

SWAZILAND HIGH COURT

REX

Applicant vs

SHONGWE Jeremiah

Respondent

Cri. Trial No. 13/2002

Coram SAPIRE, CJ

For Applicant Ms Wamala

For Respondent In Person

JUDGMENT

(26/09/2002)

The accused, Jeremiah Shongwe, is charged with the offence of rape. In the alternative he is also charged, arising out of the same incident, of contravening Section 3(1) of Act 39 of 1920. This is a statutory offence, enacted to be applied where absence of consent to sexual intercourse by the complainant cannot be proved. As will be seen we do not have to consider the alternative because the facts on the main charge are crystal clear.

The facts of the case were related by the complainant herself who at the time of the incident was, as it transpired, ten years old. On the 13 May 2000 she was sitting at her home alone her parents having gone to work that morning the accused came to her house, engaged her in conversation and led her out into a garden. He did mention something about a chainsaw. This was obviously a pretext to lure the complainant from the safety of her home to a place where he could carry out his intent. She described in detail what took place.

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Having regard to the medical evidence which showed that this young girl had her hymen injured, which indicated to the doctor that there had been full penetration shortly before the examination, such can taken with the complainant's evidence to have taken place.

The complainant's evidence was corroborated by that of her cousin, one Gugu Zwane who saw the complainant first coming out of the bushes, followed by the accused a little while later. The complainant made a tearful report to her

There can be no question of mistaken identity and the evidence that the complainant was indeed subjected to sexual assault has not been controverted.

The complainant also made a repeated complaint to her mother; she was taken to the police, thereafter examined by a doctor where the results were observed.

The accused, who was undefended, cross examined the complainant. He put to her despite my indications to him that it was a dangerous thing to do, that he had had sexual intercourse with this little girl

on three previous occasions. When she denied this he would have had me think that she was lying, for so he put it to her. When he came to give evidence it was quite clear that he was the liar as he denied that there had been intercourse previously. This was evidence of a misdirected offence. Perhaps he was trying to establish that there had been consent to confine the conviction to one on the alternative count. The accused in giving evidence attempted to limit his meeting with the complainant on that day to an innocent conversation. This does not explain all the events that have been proven especially her physical condition after the event.

The accused indicated that he wished to have a witness called. It was arranged, but the witness did not advance the defence at all.

I am satisfied beyond any reasonable doubt that it was the accused who had sexual intercourse with Nontobeko Mndzebele, a minor female who was at the time ten years old. I am satisfied that not only was she not capable of consenting to the act but that she in fact did not consent to the act. I find further that in terms of Section 185 bis of Act 67 of 1938 that the rape was accompanied by aggravating circumstances having regard to the tender years of the victim. She was also raped in her home where the accused had received shelter from her parents. One would hardly expect such heinous conduct from a person who had long been a guest in the house.

#### SENTENCE

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The offence in this matter is a very serious one and it has been observed through the everyday experience of this court to be one that is on the increase. One of the mitigating factors which one would look for would be to find that the accused was contrite and that he realised the seriousness of what he had done and also that he regrets having done that. By steadfastly denying the commission of the crime in support of your plea of not guilty, you have precluded any demonstration of regret for the crime of which you have been found guilty.

This is the sort of offence where not only must you receive punishment for what you have done but the message must go out that the courts will be very severe on this sort of behaviour. You claim to have children yourself. This should have given you greater respect for the integrity of other people's children.

As I said this is a young girl and you went ahead and raped her. Your behaviour in the witness box did not make it easier for me to treat you lightly. I heard you asking this little girl questions suggesting that you had sex with her before, when you knew that is completely untrue. The law provides for a minimum sentence of 9 years imprisonment in your case but I do not think that I will impose the minimum despite the fact that you are a first offender. You will be sentenced to 10 years imprisonment. The imprisonment is to be deemed to have commenced on the day of your arrest, which was 14th May 2000.

SAPIRE, CJ