

Review Case No. 109/2002 CR. No. 185/2000
Review Order No. 8/2002
IN THE HIGH COURT OF LESOTHO

In the matter of:

REX

v

MOTANYANE MOTANYANE

In Qacha's Nek District

ORDER ON REVIEW

(11th November 2002)

The file of the case came up for automatic review. The Accused was convicted of negligence having contravened section 90(1) of Road Traffic Act 8 of 1981. A pedestrian had been hit by the Accused's vehicle driven by him at that time.

I clearly found fault with the learned magistrate's sentence on the Accused. Accused was sentenced to 2 years imprisonment with an option of a fine, the whole of which was suspended. This sentence was imposed merely because the Accused was a first offender and had shown remorse and nothing more.

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Ranged against this was the learned magistrate's own finding that this traffic offences are rampant. Indeed the Accused's negligence seemed to be gross taking into account the terrain and that a pedestrian was just knocked off without any reason. The serious injury on the complainant suggested that the vehicle was being driven hard or with speed.

The learned magistrate has done a lot which indicates that he became too lenient. It was by suspending what otherwise was a reasonable sentence as it stood. It was reasonable since it gave a first offender an option of fine. That made him avoid prison on payment of fine. That was lenient enough. Why should the whole of this sentence have been suspended merely because Accused was first offender and showed remorse. If more circumstances were revealed such as personal and otherwise the situation could have been more understandable. I accepted in that case that with addition of remorse the learned magistrate could be as lenient as he became.

This Court thought it therefore had a reason therefore to interfere where otherwise the learned magistrate like other magistrates has a discretion in matters of sentence. He should not have been too lenient even if he had advised himself against an outright prison sentence. It is trite that first offendership is

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one of the factors against imposition of a prison sentence. It does not mean that as a rule it should not be imposed. See *S v Victor* 1970(1) SA 427(A) 427(A) The sentence has to be varied to read:

"Accused is to be imprisoned for a period of two (2) years with an option to pay the fine of M2,000. Half of the sentence is suspended for a period of three years on condition that he does not commit a similar offence."

T. Monapathi
Judge
11th November 2002

copy: The Magistrate Qacha's Nek
O/C Police Qacha's Nek
O/C Prisons Qacha's Nek
O/C Central Prison
Director of Prisons
Director of Public Prosecutions
C.I.D. Police Headquarters
AH Magistrates
All Public Prosecutors