

CRI/A/25/2000

IN THE HIGH COURT OF LESOTHO

In the matter between:-

SEFOLI MOLISE
MAPHELA MOLISE
PITSO MOLISE

1st APPELLANT
2nd APPELLANT
3rd APPELLANT

vs

REX

RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs Justice K.J. Guni on the
15th day of December 2000

This matter came before me on Appeal, against the sentence imposed upon these three accused by the Magistrate's Court, sitting in the Berea District.

The three accused were charged with the CRIME OF ASSAULT WITH INTENT TO DO GRIEVOUS BODILY HARM. They were convicted on their own plea of Guilty to this charge and were sentenced each to (12) twelve months

imprisonment without an option of a fine. They have now appealed against this sentence on the ground that it is severe.

Briefly, the facts of the case are as follows: The three accused are the herd boys. The complainant is a man, who guards against the animals which trespass upon the reserved grazing area "Leboella". In the early morning hours of the 10th Day of March 2000, the three accused drove their herds of cattle to the reserved grazing area where they were found grazing by the complainant. The complainant must have suspected or actually made firm observations, that there are animals which are, by night and surreptitiously driven to graze over that reserved grazing area. On the night in question, complainant surprised the three accused when he found them there in the early morning hours, with their herds still at it.

On his arrival at the place where the three accused were herding their animals, the complainant enquired from the accused, why they behaved in that fashion. He asked them why their animals come to graze at that reserved grazing area. They did not reply. He was, at the same time as he asked the accused, those questions, rounding up the animals with the clear intention to seize the said animals for the purpose of taking them to the POUND.

The three accused were seemingly not in favour of the pounding of their animals. Accused 1 was the first person to attack the complainant. The other two joined him. They assaulted the complainant by hitting him with their sticks all over his body. The complainant fell down while he was being so assaulted by these three accused. While he had fallen, the three accused nevertheless continued to assault him by hitting him further with their sticks. Having disabled him from impounding their animals, they drove their cattle away and left the complainant without rendering him any assistance.

The complainant must have got up and found his way back home. He reported the matter to the headman of the village. The three accused and their parents were called to the chief's place. An inquiry about the incident was made. The accused gave their explanation. The matter was referred to MAPOTENG POLICE. The Police, cautioned the accused and then sought their explanation. The accused gave their explanation following which the police gave them the charge.

The complainant was referred to the hospital. There he was treated as an out-patient. The medical report, "Exhibit A" was completed at the time of the examination of the complainant by the Doctor who carried out the said examination. The medical report was produced by consent of all the accused.

The injuries sustained by the complainant have been described on the medical officer's report, Exhibit A; as follows:-

Deep scalp laceration.

Whip marks all over the body, especially, at the back.

Bruises on the Right forearm and hand.

Fractures of the right 2nd 3rd phalanges and right 8th rib.

The degree of force applied when inflicting the said injuries is said by the Doctor to be very severe. The danger to life of the injuries caused is moderate. The complainant, will be, in the opinion of the Doctor, moderately disabled. Such disability will remain partial for a long term.

These three accused were correctly convicted on the charge of ASSAULT with intent to do grievous bodily harm. They also do not have any problems with their conviction. They have only appealed against sentence on the ground that it is severe. It is argued that they should have been given an option of a fine.


The three accused are young adults. Their ages range from twenty-two years to twenty-six years. In mitigation for Sentence, all accused pleaded with the court to treat them with leniency because they have not wasted the court's time by pleading not guilty. They are not contrite. They expressed no remorse for their action. When someone is caught red handed, a plea of guilty to the charge in those circumstances is not necessarily a matter of choice by the accused. Saving their time and that of the court is a factor to be considered in their favour when assessing an appropriate sentence. That by itself cannot be said to entitle the

accused who took the law into their own hands and disrespected the complainant's own rights to the extent, these three accused did, to an exaggerated degree of court's leniency.

The trial court had taken into account when assessing sentence, the fact that they have pleaded guilty and saved everyone concerned some time. They did not disclose to the court any other factors which they wanted to be considered, for the determination of an appropriate sentence. Before this court, still there are no factors other than those mentioned at the trial court, which this court is urged to consider in order to reduce the sentence passed by the Berea Magistrate's Court. The three accused had been convicted of one of the very serious offences. Their behaviour; first by surreptitiously driving their cattle to go and graze at the reserved grazing area and secondly, by assaulting and injuring the complainant so seriously, and leaving him without any assistance in that condition, gives me the impression that they are extremely selfish people. They are arrogant. They abrogate to themselves what should be for the common good. When they were caught red handed, doing something wrong, they should have acknowledged that, in stead of putting up resistance. It is an aggravation of their offence to assault so seriously for that matter, someone who was just doing his job.

It is the gravity of the offence, which called for a term of imprisonment S V. SPARKE 1972 (3) S A 396(A). The boys or young men who behave in this fashion and treat other people in the manner the three accused treated the complainant, need to be taught a lesson to respect others and themselves too, in the process. The deterrent aspect of the punishment, in the present case, need to be emphasised. It is common among young BASOTHO men to selfishly use the reserved grazing areas exclusively, by night, for their own animals. It is also common for such young men to react with violence when stopped from acting selfishly. A strong message must be sent to those who would think likewise, that the game is not worth a candle. The accused were wrong but instead they regarded the complainant as the one who they should punish and they punished him very severely considering the injuries they inflicted upon him.

This appeal must fail and it is dismissed.



K.V. Guni
JUDGE

15th December 2000

For Appellants : Mr. Khasipe
For Respondent: Mr. Ntaote