

IN THE COURT OF APPEAL OF BOTSWANA
HELD AT LOBATSE

CRIMINAL APPEAL NO. 38 OF 1994
[HIGH COURT CRIMINAL REVIEW CASE NO. 118/93]
[HIGH COURT CRIMINAL APPEAL CASE NO. 147/93]

In the matter between:

KOBOYATSHWENE MALEMA

Appellant

and

THE STATE

Respondent

Appellant in Person
Mr. K.N. Sebotho for the State

R U L I N G

CORAM: T.A. Aguda J.A.
W.H.R. Schreiner J.A.
Lord W.L.K. Cowie J.A.

SCHREINER J.A.:

In this matter, the accused applied for leave to appeal against the sentence which was imposed by the Magistrate. The charge was Unlawful Wounding and the sentenced passed was the maximum sentence for that offence, namely, 7 years imprisonment.

There can be no doubt that the assault which the Applicant made upon the complainant was a very serious one indeed. It appears that he used an axe which was unusually heavy and the assault appears to have been seriously intended. The Applicant has drawn our attention to what he said to the trial Court, namely, that he was not responsible for bringing the axe to the

house or the room where the complainant was. There seemed to be a dispute of the fact of the issue.

It is an unusual feature of this case that there were no serious injuries inflicted upon the complainant - scalp laceration, laceration on the right shoulder and and the right scapula. And the State has conceded that these injuries are very light considering what weapon was used to attack the complainant. There seemed to be some difficulty in the evidence concerning the motive of the attack. The Applicant says it was the presence of another man which caused the serious quarrel between himself and the complainant, but there is also evidence that there was a dispute about money. The Magistrate did not resolve that issue and I do not think it really matters.

There were no previous convictions. The assault resulted in minor injuries and no fracture of the skull. The Applicant said he struck one blow with the blade of the axe and thereafter used the handle. The Medical Report seems to lend substance to that statement by the Applicant. Although one must inevitably find that it was a very serious assault, this Court is of the opinion that the maximum penalty for Unlawful Wounding should not have been imposed. The result is that the application for leave to appeal succeeds and we will consider the appeal as having been argued and dealt with in the present hearing and will reduce the sentence from 7 years to 5 years imprisonment.

In the result the appeal succeeds, the sentence of 7 years imprisonment is set aside and be substituted by the sentence of 5 years imprisonment.

DELIVERED IN OPEN COURT AT LOBATSE THIS 18TH DAY OF JANUARY, 1995.

W.H.R. Schreiner

W.H.R. SCHREINER
JUDGE OF APPEAL

I agree

T.A. Aguda

T.A. AGUDA
JUDGE OF APPEAL

I agree

W.L.K. Cowie

LORD W.L.K. COWIE
JUDGE OF APPEAL