

IN THE HIGH COURT OF BOTSWANA  
HELD AT LOBATSE

Court of Appeal Cr. Appeal No.18/1986  
High Court (CA(F) 82 of 1984

In the matter between:

SETSHEDI WILLIAM MANYAKA                      Applicant

vs.

THE STATE

Applicant/Appellant in person unrepresented  
Mr. J. Malatsi for the State

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J U D G M E N T

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O'BRIEN QUINN, CJ:

The applicant/appellant herein seeks leave to appeal against the decision of the High Court sitting at Selibe-Phikwe given on 23rd August 1984 in which I dismissed his appeal against the decision of the Senior Magistrate at Selibe-Phikwe given on 22nd May 1984 but altered the convictions and the sentences to 3 years' and 5 years' imprisonment running concurrently and to 5 strokes of the cane which, in effect, amounted to a reduction of one year in the overall sentence.

The applicant/appellant does not seem to have applied in time to appeal against the decision of the High Court although there is a letter from him dated 11th September 1984 on the file and, while on an official Prison

visit, at his request, I advised him to apply for leave to appeal, and, on 20th October 1985, he filed an application for leave to appeal against sentence.

However, on the hearing of the application he argued on the question of conviction also.

The applicant had been charged in the Senior Magistrate's Court of Attempted Armed Robbery and his defence was that he had been coerced into joining a group of armed robbers who had seized his motor-car and had threatened to beat him if he did not join them in their scheme. He did so join them in one armed robbery and in one attempted armed robbery and was caught by the Police and charged with those offences.

In the Magistrates' Court evidence was given that the Police, during their investigations into a certain robbery, chased certain people who were on the spot and ran away and, when they traced them, found the applicant who was in possession of certain of the property which had been stolen. The applicant agreed that he had been so found but claimed that he had been forced into the armed robbery by the others who had been with him but had not been caught.

The Senior Magistrate, in a short judgment, said that his defence of having acted under force was not tenable in law, found him guilty as charged and sentenced the applicant to 6 years' imprisonment and six strokes on count 1, and to 5 years' imprisonment and six strokes on count 2 running concurrently.

On the original appeal I dealt at length with the evidence of his having been coerced into committing the offences but I found that there was no substance in his contention and that, even if he had been coerced, as he claimed, the coercion did not bring him within the scope of section 17 of the Penal Code.

Having heard his application and the views of State Counsel I could not see that he had any reasonable prospects of being successful on an appeal to the Court of Appeal,

I, therefore, refuse the applicant leave to appeal to the Court of Appeal.

He is, of course, at liberty to apply to a single judge of the Court of Appeal if he so wishes.

GIVEN at the High Court Lobatse this <sup>4<sup>th</sup></sup> day of <sup>June</sup>~~May~~ 1986.



J. A. O'BRIEN QUINN  
CHIEF JUSTICE