

IN THE HIGH COURT OF LESOTHO

In the matter between:-

R E X

and

JOHN RALENGANA RALENGANA
MAKAMOHO MAJORO
MAHLOMOLA TITISI

1st Accused
2nd Accused
3rd Accused

J U D G M E N T

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

The accused are summarily charged before this Court with robbery, it being alleged that upon or about the 3rd day of January, 1988 and at or near Blue Mountain Inn in the district of Berea, the said accused did rob one Retimeletsoe Marai and his subordinate staff of the said Blue Mountain Inn of monies totalling M40,000-00, the property of the said Blue Mountain Inn and in the lawful possession of the said Retimeletsoe Marai. The accused pleaded not guilty.

The first witness called by the Crown is Warrant Officer Raleaka who was one of the investigating officers in this case. He

/deposed that.....

deposed that at about 11.45 p.m. on the 3rd January, 1988 he received a report from Blue Mountain Inn. As a result of that report he went to Blue Mountain Inn accompanied by other police officers. On their arrival there they found Retimeletsoe Marai (P.W.2), Margaret Lebakeng (P.W.3), Rebecca Rammiki (P.W.8) and other members of staff of the hotel. He interviewed them. He went to the home of A2 but she was not there. He found one of the employees of the hotel sleeping in A2's house. He returned to A2's house at about 5.00 a.m. on the 4th January, 1988 and found A1 and A2 sleeping in the house. He searched the house but he did not find anything.

He escorted A1, A2 and ^{the} woman he found in the house to the charge office and interrogated them. On the 5th January, 1988 he came to Maseru accompanied by A1 and A2 who led them to A1's place. On their arrival there, A1 called his wife and ordered her to bring the money he gave to her. She went into another room and brought a screwdriver. She unscrewed the screws at the back of a speaker of a hi-fi set and opened it. She took out two white bank bags. On one of the bags was written "petty cash", and on the other was written "bottle store 1". On both bags there was written "M" below the writings referred to above. Warrant officer Raleaka told the Court that he opened the bags in the house in the presence of A1, A2, A1's wife and his colleagues namely, Major Marathane, Sergeant Peete, Lance Sergeant Seboka, Trooper Seboka, Trooper Mothibe and Trooper Mosuhli. Both bags contained maoney. The money was counted and it totalled M11,646-04 (The petty cash bag was marked Exhibit 1 and the bottle store 1 bag was marked Exhibit 2 after the witness had identified them in Court).

/Warrant Officer.....

Warrant Officer Raleaka testified that after counting the money he put it back into the bags and stapled them at the top. He formally charged the two accused. They returned to Teyateyaneng police station where the bags were identified by the employees of Blue Mountain Inn as the bags taken by the robbers on the night of the 3rd January, 1988. When the money was counted at the bank before it was formally handed in as an exhibit in this case, it was found that in Exhibit 1 there was M10,465-00; in Exhibit 2 there was M562-16; the total amount is M11,027-16. Warrant Officer Raleaka was not in a position to explain what caused the shortage.

Under cross-examination Warrant Officer Raleaka stated that when he arrested A1 he already had injuries and that he sustained no further injuries while in police custody. A1 was very cooperative with the police from the beginning of the investigations to the end. He says that because A1 was cooperative the investigation took a very short time. He kept A1 in police custody from the 4th January to the 8th January, 1988 because during the interrogation he had referred to some places and to some other people. The amount of M40,000-00 appearing in the charge sheet was given to him by the employees of the hotel but they did not show him any books which substantiated their claim because the books had been taken together with the money. He denied that when he came to A1's place he ordered his (A1's) wife to produce all the money she had in the house. He says that it was A1 who spoke to his wife and asked her to bring the money he gave to her.

/They did not.....

They did not search A1's house because they had found what they wanted. He was satisfied with the lesser amount than that alleged to have been stolen because A1 had given an explanation. He denied that when they came to TY they called at the hotel and that the bags were taken into the hotel while the accused remained in the vehicle.

