

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

JOE SEIPATI

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 16th day of November, 1990.

The accused appeared before a class 1 magistrate on 9th July 1990 and pleaded guilty to a charge of house-breaking with intent to steal and theft.

The accused was convicted on his own plea and sentenced to a prison term of five years in accordance with the minimum penalties order prescribed for the offence charged.

Save that the accused denied that the amount stolen was M350.00 but that according to his calculations it footed only up to M230.00 he admitted as accurate the outline of the case presented before the court by the public prosecutor.

The prosecution's outline of the case indicated that the accused stays at the stand of a relative Paulina Seipati at Upper Thamae.

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On 3rd July 1990 the complainant left her place in the evening to watch T.V. at a friend's place. She left her seven year old child sleeping in the house whose door she had locked and windows secured.

When she returned the door was still locked and she unlocked it to gain entry into the house.

On coming into her bedroom she discovered that the window thereto was broken. She obtained information relating to the accused from the seven year child whom she had left sleeping in the house, The child knew the accused well.

The complainant realised that her purse containing M350 had gone missing. Thereupon she made a report to the chief who in turn referred her to the Thamae police station. The police discovered that the window had been broken.

The accused was approached by the police the following day. They cautioned the accused who made an explanation regarding the offence. The accused's explanation further related to the pair of trousers he was seen wearing.

The accused explained that he had bought the pair of trousers with part of the M230.00 he found in the purse and not M350.00 claimed to have been placed in that purse by the complainant.

The complainant's contention according to the prosecutor was that she had not allowed the accused to break into her house and steal money she had kept in her purse.

Further outline of the case showed that children saw the accused break and enter into the complainant's house through the window, and that they later saw him come out through the same window. Children saw him open the wardrobe in which the complainant contended she had kept her missing purse. The children, it is stated, were too scared to raise an alarm. The prosecution was also in possession of evidence

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that when seen going to the complainant's house the accused was drunk.

The prosecution further indicated that the accused's age is nineteen years.

The accused when asked by the learned magistrate if the prosecution's outline of the case was in accordance with facts he accepted, raised a query in respect of the amount as shown above. Otherwise he accepted as accurate the facts presented before the Subordinate Court by the public prosecutor.

This matter is today brought before this court on automatic review. Both counsel have submitted their written submissions. I am grateful to them for that.

Relying on CRI/REV/353/89 Rex vs Saule Saule & 11 Others (unreported) Mr. Hlaoli asked that this Court should order a retrial. First, because the accused's age was in doubt for if indeed he was below eighteen years of age his matter fell to be treated under Children's Protection Act 1980. Next, because the record does not reveal that the accused was asked if he required a legal representative, and further that it behoved the learned magistrate to have warned the unrepresented accused of the desirability of securing himself services of a legal practitioner regard being had to the fact that if convicted he would face a sentence of no less than five years' imprisonment. For the last submission elaborated above the defence reposed its faith on the authority of CRI/A/37/88 Lahlohomolo Pulumo vs Rex (unreported) and other authorities cited therein.

With regard to the first point raised in favour of the retrial it appears on the record that not only the charge sheet reflects the accused's age as nineteen years but also the outline of the case reflects this age regarding which when asked whether it is accurate he answered in the affirmative.

The court can scarcely under-estimate the accused's level of intelligence and come to the view that he did not realise

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that when he accepted the general outline of the prosecution case as correct that he also accepted the correctness of the particular question of his age to be nineteen years. The contention that he might not have been aware that by accepting the outline he was also accepting particulars in that outline is defeated by the fact that he was able to query the amount which he contended was in excess of the M230.00 that he admitted stealing. If the argument advanced in respect of his age is to hold then the basis of his query that the amount stolen was M230.00 and not M350 is called in question. Conversely the fact that he was circumspect enough to differentiate between these two sums serves as proof that he would not have confirmed his age as nineteen years if it was below eighteen.

It would perhaps be worth noting that in Pulumo unlike in the instant matter the unrepresented accused had pleaded not guilty. Thus similarly in C of A (CRI) No. 12 of 1974 Stephen Tsatsane vs Rex (unreported) where the appellant had pleaded guilty in the Subordinate Court and for purposes of sentence his matter was committed to the High Court where he sought to challenge the original plea Maisels P. as he then was found it fitting to extract from Hoffman on the South African Law of Evidence 2nd Edition p. 305 et seq the following:-

"A plea of guilty is in effect a formal admission of the essential elements of the charge. Even after withdrawal, the fact that it was made is something which the court is entitled to consider."

In S vs. Mashinyana 1989(1) SA. 592 it was held that:-

"A court is not obliged to enquire from an accused whether he wishes to have legal representation. The unexpressed desire of an accused to engage a legal representative cannot afford him a cause for complaint after his conviction and sentence."

In Caiphas Dlamini vs Regina case No. 46/84 (a Swaziland Court of Appeal decision) Welsh J.A. referring to S vs Baloyi 1978(3) SA. 290 at 293 said:

/"However

"However, where he (the accused) does not seek it, (legal representation) and where no irregularity occurs by which he is deprived of it, there is no principle or rule of practice of which I am aware which vitiates the proceedings."

I may further add that section 240(1) of our C.P. & E. provides that:-

"If a person charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on that charge, and the prosecutor accepts that plea the court may

(a)

(b) if it is a Subordinate Court, and the prosecutor states the facts disclosed by the evidence in his possession, the court shall, after recording such facts, ask the person whether he admits them, and if he does, bring in a verdict without hearing any evidence."

C/F Tsatsane above (unreported) at p. 2.

The record shows that the accused was asked if he admitted the facts disclosed by the evidence in the prosecutor's possession.

In Rex vs Sibia 1947(2) SA. 50 AD Schreiner J.A. is recorded at page 54 et seq as having said:

"I do not wish to be understood as suggesting that it is an irregularity, of which the accused could take advantage, if no record is made. Speaking only from my own experience - I do not think that it could be inferred from the absence of any reference thereto in the judge's notes or in the shorthand record that the accused was not asked"

In CRI/A/48/86 Mosoeunyane Mothakathi vs Rex (unreported) at p. 7 this Court made the following observation:

"Section 162(1) of the C.P. & E provides that where provisions of section 159 of the Act have not been invoked the accused shall either plead to the charge or except to it on the ground that it does not disclose any offence cognisable by the court. In the instant case the charge and outline of the Crown case clearly disclosed an offence committed.

/Subsection

Subsection (2) provides that if he (the accused) pleads he may plead

- (a) that he is guilty of the offence charged ..or
- (b) that he is not guilty; or
- (c) that he has already been convicted or acquitted of the offence with which he is charged; or
- (d) that he has received the Royal pardon for the offence charged; or
- (e) that the court has no jurisdiction to try him for the offence; or
- (f) that the prosecutor has no title to prosecute."

In the instant case the accused in exercise of his unfettered right to opt for any one of the alternatives listed above opted for that listed under (a).

This being a matter brought before this Court on automatic review albeit that the court had the benefit of hearing oral arguments and of observing the accused who was present in court it is of the firm view that proceedings in the court below were in accordance with substantial justice. Thus the court declines to make an order for retrial on grounds advanced on behalf of the accused by his counsel.

The proceedings before the court below are confirmed.

J U D G E.

16th November, 1990.

For Crown : Mr. Lenono
For Defence : Mr. Hlaoli