

IN THE HIGH COURT OF LESOTHO

In the matter of:

R E X

v.

LEBEKO MONYEKE

Review Case No.39/99
Review Order No.1/2000

C.R. 314/98
In Berea District

ORDER ON REVIEW

This case has come to this court on automatic review.

The accused Lebeko Monyeke was charged in the Teyateyaneng Magistrate's court of the Second Class on two counts namely:

Count I: in that upon or about the 26th day of July, 1998
 and at or near Pitsane in the Berea district the said
 accused did unlawfully assault one Leronti
 Monyane and by intentionally using force and
 violence to induce submission by Leronti
 Monyane did take and steal from his person or out

of his immediate care and protection certain property to wit; one Omega Radio cassette player with one cassette his property or in his lawful possession, and did rob him of the same.

Count II: That the said accused is charged with the crime of Attempted Murder in that upon or about the 29th day of July, 1998 and at or near Ha Samo-samo in the district of Berea, the said accused did wrongfully and unlawfully and intentionally acting with intention to kill did shoot at Joubere 'Matli with a firearm and missed him.

Crown evidence having been called the court per the learned magistrate Morenzi had found that the crown having proved its case beyond reasonable doubt the accused was guilty of the charges brought against him and had accordingly convicted and sentenced the accused.

When this matter came on review by this court the court had asked itself of the propriety of convicting an accused person on charges of robbery and attempted murder the reason being that, according to the court, these charges seemed to be of the same species so that the act was part of the same transaction with a single intent, both acts of robbery and attempted murder achieving a single intent and evidence necessary to prove the attempted murder also necessary to prove robbery.

Thus in *S. v. Benjamin En 'N Ander, 1980 (1) S.A. 950 (A)* the accused were charged of attempted murder and robbery. The appellate division had found attempted murder can occur without an act of assault constituting an element thereof though in cases where an act of assault does constitute an element of attempted murder, the law in that case has to do with attempted murder as species of the offence of assault being assault with the intent to murder.

On the other hand it was said robbery with the use of force is a species or the form of the offence of assault which is coupled with theft.

In Benjamin's case above the two appellants were brothers who had been charged with attempted murder in that they had attempted to kill the complainant by means of shooting him with a rifle and secondly robbery with aggravating circumstances in that they had used violence on the complainant by shooting him with a firearm to threaten him with an intent to steal money in his custody. They were convicted on both counts of attempted murder and robbery and sentenced on each count. On appeal the court on an analysis of the evidence found that both charges had included a conviction of an act of assault, that is the shooting of the complainant with a firearm. Held that the attempted murder and robbery had resulted in the appellants being twice convicted of the same act of assault, that is, the shooting of the complainant with a firearm. Held further that the appellants could only be convicted on one offence.

In the instant case the accused was convicted of both robbery and attempted murder. These offences occurred at the same time and were part of the same

transaction. Evidence necessary to prove one offence was also necessary to prove the other offence. Both counts included an element of assault and there can be no doubt in this court's mind that these offences constituted duplication of convictions.

In the result the conviction of attempted murder is set aside and so is the sentence.

The accused is to be called before the Presiding Officer and the result of the review explained to him.



G.N. MOFOLO
JUDGE

4th February, 2000.

c.c. Magistrate, Berea
O/C Police, Berea
O/C Prisons, Berea
O/C Central Prisons
C.I.D. Police Headquarters (C.I.B.)
Director of Prisons
Director of Public Prosecutions
All Magistrates
All Public Prosecutions