Retselisitsoe Marai testified that he was employed by Blue Mountain Inn as the assistant manager. On the 3rd January, 1988 he was on duty; they were supposed to close at 12 midnight, but because there were many customers they did not close at that time. After 12 midnight he went into his office and Margaret Lebakeng came, she was bringing money from her department. Money from each department is accompanied by a document known as cash up summary sheet. It shows how much money was collected for that day. The assistant manager counts the money and makes sure that it tallies with the cash up summary sheet before he takes it. They both sign the document and he puts the money and the cash up summary sheet in the same bag and keeps them in the safe. He says that when he is off duty that job of receiving money from the various departments is done by one Rebecca Hlothoane (P.W.7).

On the day in question money from bottle stores 1 and 2 had already been brought to his office and received not by him but by another person. Money from the bars had not yet been brought to his office. Immediately after Mrs. Lebakeng got out of his office, he saw a man enter into his office hurriedly. The man was holding a gun in his right hand and pointed it at her. While

/he was.....

he was still shocked another man entered. He was holding a butcher knife. He put the point of the knife on the left side of his (witness's) trunk and prodded him with it whenever the gunman gave orders. Both men covered part of their faces with white clothes. The clothes covered from the nose downwards leaving the eyes and the forehead exposed. The gunman was wearing a white hat with a brim. The other man had no head gear.

The gunman said they wanted money. Mr. Marai says that he pointed out the safe and the keys which were on the door. The gunman took the keys and gave them to him. He ordered him to open the safe. He complied. The gunman ordered him to take out the money. He took it out from the lower compartment of the safe. It was in two bank money bags. He says that after that the man holding a butcher knife dropped it on the floor and took out the money from the safe. The gunman came near him and kicked him on the buttocks accusing him of being too slow. After taking the money the man got out. The gunman remained in the office for a while and then left. Immediately after the gunman had left he heard a gun report which was followed by the sound of a vehicle and the scream of a woman.

Mr. Marai says that he identified the gunman as A1. He was wearing a white hat, a grey lumbar jacket which had check colour inside, a blue pair of jeans and white training shoes. His complexion was dark brown. He had known A1 since 1978 when they both lived in the same area at Thabong. Between 1978 and 1988 they used to meet. On the 20th December, 1987 he saw A1 at the hotel.

/The two bags.....

The two bags taken by the robbers were canvass bank money bags; on one of them was written the words "bottle store 1, on the other bag was written "petty cash. There was an M witten on both bags under the words referred to above. He identified Exhibits 1 and 2 as the bags which were taken by the robbers. In addition to the money in the bags there were some cash up summary sheets which tallied with the takings for the relevant period i.e. Thursday eveing to Sunday night.

He was later called to the charge office where he identified Exhibits 1 and 2. Immediately after the robbery the police were called and he told them that he had identified one of the robbers as A1.

Under cross-examination Mr. Marai told the Court that during the robbery he was so frightened that he was unable to estimate the time the robbers spent in his office. Despite his fright he was able to recognize A1 because he is a person well known to him. He did not identify the man who had a butcher knife. He did not know how much money was there in the safe. His evidence was that Mrs. Hlothoane (P.W.7) would know how much money was in the safe because she kept the books of account of the hotel and she did the banking.

At the time of the robbery both bottle stores had been closed and he had received money from both of them. It was brought to him by one 'Masekoati. In the bag marked "bottle store 1" they kept money from various departments of the hotel.

