

CRI/A/53/79

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TIKANELO LEKOLA BOFIFI

Appellant

v

R E X

Respondent

REASONS FOR JUDGMENT

Filed by the Honourable Mr Justice F.X Rooney on
3rd day of January, 1980.

This is an appeal against the conviction of the appellant in the Subordinate Court at Mokhotlong of the crime of an assault with intent to murder. On the 12th December I allowed the appeal in part by setting aside the conviction and substituting a conviction for common assault. I reduced the sentence of 12 months imprisonment imposed by the magistrate to one of six months.

The Crown evidence revealed that the complainant, Thabang Mohale (P.W.2), Tjoetsane Bytwo (P.W.3) and Tjoetsane Tjoetsane (P.W.4) were looking for missing sheep on the 28th August 1978. They were on horse-back when they came upon the accused whom they suspected was a stock thief. Instead of answering their questions the appellant produced a firearm, described as a pistol, and shot the horse which the complainant was riding. The bullet entered the right side of the animal's neck. The horse collapsed and died shortly afterwards.

The assumption was made by all concerned that the accused had fired at the complainant intending to kill him, but, had missed his target and hit the horse by

mistake./....

mistake. Although the appellant at the trial did little to assist his own case by denying that he fired a shot at all at the horse or anything else, it was not correct for the court to assume that he intended to do more than he had in fact achieved. He shot the horse from under the complainant and in the absence of evidence that he was unskilled and incompetent in the handling of firearms, no inference could be drawn that he intended to kill anyone. However, the action of the appellant in discharging the firearm and killing the horse in the circumstances proved clearly amounted to an assault.

There are a number of disturbing features in the case which call for an explanation. The offence was committed on the 26th August 1978. The trial did not commence until the 22nd May 1979. According to the charge sheet the appellant was in custody. There is no indication as to where he was during the intervening period. This is not satisfactory. Magistrates should enquire into such matters and record their findings. I propose to request the trial magistrate to investigate the whereabouts of the appellant between his arrest and trial and to report the result to me. I note that when the trial was postponed to the 6th June and again until the 13th June, the record does not indicate if the appellant was remanded in custody.

The trial ended with the conviction of the appellant on the 13th June 1979. An appeal was filed on the following day. The record of the trial and

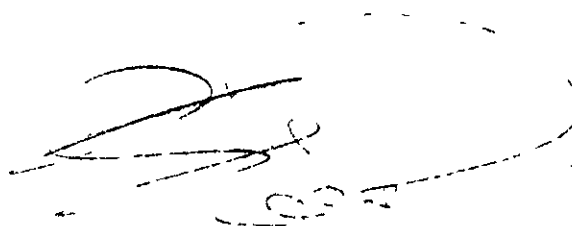
other papers/....

other papers (less than 20 typewritten sheets) were not despatched to the High Court until the 28th August. For some inexplicable reason, the papers did not reach the attention of the Registrar until the 2nd October. On the 8th October I gave directions that the appeal be placed on the roll. Yet the matter did not come up for hearing until the 12th December, that is almost six months since conviction by which time the appellant had served the sentence ultimately passed upon him by this Court.

There can be no excuse for this type of delay in the administration of justice. Magistrates and the staff appointed to assist them must ensure that appeal records are completed as soon as possible and sent to the Registrar. The Registrar in turn must put appeals down for hearing with despatch, particularly in those case in which the appellants are serving their sentences.

I draw the attention of all concerned to Order 35 of the Subordinate Court Rules which set out the time for preparing an appeal in the magistrates court.

Failure to follow the rules strictly could in certain circumstances render those responsible liable to pains and penalties of both a civil and criminal nature.



F.X. ROONEY

JUDGE
3rd January, 1980

For Appellant: In person
For Respondent: Mr Mdhluli