

IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal No. 26 of 1986
High Court Appeal No. 101/85

In the matter of:-

SHIMANE MAZINYANE Appellant

vs

THE STATE

Mrs M.C. Motsemme for the Appellant

Miss T. Mutshekwane for the State

J U D G M E N T

CORAM: T.A. AGUDA, JA
A.N.E. AMISSAH, JA
B.A. DOYLE, JA

AGUDA JA:-

The appellant was on April, 19, 1984 charged before a magistrate for Store Breaking and Theft contrary to section 307 of the Penal Code. After the charge had been read, interpreted and explained to him, he pleaded guilty and was accordingly convicted. Thereafter the proceedings were adjourned to a later date to give the prosecutor an opportunity of producing evidence of the previous convictions of the appellant, if any. On May 1, 1984, a record of such previous convictions/^{was}produced and read over to him. He agreed that the record was correct. Although the appellant told the magistrate that he was only 25 years of age, the magistrate estimated the appellant's age to be about 35. After

mentioning the fact that in this particular case the appellant had pleaded guilty, the magistrate went on to consider the fact that as a result of the breaking into the store he stole property of some considerable value. He also took account of the previous convictions of the appellant. The magistrate thereupon imposed upon the appellant a prison term of 7 years, and in addition to receive six strokes of the cane. His appeal to the High Court having been dismissed on August 16, 1984, he has now appealed to this Court against the sentence imposed upon him as aforesaid.

The offence of which the appellant was convicted carries a maximum punishment of seven years imprisonment. By an amendment which took effect from October 10, 1982 (Act No. 20 of 1982), the punishment prescribed under the section was altered to "imprisonment for seven years, with corporal punishment."

Mrs Motsemme, Counsel representing the appellant, has urged this Court to reduce the sentence in view of the fact that the learned trial magistrate did not give sufficient consideration to the appellant having pleaded guilty. She conceded, quite rightly, that the appellant has had a bad record for house breaking and of similar offences. She urged, nevertheless, that the sentence of seven years plus six strokes of the cane (which had been inflicted) was over-severe. I am inclined to agree with her and to hold that a sentence of five years imprisonment together with the strokes of the cane already applied will meet the

justice of the case.

The appeal therefore succeeds to the extent that the sentence imposed should now read "imprisonment for five years together with six strokes of the cane."

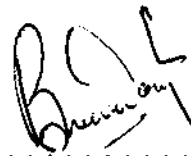


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T.A. AGUDA
Judge of Appeal



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A.N.E. AMISSAHU
Judge of Appeal

I agree



.....
B.A. DOYLE
Judge of Appeal

I agree

GIVEN at the Court of Appeal, Lobatse, this 18th day of July, 1986.