CRI\A\53\93

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

NAPO MATSEPE

vs

R E X

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 14th day of February, 1995

This is a criminal appeal from the magistrate's court of Butha Buthe in which this Appellant had been charged with assault with intend to do grievous bodily harm, it being alleged that on the 10th June 1993 he assaulted John Mokhoabenyane by chopping him with a knife on the head and hand with intend to cause grievous bodily harm. This Appellant admitted guilt in terms of Section 240(b) of the Criminal Procedure and Evidence Act 1981. After the outline of facts which he agreed to, the Appellant put in evidence in mitigation and was thereafter sentenced to a term of imprisonment of three years without an option of a fine. I would find, that from the outline of the facts, the case with

which the Appellant was charged was proved.

The learned Counsels, Mr. Kolisang for the Appellant and Miss Nku for the Crown agree that there are really no sound reasons for disturbing the finding on conviction. What did appear to worry Mr. Kolisang was the fact that what we find in mitigation appears to indicate, I would say in a rather obligue manner that there could have been a fight over a dog and this could normally have necessitated a finding that there was a case for self defence in favour of this Appellant. I am saying normally to mean if there had been a trial. The hardships that have to do with the procedure in that Section 240(b) are obvious and clear and they are always problematic to a Court that is being asked to make a finding, when the facts that come out in mitigation when the Appellant has already admitted the facts supporting the charge in the prosecutor's outline.

I have myself on numerous occasions commented adversely about the habit of the magistrates not giving reasons for their sentences. The Crown has conceded again that the sentence seems to be on the harsh side. I agree that if the learned magistrate had given reasons and had taken all the other personal circumstances of the Accused into account she would have imposed a lesser sentence or for that matter a custodial sentence would have been made albeit with an option of a fine. I approve the

comments of Mcdonald A.C.J. in this case of State v Manuel, 1972 (4) SA 425 at 427B that "where the option of paying a fine is permissible the first question is always whether such a punishment is appropriate. If it is not an option should not be granted, if it is, the fine must always constitute a real option".

I have myself commented adversely about the absence of reasons for sentence in the appeal. I have approved the comments in the review No.4\94, R v Mahao in that regard. Previously, I had commented in a similar manner in the review No.3\93 R v Simon Phala Mokoaleli. I have no reason to disbelieve the facts in the record that this Appellant is a herdboy. He is married with children. He has two children and that first was born in 1988 and the last was born in 1991. His wife is a housewife. He survives by working the soil and he is illiterate. It is clear therefore that having confirmed the conviction, I am persuaded that there must be a variation to the sentence imposed by the learned magistrate. I would substitute, therefor, the following sentence: "Two years imprisonment or six hundred Maloti".

T. MONAPATHI
JUDGE

For the Appellant : Mr. G. M. Kolisang

For the Respondent : Ms N. Nku