

IN THE HIGH COURT OF LESOTHO

In the matter between:-

TANKI LEHEHELO .....Appellant

and

R E X

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola  
on the 11th day of April, 1989

The appeal has already been dismissed and what follows are the reasons for that decision. The appellant was convicted of assault with intent to do grievous bodily harm and was sentenced to nine (9) months' imprisonment. He is now appealing against sentence only.

The facts of the case were that on the 9th day of August, 1987 the complainant was walking along Airport Road accompanied by his lover, Palesa Mohatlane. The girl was in love with the appellant. When they passed near Khabo's Garage the appellant saw them and

called Palesa. She went to him leaving the complainant some distance away. They talked for some time till the complainant went to them and asked Palesa that they should go. The appellant did not like that and a fight started between them. The appellant stabbed him twice with a knife.

On examination by a medical practitioner it was found that the complainant had a 2cm. penetrating stab wound left upper abdomen and intestines were hanging out for about 35cm. The second wound was also 2cm. long and was on the right side of the abdomen towards the waist. He was in a critical condition and even had to undergo an emergency operation which revealed a 1cm hole in the transverse colon, plus a tear in the duodenum and gall bladder.

There is no doubt that the injuries were extremely serious and that in passing sentence the trial court had to take this factor into account. I do not agree with Mr. Mphalane, attorney for the appellant, that the case was one in which the opinion of a fine had to be given. The appellant used a very dangerous weapon when there was no cause for him to use it. In R.v S. 1958 (3) S.A. 102 (A.D.) it was held that "in the matter of a trial Judge's power to impose punishment it is undesirable that the Appeal Court should lay down principles which might be construed as in any way fettering his discretion. The responsibility for determining the punishment lies squarely on the shoulders of trial Judges, and their decisions in this regard are not subject to review by the Appellate Division except within the limited compass of the well-recognised grounds on which a Court

of Appeal will interfere with a sentence, namely where the trial Judge - or the magistrate as the case may be - has misdirected himself on the law or on the facts, or has exercised his discretion capriciously or upon a wrong principle or so unreasonably as to induce a sense of shock. Where no such ground exists, however, the Appeal Court will not interfere merely because the Appeal Judges consider that they themselves would not have imposed the sentence.

Judge pronouncing sentence has a very wide discretion in having regard to factors which, in his opinion, may be either favourable or unfavourable to the convicted person."

The defence failed to show that the learned magistrate misdirected herself on the law or on the facts, or that she exercised her discretion capriciously or upon a wrong principle or that so unreasonably as to induce a sense of shock. I am of the opinion that the sentence of nine months' imprisonment for this serious offence was disturbingly lenient and if the Crown had applied for its enhancement, I would have had no hesitation to do so.

The appeal is dismissed.

J.L. KHEOLA  
JUDGE

17th July, 1989.

For the Appellant - Mr. Mphalane  
For the Crown - Mr. Mdhluli.