CRI\A\6\94

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

'MAMATSELISO LEPHAKA Appellant

v

R E X Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla on the 25th day of May, 1994

In this case the appellant 'Mamatseliso Lephaka was charged with the assault on 'Mapinki Ramakau with intent to do her grievous bodily harm.

Medical evidence shows that the injuries were minor and that they were not dangerous to life.

The main thrust of the appellant's appeal is that the learned Magistrate was wrong in not having paid due regard to this evidence. I must hasten to point out that the appellant herself at the close of the outline by the prosecution of the crown's case admitted the facts as true and correct. One factor which was disclosed in that evidence was that the victim when so stabbed or

when so hit with the bottle on the head fell to the ground.

It appears that in the view of the magistrate in rejecting or in paying no regard to the doctor's evidence he relied on this element that the victim as a result of the blow to the head fell to the ground; and in that respect felt that the charge that had been preferred should be returned as proved namely that the finding that the accused now appellant is guilty of assault with intent to do grievous bodily harm.

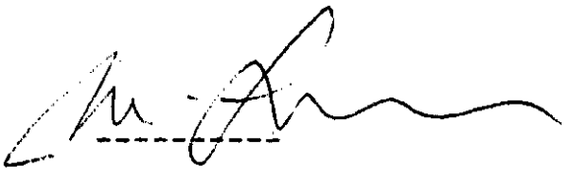
It has been argued on behalf of the appellant that the learned magistrate misdirected himself in ignoring this evidence which was before him and which was in favour of the appellant, yet, in Hunt there is authority for the view that the bodily harm need not be grievous: as long as it has been inflicted with the appropriate intent then it is proper to return the verdict of assault with intent to do grievous bodily harm. However, there is a little lacuna in the current case in that the learned magistrate having properly taken the view that the medical evidence was not reliable, he nonetheless failed, or the prosecution failed to call the same doctor at least to give that doctor an opportunity to comment on what the effect that was witnessed by eye witnesses on the victim falling after the blow on her could have been; or whether that doctor would still think that this laceration that the magistrate learnt of coupled with the falling of the victim could indeed in the opinion of that doctor still have amounted to no harm to life

at the time the resultant falling took place; or something of the sort. But that too in a sense is irrelevant in the view advanced by Hunt that the blow need not be grievous as long as it is accompanied by the requisite intent. But because there was this omission to ask the doctor what the effect I have pointed out could have been and why the victim fell as a result thereof some doubts ensued. This defect could have been cured if another doctor had been called to make expert comment on the medical evidence adduced, in the event that such evidence seemed as in my view it appears, to be inadequate. Such evidence would have helped throw some light on the effect the blow had on the victim to cause her to fall to the ground.

As to the question of sentence true enough five years would seem to have been excessive but it doesn't appear that the learned magistrate had any choice in the matter, this being a sentence which was imposed by statute in terms of the minimum Penalties Order. But because of the view that I have taken of the failure on the part of the learned magistrate to get further support of the facts which I might say he had properly taken into account - short of this extra step then - the court's view is that the appellant was wrongly convicted of assault with intent to do grievous bodily harm. To that extent the conviction is set aside but in its place is substituted that of Common Assault and therefore this will have an effect on sentence.

I have just indicated that the verdict of Assault with Intent to do Grievous Bodily Harm is set aside and that of Common Assault is substituted therefore.

With regard to sentence the order of Court is that sentence is set aside and substituted by one of payment of a fine of Two Hundred Maluti or serving of six months' imprisonment of which half is suspended for two years on condition that the appellant be not convicted of a crime of which violence is an element committed within the period of the suspension.



J U D G E

25th May, 1994

For Appellant : Mr. Mofolo

For Respondent : Miss Nku