attacked Puleng without any warning and punched her on the face with fists and kicked her on the legs. She ran away to a neighbour's house but the appellant chased her. He found her in the house and again hit her on the face with fists.

Medical evidence was to the effect that Puleng had bruises on the face which were minor and not dangerous to life.

The facts of the case in count 2 were that on the 13th September, 1987 Policewoman Masopha was at T.Y. bus stop between 5.45 p.m. and 6.00 p.m. She was in the company of her two sisters, namely Lineo Lechele and 'Mahalio Makhupane who wanted to see her off to Maseru. After she had boarded a taxi she noticed that the appellant was holding Lineo in an indecent manner. She alighted and reprimanded the appellant, but the latter did not take kind to the reprimand. He slapped Policewoman Masopha on the face. She also slapped him and then the appellant took out a knife from his pocket and stabbed her on the right wrist.

Medical evidence is to the effect that she had a small incised wound on the right wrist-posterior aspect. The doctor did not say whether or not light degree of force was used. It can reasonably be inferred that only light force was used to inflict that small incised wound. A knife is a sharp object which does not require any considerable force to cause severe

injury to a human being whose skin is very delicate. In the instant ^{case} the injury was so minor that it cannot be said that the accused had the requisite intention to cause grievous bodily harm.

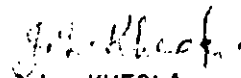
In S.v. Mbelu 1966 (1) P.H., H176 (N) Miller, J. said:-

factors which provide the index to the accused's state of mind. I am not suggesting that these four factors are exhaustive; I do suggest that in the large majority of cases these are the factors which provide a guide to the accused's state of mind. They are, first, the nature of the weapon or instrument used; secondly, the degree of force used by the accused in wielding that instrument or weapon; thirdly, the situation on the body where the assault was directed, and and fourthly, the injuries actually sustained by the victim of the assault."

I am of the opinion that the injury actually sustained by the victim of the assault in the instant case fail to prove beyond a reasonable doubt that the appellant had the requisite intent because it is too minor.

I set aside the conviction and sentence in Count 2 and substitute a conviction of common assault and a sentence of M150-00 or five (5) months' imprisonment.

There is no merit in the appeal against the sentence in count 1. I accordingly dismiss the appeal. In count 2 the appeal is upheld to the extent shown above.


J.L. KHEOLA
JUDGE

16th October, 19

For Appellant - Mr. Matete
For Crown - Mr. Lenono.