

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

SELLO MOSOEUNYANE

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 22nd day of November, 1989.

The accused in this case was charged with the crime of assault with intent to do grievous bodily harm.

He appeared before the magistrate in the Subordinate Court - T.Y. where he pleaded guilty as charged. In brief the facts show that on the 6th July 1989 the complainant Mosiuoa Seemahale aged 10 was herding donkeys and in the process rode on one of the accused's donkeys. It is this event that infuriated the accused with the result that he assaulted this young man. The assault was so great with a whip that one Thabo Seboka intervened but the state of the child's injuries were such that he underwent hospitalisation from 7th of July until August 1989.

The doctor who examined the complainant formed the opinion that a blunt instrument was used with force to inflict injuries that the complainant suffered. The doctor among the observations that he made found that there were severe contusions on the child's body and more particularly on the left eye which the doctor found or

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established that it had some softness to the touch which needed following up. The doctor also established that the force that was used was severe. So it would appear that the verdict that was reached by the learned magistrate was proper that the intent here must have been to cause grievous bodily harm.

Mr Moorosi appearing before me today argued that the accused is the man who suffered some injuries sometime in the past as the result of which he turned epileptic.

I have before me exhibit "A", a health book belonging to the accused. In my view it seems that it was kept as a record showing the treatments that the accused has been undergoing in the years 1982 to 1986 or even 1988.

The magistrate, although this matter fell within his jurisdiction felt that it should come to this court because he fears that the state of the accused's health might be such that imprisonment will not be proper. But there was no evidence led before him, after he had found the accused guilty, as to whether the accused would carry the sentence or that his health would not equal the weight prescribed by the minimum penalties Order 44 of 1988.

Mr Moorosi was invited by the court to say now what authority should be relied on to support this learned magistrate's fear and he said that there wasn't any authority. I am also aware of none.

It therefore is the duty of the court to impose the penalty which is not lower than that which is prescribed in the law. Indeed the learned Counsel for the crown was also invited for purposes of finding whether this fear by the learned magistrate has any substance. In the circumstances I am afraid the sentence to be imposed is one which is prescribed as the minimum according to the law.

Apart from the horror that the little child must have suffered - we are told that the eye got injured and

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regard being had to the fact that the child's offence was but a minor thing as we know that boys always ride on donkeys: that does'nt justify the savage attack that he was subjected to. I am afraid that the accused will have to be sent to jail for 5 years.

J U D G E.

22nd November, 1989.

For Crown : Mr Lenono

For Defence : Mr Moorosi.