/Margaret

Margaret Lebakeng (P.W.3) testified that she is employed by Blue Mountain Inn as a receptionist. She knows all the three accused, however, she knows A3 only by sight. On the 3rd January, 1988 she was on duty at the reception. At about 4.00 p.m. A2 came to the reception and left her bag there. She also asked her (witness) to tell A1 that she was at the lawn. A1 arrived at about 7.00 p.m., she told him that A2 was at the lawn. A1 replied that he had already met A2. At about 8.00p.m. A2 left the lawn and went to the bar because it was cold outside. P.W.3 says that at about 11.00p.m. she went to the toilet and again met A1 near the door of the office. He was wearing a blue lumbar jacket with check inside, a pair of jeans, training shoes and a white sporty hat. A3 arrived at the reception and bought cigarettes and matches and went out. After about ten minutes A1 and A3 came in and went to the bar.

P.W.3 deposed that at the time A1 and A3 came in she was closing her books. She took the money to the office of P.W.2. The money was accompanied by a cash up sheet. When she went out of the office of P.W.2 she met A1 and A3 near the door. She thought that they were going to the men's toilet which is near the office of P.W.2. They were still dressed in the way she had earlier seen them. She returned to the reception. After about five minutes she saw A1 and A3 passing at the reception, they were in a hurry. A1 was holding a gun and his face was partially covered. When she looked at them A1 fired in the air. She dived for cover. As far as the other man was concerned she noticed that he was carrying some parcels. She did not notice whether his face was covered or not.

/After the.....

After the men had passed she heard another gun report outside the hotel. She called the security guard and reported to him that the men came from the direction of the office. They went to the office but P.W.2 came out of the office before they arrived there. He reported to them that the men had taken the money. She went to the office and peeped at the door. She noticed that the safe was open and that the boxes were on the floor.

When the police arrived she told them the names of the people involved in the robbery. She later identified Exhibits 1 and 2 as the bags used by the Blue Mountain Inn. P.W.3 says that when she met A1 and A3 near the office door they were facing the toilet door which is very close to the office door. However, she did not notice if they entered into the men's toilet. They were following each other and A1 was in front. She carried the money to the office in a plastic bag. She and P.W.2 counted the money. After that they both signed the cash up sheet. P.W.2 put the cash up sheet into the plastic bag together with the money. The bag was on P.W.2's table when she left. As far as Exhibits 1 and 2 were concerned she said they were the only bags used by the hotel. They were already in use in 1985 when she joined the hotel but she cannot be positive that they were never changed.

She was pulling down the folding door of the reception when she saw A1 and A3 passing near the reception walking fast. Although A1 was following A3 he saw him first because he (A1) first of all peeped into the passage from the wall to see if there were people in the passage.

/Rebeca Hlothoane.....

Rebeca Hlothoane was employed by Blue Mountain Inn and dealt with books of account. She started work in the morning and knocked off in the evening. She counted the money in the morning and entered it in the books. The takings came from two bottle stores, three bars, the dining room and the reception. According to her records the takings from various departments of the hotel from the 31st December, 1987 to the 3rd January, 1988 were as follows:

On 31st December, 1987	=	M14,980-40
1st January, 1988	=	4,749-34
2nd January, 1988	=	12,174-74
3rd January, 1988	=	3,497-64
		<hr/>
		M35,402-12
Change		600-00
Petty Cash:		364-60
		<hr/>
		36,366-72
Minus R805-05 found on 4th January	=	805-00
		<hr/>
		M35,561-72

She explained that because some of the departments of the hotel were not yet closed when the robbery took place, their takings for that evening had not been taken to P.W.2's office. Such takings totalled M805-05 which has been deducted from the takings of the relevant period. She handed in as an exhibit a book in which she records the daily takings from each department. It was marked Exhibit A.

Mampho Rammiki (P.W.8) testified that on the night of the 3rd January, 1988 she went to A2's place accompanied by her (A2).

/When they.....

When they arrived there was a motor vehicle parked outside the house. They entered into the house. She went into the bedroom and got into the bed. A2 came to her and told her that she was going away with A1. She did not see A1 at that time. They went away. She slept and was awakened by them during the morning hours. After that the police arrived and arrested them. She was released on the following day.

