

CRI/A/36/93IN THE HIGH COURT OF LESOTHO

In the Appeal of:

'MABATAUNG MAKHEBESELE  
'SENTLE MOHOATLANE  
'MARELEBOHILE MOKOTO  
'MAMONYANE TAU

1st Appellant  
2nd Appellant  
3rd Appellant  
4th Appellant

vs

R E X

Respondent

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi  
Acting Judge on the 28th March, 1994

I have reasons to deliver this judgment this morning now after hearing Counsels arguments. It seems a straight forward matter.

This is an appeal from the magistrate's court of the district of Maseru, in which the Appellant who were the accused numbers 2, 4, 5 and 6 noted appeals to this Court.

The most important aspect to consider is that having appeared before the magistrate on the 22nd day of June, 1992, a

charge was read and explained to them. It appears from the record that all pleaded guilty to the charge. The then Public Prosecutor then went on to indicate that he does not accept the accused's pleas to the charge in the case. The matter was postponed to the 14th day of July 1992, for hearing.

On the 14th day of July 1992, the Public Prosecutor, Mr. Posholi, came into the picture, it having been alleged that Mr. Lepphoto was absent. Instead of proceeding on the basis that the previous Prosecutor had not accepted the accused's plea, this Prosecutor on the last mentioned date proceeded and outlined the facts presumably on the strength of section 240(b) of the Criminal Procedure and Evidence Act, 1981 as if the situation had been that the accused had pleaded guilty and the Prosecutor had accepted their plea. This is the matter that was objected to by both Mr. Monyako and Miss Ramafole for the Appellant.

The aforementioned objection by Appellants' Counsels, is briefly that that (as they submit) what should have happened was that evidence of Crown witnesses should have been led. Once this has not been done an irregularity, that goes to the root of the matter, has occurred which should result in quashing of the proceedings and the acquittal of the accused. Most wisely Miss Nku who appeared for the Crown does not support the conviction and sentence.

I am satisfied that the submission of the Appellants' Counsels is correct. The proceedings are quashed the verdict and sentence accordingly struck off. I am persuaded (not in anyway believing its correctness) that the Appellants would have had a defence namely, that they were commanded by the Chief of the area to do the assaults. This appears to be the statement that they made even before the Court *a quo*.

It is unfortunate that we have come across a situation like this, whereby a very serious kind of negligence in the Courts proceedings has occurred. The Crown's case has been unnecessarily jettisoned for the reasons shown above.

I further order that the cash bail deposit and other payments made pending the hearing of this appeal be refunded to the Appellants.

  
T. MONAPATHI  
Acting Judge

28th March, 1994

For the Appellants : Mr. A. T. Monyako &  
: Miss M. Ramafole

For the Crown : Miss N. Nku