C of A (CRI) No.4 of 1995

IN THE LESOTHO COURT OF APPEAL

In the matter between:

MAHULA

v

R E X

CORAM

BROWDE J.A.
KOTZE J.A.
LEON J.A.

JUDGMENT

LEON J.A.

The accused was charged on a count of an attempted murder of one Hank Stelzer by shooting him on the abdomen and he was also convicted on count 2 of contravening the Act No. 17 of 1966 by also possessing a .38 special revolver and 2 rounds ammunition. On count 1 he was found guilty and was sentenced 6 years imprisonment and on count

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2 he was sentenced 2 years imprisonment. The sentences were ordered to run concurrently. Mr. Mafantiri who appeared today for the appellant correctly submitted that the sentence was inproper one on count 2 and this was conceded by Counsel for the Crown. The sentence on count 1 shall not exceed 1 year's imprisonment.

Counsel for the appellant also submitted firstly that there was a scuffle secondly that the appellant did not have a gun and thirdly that when he had a gun he acted in self defence. In my view none of these submissions have any merit whatever and that is why we did not call upon Counsel for the Crown to argue the merits of this case.

It is common cause that the complainant was shot in the abdomen on the 9th April 1994 nor is it in dispute that he suffered extremely severe injuries which were almost fatal. He had a gunshot wound on the right rib, he was firstly operated at Queen Elizabeth II in Maseru. His condition deteriorated causing him to be removed to Universitas hospital in Bloemfontein where he was subsequently found to have a laceration of the lungs and *inter alia* septic wounds and puss and faeces contents in

the pelvis. He was very seriously ill and he received further treatment and there were other complications. In fact the evidence suggests that he was virtually at death's door. Indeed he stayed for several weeks in hospital until he recovered. The complainant is a partly blind man who was in a company of a transport business which amongst others transported television sets and television monitors to Bloemfontein for repairs and then return them to the agents.

The appellant in this case had a television monitor which was given to the complainant to take to Bloemfontein for repairs. The cost for repairs was M480.00 which was very much more than the appellant believed it would cost. He did not pay the company and the company, having not been paid, sold the monitor. The appellant felt that the complainant was a cheat and he went to the appellant's house on the day in question. It is against that background that the appellant in a very angry mood went to the complainant's house.

The Court was faced with two possible versions. It was the Crown case that the appellant armed with a gun

first deliberately tried to shoot the complainant through the head. The shot did not go off. The appellant ended up shooting the complainant in the lower abdomen when he was on the ground. I pause to say that on that version there was no possibility of self defence in this case. It was the appellant's case that the complainant had a gun and the shot went off when the appellant was trying to defend himself. The Court has given a very detailed judgment in which it has analyzed fully the defence case and it concludes that the appellant's case was so improbable that it urges on the or absurd. The Complainant was a good witness and the complainant's evidence was not discredited in cross-examination. It is supported by other evidence which I shall not analyze in detail. But the evidence which is referred to very fully by the learned judge. There was also the evidence of a friend of the appellant Michael Mhlanga P.W.6 who gave evidence in which he said the appellant did tell him that he had a gun. The appellant was asked why he was giving evidence against him and he said that the witness may have been bribed. The appellant was a shocking witness. He was evasive, he did not answer questions. When he saw that he landed in trouble he said that he was confused. There is an

expression in English which says he dived and he dived and that is precisely what the appellant did in this case. His story is also full of improbabilities.

I am persuaded that the learned judge was perfectly correct in finding that the version of the Crown was true and that of the appellant was false. On that version the appellant tried deliberatly to kill the complainant not once but twice. First he tried to shoot him through the head and later when he was on the ground fired deliberately fired at his abdomen. It follows in my view that the appellant was rightly convicted of attempted murder and also correctly convicted on the second count. With regrd to the second count, as I indicated earlier, counsel for the appellant is correct in submitting that the sentence should not be more than 1 year. With regard to count 1, that is the sentence of 6 years in attempted murder, Mr. Mafantiri submitted that the sentence should not be more than 2 years. The Court has a dicretion as to what sentence it ought to impose on count 1. It has not misdirected itself anyway nor does there exist in my judgment any discrepancy between the sentence which I would have imposed and that which the learned judge imposed. As

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I indicated earlier in this judgment this was a very serious case indeed. The complainant is very lucky to be alive today. A sentence of 6 years imprisonment in all the circumstances including the appellant's state of anger is not in my view inappropriate in the circumstances of this case. The sentence of 6 years in my view is a proper sentence. I would therefore dismiss the appeal against the conviction on count 1 and count 2. I would allow the appeal against the sentence on count 2 of 2 years by reducing it to 1 year's and order that that sentence run concurrently with the sentence of 6 years imprisonment on count 1.

Delivered on 29th this day of June, 1996

Signed : .....
R. N. LEON
JUDGE OF APPEAL

I agree : .....
J. BROWDE
JUDGE OF APPEAL

I agree : .....
G. P. C. KOTZE
JUDGE OF APPEAL

For the Appellant : Mr. Mafantiri

For the Respondent : Mr. Sakoane