A1 testified that on the 3rd January, 1988 he went to Khabo's for business reasons to see one Tseliso Lebesa who is involved in transport business. He left the home of Tseliso at about 6.00p.m. and arrived at TY at about 10.00p.m. He went to the home of A2 who is his girlfriend. He slept there with her for the whole night till the police arrived in the morning and arrested them. He says that he never went to the hotel on that day. He was not even wearing the clothes described by the Crown witnesses.

He says that when his house was searched on the 5th January, 1988 an amount of over R11,600-00 was found. His version of what happened when they arrived at his house differs from P.W.1's version. His version is that when they arrived, P.W.1 searched the whole house. He found an amount of over M3600 in one room. He then asked him (A1) whether that was all the money he had in the house. He (A1) said some money was in a speaker of a hi-fi set. He took a screwdriver and opened the back of the speaker and an amount of over M8000-00 was found in two bank money bags similar to Exhibits 1 and 2. He alleges that his bags did not have the writings which are on Exhibits 1 and 2.

/From his home.....

From his home they travelled back to TY. They went straight to the hotel. When they arrived there P.W.1 and other police officers alighted and took the two money bags into the hotel. He (A1) and A2 and the driver remained in the vehicle. After about five minutes Seboka appeared and ordered the driver to go to the charge office. The bags and the police officers remained in the hotel. He never saw the bags again until they were brought to Court.

The Crown withdrew the charge against A2 and she was discharged at the close of the Crown case.

A3 closed his case without giving any evidence.

There can be no doubt that theft is an essential element of the crime of robbery. In Hunt: South African Criminal Law and Procedure, Vol.II, 1st edition at page 640 the definition of robbery is as follows:

"Robbery consists in the theft of property by intentionally using violence or threats of violence to induce submission to the taking of it from the person of another or in his presence."

In the instant case threats of violence to induce submission by P.W.2 were used. He alleges that A1 pointed a gun at him while the other man pressed a butcher knife on his kidney region. They told him that they wanted money. He submitted and showed the keys of the safe. He eventually opened the safe and all the money in the safe was taken by the robbers. The only difficulty in the case is

/that the Crown.....

that the Crown is unable to establish the exact amount taken by the robbers. The reason for this failure is that the takings from some departments were taken before entries were made in Exhibit A. The thieves took the money together with the cash up summary sheets which are usually kept in the money bags together with the money.

P.W.7 was supposed to check the takings of the 3rd January on the following day, i.e. the morning of the 4th January, 1988 which was a Monday. The takings of the 31st December, 1st January and the 2nd January had been properly and accurately recorded in Exhibit A by P.W.7 when the robbery took place. It was her evidence that every morning she checks the takings of the previous day. Using the cash up summary sheets she records in Exhibit A what monies were collected on the previous day. The money is then taken to the bank.

There was no banking of the money collected from the afternoon of the 31st December 1987 to the time of the robbery because of the holidays. Regarding the takings of the 3rd January, 1988 P.W.7 says that she established them by using a rough piece of paper which she found in that department. The rough piece of paper had been prepared by a person who works in that department. She failed to explain why such piece of paper was not produced in evidence and why a person who prepared it was not called as a witness. The same applies to the books used at the reception. They ought to have been produced by a person who works there and who made entries in them.

/The truth.....

The truth of the matter is that the exact amount taken by the thieves cannot be established because the money was taken together with the cash up sheets and before proper entries of the takings of the 3rd January, 1988 had been made into Exhibit A. All we know from the records is that there was an amount of between M30,000-00 and M35,000-00 in the safe when the robbers raided P.W.2's office. They took all the money in the safe. It seems that they also took the money which P.W.3 had just brought to P.W.2. I say this because no money was found on the table when the police arrived.

