

IN THE HIGH COURT OF SWAZILAND

In the matter of: CRIM. CASE NO.

THE QUEEN

VS

BONGANI MESHACK PHIRI

CORAM: DUNN A. J.

FOR THE CROWN MR. S. N. DLAMINI

FOR DEFENCE IN PERSON

JUDGMENT

(13/7/84)

DUNN A. J.

The accused is charged with the rape of Thembi Sioiya at Mlindazwe on the 7th October, 1983.

The accused who conducted his own defence pleaded not guilty to the charge.

The complainant, a girl of about 17 years of age, told the Court that she was at home with one Thembeni. The accused whom she did not know arrived and told Thembeni that he wanted the child, obviously referring to the complainant. He made certain remarks about the complainant's thighs and eventually got into the house. He grabbed hold of the complainant and slapped her in the face. The accused told Thembeni that the complainant knew what she had done to get the treatment he was giving her. The accused pulled the complainant out of the house and out of the yard through the gate. The complainant stated that she was crying but nobody came to her aid. She explained under cross-examination by the accused that there were no adults at the neighbouring homesteads. I might here mention that I have found in several rape cases heard in this Court, that the public seldom responds to cries from persons in the complainant's position. The matter is

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invariably treated as a purely personal one between the assailant and his victim.

In any event the complainant stated that the accused closed her mouth when she cried out. He dragged her into a bush where he again assaulted her. He pushed her to the ground, removed her parity placed it in his pocket and had sexual intercourse with her.

The complainant requested that the accused release her to go home. The accused again assaulted her and had sexual intercourse with her.

James Dlamini whom the complainant said was her brother arrived at the scene and questioned what the accused was doing to the complainant. The accused replied that the complainant was his lover. Dlamini stated that he asked the accused the simple question why the complainant was crying if she was his lover. Dlamini took the accused to the other people that had gone out in search of the complainant. The accused was identified by a colleague as a member of the Umbuto Swaziland Defence Force. The accused's cross-examination of these two witnesses was along the lines that he never saw the two witnesses on the day in question. There is no doubt from the evidence of the complainant, James and Jane Gamedze who joined the search with James that the accused was the person found having sexual

intercourse with the complainant in the bush.

The complainant was examined by a Doctor at the Good Shepherd hospital at about 10.00p.m. She had been raped at about 3.00p.m. A vaginal smear taken for analysis showed the presence of spermatozoa, which according to the doctor was evidence of recent sexual intercourse.

The accused in a statement under oath stated that he met the complainant after 1.00p.m. on the day in question.

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He stated that she saw him walking past her homestead. She joined him as he walked towards the bus stop. She wanted to go with him to Siteki. He pointed out that his wife would not approve of this whereupon the complainant became furious and asked him why he had not informed her of this before she fell in love with him. He requested her to return home. He proceeded to Siteki and returned on the 10th October, 1983 to find that the complainant had laid a charge against him. The accused's evidence of meeting with the complainant differs with what he put to her under cross-examination when he denied having seen her on the day in question.

The Crown's evidence fully establishes the accused's guilt. The complainant's evidence is satisfactory in all material respects. She was not seriously challenged by the accused who initially set out to deny having met her and seen her brother on the day in question only to change his stand in his evidence and give an account of meeting with the complainant and a possible reason for her having laid the charge against him.

The complainant's evidence is amply corroborated by that of James Dlamini who found the accused having sexual intercourse with the complainant. The identity of the accused is not in issue. I reject as totally false the evidence given by the accused.

I find the accused guilty as charged.

B. DUNN

ACTING JUDGE