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IN THE COURT OF APPEAL OF BOTSWANA
HELD AT LOBATSE

Criminal Appeal No. 29 of 1989

In the matter between:

MOMPATI SHIMANE

Appellant

vs.

THE STATE

Respondent

J. R Malatsi for the Appellant
N. Chadwick for the Respondent

J U D G E M E N T

Coram: A. N. E. Amissah, JP:
T. A. Aguda, JA:
C. E. Puckrin, JA:

PUCKRIN, JA:

At the previous session of this Court we postponed the Appeal to allow for the hearing of further evidence from a Specialist Psychiatrist, Dr. Subramanian, on the issue of the prognosis of the Appellant's mental condition. Our reasons for doing so are contained in our previous judgment and we do not repeat them herein.

Dr. Subramanian explained that she had previously been the Medical Superintendent of the Mental Hospital situated at Lobatse. She had examined the Appellant on a number of occasions, the last two of which occurred on the 15th and 28th December 1989 respectively. On the 3rd September 1985 she had compiled a written report, which report was handed up to this Court as an exhibit. During her examination she explained certain of the opinions expressed in her report. I point out hereunder certain of the salient features of her report:

- (i) The Appellant exhibits signs of having a psychopathic personality;

- (ii) The foregoing manifests itself in anti-social behaviour which results in impulsive and often criminal conduct on his part;
- (iii) He has a history of criminal conduct, including two incidents of violence committed against policemen, one of which resulted in the death of a policeman;
- (iv) One of the manifestations of a psychopathic personality is the telling of lies;
- (v) The appellant is reported to have a history of epileptic seizures, although since his incarceration in 1985 no such seizure has manifested itself. This is not unusual;
- (iv) The afore defined anti-social behaviour is always latent in a psychopathic personality and it is extremely difficult to cure such a condition;
- (vii) At the examinations conducted during December 1989 no signs of psychiatric illness could be observed.

The witness was then questioned on the source of her evidence relating to the appellant's history contained in her report. Of particular importance is her evidence that the facts pertaining to the alleged assaults on the two policemen were derived from the Appellant himself. The record of the trial shows that no evidence of any such assaults having taken place exists and that this incident must therefore have been a fabrication on the part of the Appellant. When questioned on this aspect Dr. Subramanian expressed the opinion that this bizarre revelation on the part of the Appellant must have been due to a delusion on his part. She stated further that this exacerbated the situation because it was a further indication of the Appellant's mental instability and that a real danger exists that he might try to enact his delusions in the future.

Upon a series of questions by the Court the witness conceded that the Appellant's psychopathic personality might be either the consequence of epilepsy or might exist independently therefrom. In the event of


the former the condition is controllable whilst in the latter it is not. Obviously it is essential to know which of the two prevails in order to assess whether or not the Appellant will forever constitute a danger to the public.

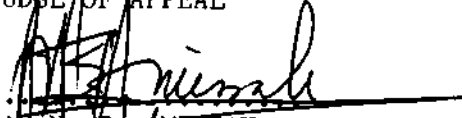
Dr. Subramanian indicated that sophisticated tests exist which would indicate whether a history of epilepsy is present, but facilities for these tests do not exist in Botswana. Alternatively, a controlled regimen of medication for a period of two years would allow for a similar assessment.

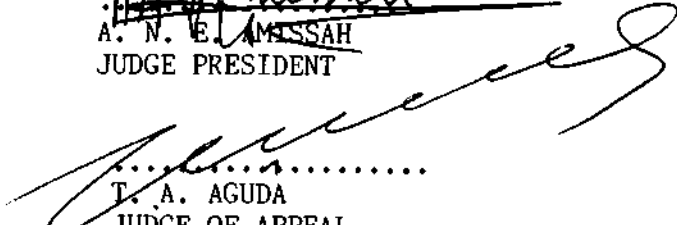
In my view the foregoing set of facts is exemplary of the circumstances which must be examined and which must be found to exist before an indeterminate sentence is imposed. This appears to me to be consistent with the views expressed in the cases of Pither, Bogosi and Wilkinson referred to in our previous judgement.

Accordingly the Appeal against sentence is dismissed and the sentence imposed by the Court below is confirmed. For the assistance of the officials who have to administer the functions set out in Section 82 of the Prisons Act (Cap 21:03) we recommend that the Appellant should be placed on a regimen of medication comprising carvalazepine ("Degredon") (this being Dr. Subramanian's suggestion) or other similar medication for a period of two years to assess whether his condition is curable or susceptible to palliative treatment. We further recommend that this assessment be used as a basis for any determination which they may make. We order that this recommendation be brought to the notice of the responsible prison authorities.

GIVEN at Lobatse this ...^{3rd}... day of June, 1990


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C. F. PUCKRIN
JUDGE OF APPEAL


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A. N. E. AMISSAH
JUDGE PRESIDENT


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T. A. AGUDA
JUDGE OF APPEAL