The next question is whether P.W.2's recognition of A1 is satisfactory or not. He conceded that he was very frightened during the robbery. However, he asserted that he recognised A1 as one of the robbers. He was the man holding the gun. It is common cause that A1 and P.W.2 knew each other before the present incident. In R. v. Mokoena, 1958 (2) S.A. 212 (T) it was held that identification by a single witness should be honest and reliable before a conviction thereon is justified. The witness should be asked to describe identifying features if any of the accused, questions as to build and height should be put, for an untested and unexplored statement leaves the door wide open for mistakes.

In a later case of R. v. Dladla, 1962 (1) S.A. 307 (A.D.) it was held that where the witness previously knew the person sought to be identified, the witness's ability to give an accurate description of the accused's facial characteristics assumes lesser importance. What is important then is the degree of previous

/knowledge.....

knowledge and the opportunities for a correct identification. In the present case P.W.2 is not a single witness. His evidence is corroborated by P.W.3 who also previously knew A1. The pointing out of the money in the house of A1 is also corroboration of P.W.2's evidence that in fact it was A1 who took the money from his office. The Court shall later decide whether the bags are those taken by the robbers from P.W.2's office on the night of the 3rd January, 1988.

I am of the opinion that the previous knowledge of A1 by P.W.2 was a good one. P.W.2 said that between 1978 and 1988 he used to meet A1. The most recent of such meetings was on the 20th December, 1987. The opportunities for a correct identification exist in the present case. A1 and his companion were in the office of P.W.2 for a time which could not be less than two minutes. This is my own estimate taking into account what transpired in that office. During all that time A1 was standing very close to P.W.2 and making his orders. P.W.2 had a very good opportunity of observing him in a well lit office. He had not properly disguised himself because part of his face was still exposed. It is true that P.W.2 was under a state of shock but I am of the opinion that he saw A1 well as being a person he previously knew.

P.W.3 also previously knew A1 although the latter says he does not know her. On the night in question she first saw A1 when she told him where A2 was to be found. The second occasion was when she met them near the door of P.W.2's office. The third time was when A1 peeped near the wall in the passage to check if

/the coast was.....

the coast was clear. Then immediately after that A1 and A3 came running towards the reception. When she looked at them A1 fired in the air with a gun. It was only then that she took cover having identified the two men. I accept her evidence as honest and reliable because she had a very good opportunity of identifying A1 even before he started running. As far as A3 is concerned I think P.W.3 had only a fleeting look at him when she saw them running out of the hotel. At the time she met them near the door of the office of P.W.2 she did not pay much attention to them.

The learned Director of Public Prosecution conceded that the evidence of P.W.3 concerning the identification of A3 is not reliable because she had only a fleeting glance at him. I agree with this concession. In addition to that fleeting glance P.W.3 did not have a good previous knowledge of A3, she knew him only by sight. It is not even clear how often she saw him to enable the Court to rely on her previous knowledge of him.

A1 says that on the 3rd January, 1988 he was at Khabo's at the home of Tseliso Lebesa. It is trite law that the defence must put its case to the Crown witnesses (Phaloane v. Rex, 1981 (2) L.L.R. 246). The defence never put this part of their story to the Crown witnesses. In any case at 11.45 p.m. when the robbery took place A1 was already in TY. He says that he arrived at the home of A2 at about 10.00 p.m. The home of A2 is about fifty metres from the hotel. A1 was seen by P.W.3 at the hotel long before the robbery took place. She spoke to him to inform him where A2 was. He said he had already met her. P.W.3 impressed me as credible witness who gave her evidence in a forthright manner.

/A1 is not telling.....

A1 is not telling the truth that he never went to the hotel on the 3rd January, 1988. He was seen at the hotel by two witnesses, i.e. P.W.3 and P.W.2 . He was later found in possession of two bags similar to the bags taken by the robbers from the hotel.

