

CRI/APN/14/2000  
MASERU CR/848/2000

IN THE HIGH COURT OF LESOTHO

In the matter between:-

THABISO KANE APPLICANT  
vs  
REX RESPONDENT

JUDGMENT

Delivered by the Honourable Mr Justice S.N. Peete on the 23rd August, 2000.

This application appeared first in the Motion Roll of the 21st August 2000 and the applicant sought to be granted leave to note his appeal out of time in CR848/2000 and to be granted bail pending the outcome of his appeal.

On the motion day, having heard Mr Mohau, I granted applicant leave to note his appeal out of time as he was unrepresented at his trial and had no funds to brief counsel timeously. I also ordered that the record of proceedings be dispatched to the

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Registrar before noon on the 22nd August 2000, and that Mr Mohau should file his notice of appeal and grounds therefor before the 23rd August 2000 on which day the appeal would be argued.

The record of the proceedings reveals that the applicant, a 20 years old Mosotho man appeared before Maseru Subordinate Court on the 15th May 2000 facing a charge of housebreaking within intent to steal and theft of a (Video Cassette Recorder)VCR it being alleged that he broke and entered the premises of one Mpho Letuka on the 3rd May 2000 and stole the VCR worth M2,493.81. The applicant (hereinafter called accused who was unrepresented, pleaded guilty to the charge and admitted the facts as outlined by the public prosecutor in terms of section 240 of the Criminal Procedure and Evidence Act of 1981. The learned magistrate found him guilty as charged. The prosecutor then had stated that the accused had no previous convictions and the accused having had pleaded for leniency, the learned magistrate sentenced him to four years imprisonment without on option of a fine. He also ordered that the VCR be returned to the complainant. It is important to quote in full the statement of facts as outlined by the prosecutor because, as Mr Mohau correctly submitted, these facts did not disclose commission by the accused of the offence charged.

"PP. Accepts the plea and outlines the facts as follows:

Evidence would show that the complainant stays at Maputsoe Ha 'Mathata but resides at Moshoeshe II due to work. The complainant knows the accused.

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On the 3rd instant the complainant left his home and went to work. In the evening when he come back from work he found his house opened. He had not allowed anyone to enter his home. When he got inside he found his VCR machine missing. He immediately went to the Airfield police post to report. When he got there he reported to Trp Makhutla. Trp Makhutla then started investigating. His investigation led him to the accused whom he met on the 11th instant. He asked him for an explanation which he gave. His explanation was not satisfactory.

The complainant identified the VCR or his in the presence of the accused.

The accused was given a charge which he stands facing. The VCR is before court and I wish to hand it in as a exhibit before this court.

Court marked exhibit I That is all.

Accused: I accept the outline of facts.

Verdict: Guilty as charged.

P.P. No Previous convictions

Mitigation: I didn't know why I did this. I ask to be forgiven. I am not working. I am still looking for a job.

Sentence: I have heard what you have said in mitigation but surely this is a very serious offence. It has to be stopped. This court has time and again said housebreaking is no less than murder. For one can't just imagine having worked for many years to acquire something like Exhibit I and a person of your behaviour just takes it with blink of an eye. Surely when the court finds out he would just fall and die. I need not buttress this risk any further. Having said this I find that the most lenient sentence of this court is that you should go to the jail for a period of four (4) years without an option of fine.

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Order: Exhibit I to be returned to the owner."

It is a trite principle of our law supported by plethora of authority that where an accused pleads to an offence other than murder in the following requirements must be satisfied-

- a) the plea must be an unequivocal admission of guilt - Rex vs Matsoso-1976LLR44
- b) the facts as outlined by the prosecutor must disclose the offence. (Rex vs Tucker - 1953 (3) SA 150 AD.; Jeilara Lenyepa vs Rex - 1991 -96 LLR 312
- c) the fact must connect the accused with the commission of the offence, that is, the accused must be proven to have committed the actus reus.

Where after the accused has pleaded guilty the procedure under section 240 (1) (b) of the Criminal Procedure and Evidence Act of 1981 is followed and the prosecutor accepts the plea, the prosecutor then must carefully outline the facts which should disclose the offence charged; in other words, the outline of the facts replaces the evidence which would otherwise

have been led by the prosecutor to prove the guilt of an accused. Unfortunately, as it often happens in practice, both the prosecutor and the presiding magistrate in their alacrity after the accused person has pleaded guilty, commit miscarriages of justice when in fact the outlined facts either do not disclose an offence or if they do they fail to implicate the accused. It is of utmost importance that when an accused pleads guilty to an offence (save to murder) the prosecutor must prepare and outline a careful statement of facts and assure himself that commission of the offence charged is disclosed thereby. In the same manner, the presiding

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magistrate must carefully record the all facts as outlined by the prosecutor and assure himself before bringing in a verdict of guilty that the outline discloses the commission by the accused of the offence charged. Acceptance of the facts by the accused is of no consequence if the facts do not disclose the commission of an offence charged (see also Rex vs Motjola - 1977 LLR 1).

In the facts of this case as outlined it is alleged that on the 3rd May 1999, the house of the complainant was broken into and a VCR stolen. The investigating policeman was led to the accused whom he met on the 11th May 1999 and he then asked him for an explanation which he gave. His explanation was not satisfactory. The complainant identified the VCR as his in the presence of the accused. The accused was then given a charge.....In my view these facts merely show, as Mr Mohau correctly pointed out, that an offence of housebreaking was committed and VCR stolen but the outline does not connect the applicant with such offence. We are not told whether the VCR was found in the possession of the applicant or whether the accused pointed it out after he was arrested. The accused was unrepresented and could not have been following the proceedings intelligibly. It is unsafe to let the conviction and sentence stand and are stand hereby set aside and the accused is to be released; but the VCR should be retained by the complainant as its owner - (CPE, section 56(1) (b)). I also order that the appeal deposit be returned to the applicant

S.N.PEETE  
JUDGE

For Applicant : Mr Mohau  
For Respondent : Mr Masiphole