CRI/A/1/90

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MABULA RAMOROBI Appellant

v

R E X Respondent

JUDGMENT

Delivered by the Hon. Mr. Justice B.K. Molai
on the 30th day of March, 1990

On 18th September, 1989 the appellant appeared before a Subordinate Court and was convicted of assault with intent to do grievous bodily harm, on the allegations that on or about 19th August, 1989 and at or near ha Moqathinyane in the district of Leribe he had unlawfully and intentionally assaulted Thabo Letsela by hitting him on the head and body with a stick and iron rod. A sentence of five (5) years imprisonment was imposed.

The appeal is against both the conviction and sentence on a long list of grounds which may, however, be summed up in that the conviction was bad in law and the sentence of five (5) years imprisonment too harsh.

It is significant to observe that although the appellant is recorded as having said he pleaded guilty to the charge the record of proceedings makes no mention that the charge was ever read or explained to the appellant. Indeed, one of the appellant's grounds of appeal is that the charge was never explained to him. I have also

2/ read through .....

read through the record of proceedings and found that nowhere did the trial magistrate write that he had read or explained the charge to the appellant who was unrepresented in this case.

The requirement that the trial magistrate must read the charge to the person who is charged before him is, in my view, clearly layed down in section 123 (2) of the Criminal Procedure and Evidence Act, 1981 which reads as follows:

> "123(2) At the trial the charge shall be read out to the person charged, who shall be called upon to plead thereto, and his plea shall be recorded thereon."
>
> (My underlining)

Section 150 of the Criminal Procedure and Evidence Act, supra, also provides, in part :

> "150. Subject to section 313 the accused, upon the day appointed for his trial or sentence upon any charge -
>
> (a) .....
>
> (b) .....
>
> (c) shall be informed in open court of the offence with which he is charged as set forth in the charge ....."
> (My underlinings)

The words I have underscored in the above cited sections of the Criminal Procedure and Evidence Act, 1981 fortify my view that it is imperative for the trial magistrate to read and explain the charge to the person who appears before him charged with an offence.

There is yet another difficulty in the record of proceedings of this appeal. It appears from the record that after the appellant

3/ had pleaded .....

had pleaded guilty to the charge the public prosecutor accepted the plea and outlined the facts he had in his possession. There is, however, no indication in the record of proceedings that the appellant admitted as correct the facts outlined by the public prosecutor. If the appellant were to be convicted on the facts outlined by the public prosecutor, it was essential to show that he had accepted them as correct - vide Criminal Procedure and Evidence Act, 1981 of which S.240 provides, in part:

> "240(1) 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."
>
> (My underlining)

It is to be observed that the notice of appeal bears the rubber stamp impression of the Leribe Magistrate court indicating that it was filed with the clerk of the court on 27th September, 1989. Rule 1(3) of the Subordinate Court Rules embodied under Order No.XXXV of High Commissioner's Notice 111 of 1943 at page 661 et seq. of Vol.I of the Laws of Basutoland (1960 ed.) clearly provides:

> "Upon an appeal being noted the Judicial Officer shall within seven days deliver to the clerk of

4/ the court .....

the court a statement in writing showing -

(a) the facts he found to be proved;

(b) the grounds upon which he arrived at any finding of fact specified in the appellant's statement as appealed against; and

(c) his reasons for any ruling of law or as to the admission or rejection of evidence so specified as appealed against.

In the present case the trial magistrate has, contrary to the provisions of the above cited Rule, chosen to submit no written reasons for judgment at all. There is, therefore, nothing to gainsay the appellant's ground of appeal that the charge was never read or explained to him. Indeed, as it has already been pointed out earlier there is nothing in the record of proceedings to indicate that before the trial magistrate returned a verdict of guilty, the appellant had admitted, as correct, the facts that were outlined by the public prosecutor. In my view, the cumulative effect of all these omissions is to constitute a serious irregularity resulting in a miscarriage of justice.

In the circumstances, I have no alternative but to come to the conclusion that the proceedings ought to be set aside and an order made that the trial starts de novo before a different magistrate.

I accordingly order. The appeal deposit is to be refunded to the appellant.

B.K. Molai
JUDGE
30th March, 1990.

For Appellant : Ramodibeli
For Respondant : Miss Nku.