P.W.1 deposed that Exhibit 1 and 2 were taken out of the speaker by the wife of A1. It was never put to P.W.1 that at that time the bags did not have the inscriptions allegedly made by one Bob Lee who was the manager of the hotel. In other words, the evidence of P.W.1 was never challenged on this very important point. Even when it was put to P.W.1 that from A1's place they went to the hotel and that he (P.W.1) remained there while the accused and the driver went to the charge office, it was not put to him that he remained there so that the hotel staff could make the inscriptions on the two bags.

I am convinced that when Exhibit 1 and 2 were found at the home of A1 they already had the words "bottle store" and "petty cash" respectively because they are the bags which were taken from the hotel by A1 and his companion. I reject A1's implied version that the bags did not have such inscriptions when they were found at his home. I found P.W.1 to be a very reliable and truthful witness. He had previous knowledge of A1 and told the Court that A1 was very cooperative during the investigations. The reason why he was detained by police for a long time was that he had referred them to other people and places. P.W.1 says that it was his duty to go to such places and to try to contact the people referred to.

/It was submitted.....

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/It was submitted.....

It was submitted on behalf of the accused that when the bail application by A1 was opposed P.W.1 said there were other four people involved in the robbery. If P.W.1 said so he must have got that information from the accused. P.W.2 and P.W.3 never referred to more than two people who were involved in the robbery. I have already said that I had a very good impression of P.W.3 as a reliable and credible witness. As regards P.W.2 I formed the opinion that he is a forgetful person whose evidence must be corroborated in all respects. He could not remember that there were some plastic bags scattered in his office after the robbers left. The other Crown witnesses found the plastic bags when they went to the office. It may be that he was so frightened that he did not see clearly what happened. But he ought to have seen the bags after the police had arrived. He appeared not to be an intelligent person. Nevertheless his evidence is corroborated in all material respects by other reliable and credible witnesses.

A1 says that he kept that large amount of money in his house because he intended to use it in an auction sale and to pay for the licences of his motor vehicles. I find his story to be so improbable that it cannot reasonably possibly be true. He has three banking accounts with the three major banks in Maseru. It does not take a very long time to withdraw money from all the banks in Maseru. I am of the opinion that the true reason why he hid the money in a speaker in his house is because he stole it from Blue Mountain Inn.

/I agree that.....

I agree that there were some discrepancies in the evidence of the Crown witnesses but I think they were so minor that they did not affect the Crown case in any way. One of such minor discrepancies was that one of the Crown witnesses (P.W.7) said that Exhibit 1 and 2 were marked by Mr. Bob Lee who arrived at the hotel as manager in 1987. Another witness (P.W.3) said that the bags were already there when she first joined the hotel in 1985. She immediately qualified her statement by saying she could not positively say that the bags were never changed. I take the view that the person who has knowledge of the bags is P.W.7 because she was the accountant and dealt with the money bags more than P.W.3.

In my opinion A1 is guilty of robbery and I so find him.

I find A3 not guilty.

My assessors agree.

J.L. KHEOLA

JUDGE

8th May, 1989.

SENTENCE

Accused is a young man of 28 years of age. He is a first offender. He has been in detention for one year and four months.

The amount stated in the indictment is M40,000-00 but the Crown was unable to establish that amount. According to Exhibit A the takings for the period between 31st December and the 2nd January, 1988 totalled about M32,000-00.

It was stated by the Crown witnesses that the accused was very cooperative during the investigations. These are the mitigating factors which have to be taken into account in passing sentence.

On the other hand the Court must not lose sight of the fact that robbery is a serious offence especially where arms are used. In the instant case arms were not used to inflict injuries but were used to threaten the victim. It must also be borne in mind that in recent years robbery has become prevalent in Lesotho.

In the result the accused is sentence to six (6) years' imprisonment. My remaining assessor agrees.

Disposal of Exhibits:- Exhibits 1 and 2 (the bags and money) must be given back to Blue Mountain Inn.

J/L. KHEOLA
JUDGE

8th May, 1989.

For Crown - Mr. Mdhluli
For Defence - Mr. Pheko and Mr. Seotsanyana