

IN THE HIGH COURT OF SWAZILAND

CBIM. CASE NO. S.124/84

In the matter of:

REGINA

vs

JOHN M. MHLANGA

CORAM: WILL, C.J.

FOR THE CROWN: MR NDZIMANDZE

FOR THE DEFENCE: IN PERSON

JUDGEMENT

(23/11/84)

Will, C.J.

The Accused was charged with rape. Complainant stated that she was at the house of a certain Silelo when the Accused asked her how his photograph had found its way into her photograph album which was then with Silelo. The Complainant said that it was her brother's album and that he had been a friend of the Accused who had given him the photograph. Accused told her she was not telling the truth and several times said she was lying, Silelo left and Accused and Complainant were left alone together. Accused, according to Complainant had a battle-axe and he threatened to chop her with it when she refused to accompany him into the forest. He threatened her with the battle-axe and so she went with him. On the way Accused asked her if she knew that he intended killing her. On the way to the Komati River they met a Mathonsi man who asked Accused if he was going fishing. He answered in the affirmative but Complainant was afraid to complain to him. Accused pulled up some creepers and made them into a rope. Near the river Accused made her put her arms and legs around a tree and tied her up with the rope he had

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made. He said it would be too cruel to kill her with the battle-axe and that he would leave her tied up whilst he returned to his home to fetch a knife to kill her with less pain. He went off and came back almost immediately and released her. He asked her to kiss him and she did so as she was afraid. He told her to take off her clothes. She said that she didn't even strip for her boy-friend. He said that in that case she could lie down and pull up her clothes. Because she was afraid she lay down and he pulled up her clothes. He pulled down his trousers and parted her legs with his knee and had intercourse. She cried but he said she shouldn't cry but should thank him for giving her pleasure. He did not however ejaculate in her saying she was no use even for the purpose of getting a baby. He ejaculated on the ground and then spat. They then left, each going their own way home. He said he would kill her if she told anyone what had happened. She reported to her mother on her return. Later she took the Indvuna to where she said she was raped. The rope was found there.

It is clear from Complainant's story as I have stated it in some detail that it was very circumstantial and although there were some extraordinary features about the Accused's conduct as described by her and therefore placed me on my guard as to whether all these things really happened. I am satisfied that she told the truth her story had the ring of truth.

The Complainant's mother said that Complainant returned home crying and she reported that the Accused had raped her. She went with the Indvuna to the scene of the crime where they found the rope. The Accused who was present, admitted raping Complainant, after at first denying that he had done so. The Accused also admitted tying her to a tree with a rope,

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The Indvuna said the Accused denied raping Complainant but when he was taken to the scene of the crime where the rope was found and the ground was disturbed he admitted raping her.

The Accused's evidence which I totally rejected as being most unsatisfactory is that there was a discussion about a photograph. He then asked Complainant to accompany him to the river to see if there was sufficient water in it to fish. They then went home. He did nothing to Complainant. He admitted carrying the battle-axe. The reason he gave for Complainant laying what he said was this charge against him was that the Chief's Runner and others had instigated the Complainant to lay the false charge although she had not wished to charge him at all.

I have no doubt that Accused committed this rape and I convict him accordingly.

SENTENCE

A large number of rape cases come before this court. There has hardly been a day since the beginning of this Session of the Court that there has not been at least one, and usually several rape cases.

The court has therefore been obliged to impose heavy sentences for rape. This rape was an aggravated one. You threatened to kill her and you tied her up with a rope. She must have suffered a terrifying experience.

In your favour I take into account that you have been in custody for well over a year. I sentence you to 6 years imprisonment .

D.D. Will

CHIEF JUSTICE