

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE.

CRI CASE NO. S.245/83

In the matter between:

THE QUEEN

vs.

JOHANNES M. MAMBA

CORAM:

DUNN, A.J.

FOR CROWN:

MISS NGUBANE

FOR DEFENCE:

IN PERSON

CHARGE:

RAPE

PLEA:

NOT GUILTY

JUDGMENT

(Delivered 12 December '83)

DUNN, A.J.

The Accused is charged with the crime of rape. It is alleged that the accused had unlawful sexual intercourse with Theresa Matsenjwa at Simunye, on the 18th May, 1983.

The Accused who was not represented pleaded not guilty to the charge.

Dr. Philip of the Good Shepherd Hospital, Siteki, examined the complainant at about 11.00a.m. on the 19th May 1983. The Doctor found bite marks on the inside of the complainant's left thigh. He said that the teeth marks were visible on the left thigh. The doctor did not get any explanation from the complainant about these marks. In the course of cross-examination by the Accused the doctor stated that he was

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prepared to say that he only observed lacerations on the complainant's left thigh and not bite marks. I am not entirely happy with this aspect of the doctor's evidence. There is no reason for the change in the doctor's evidence if he in fact saw bite marks. It does not however, appear that the presence or otherwise of any injuries on the complainant's left thigh has any bearing on this case. The complainant did not complain of any injury on the thigh or suggest that the accused had caused any such injury. The doctor formed the opinion that the complainant had recently had sexual intercourse.

The complainant told the court that she was in the company of 2 female friends when the accused whom she knew, called her. She did not go to him and he went up to her and grabbed her by the arm demanding that she should go with him to his house. She refused to do so and the accused proceeded to hit her with his open hands. She fell down. The accused pulled her up and she realised that her 2 companions had left. She cried and the accused pulled her towards his house. Nobody came to her assistance. One man she appealed to for assistance told her that he was afraid to interfere as her husband, obviously referring to the accused, might stab him. I might here pause to mention that I have on several occasions commented on the apparent indifference shown by the members of the public to calls for assistance made by women. The reply given to the complainant in the present case appears to be the standard reply

given to rape victims calling for assistance.

The complainant continued to state that the accused pulled her to his house where he pushed her on to a bed. He ordered her to undress and when she refused to do so he proceeded to

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undress her, tearing her jacket and panty as he did so.

The accused had sexual intercourse with her on two occasions that night.

The complainant states that she was awakened by the sound of tractors driving to the cane fields at about 2.00a.m. the next day. She informed the accused that she was going home to prepare food for work and she left the house. She stated that she went to the Security office and reported the fact that she had been raped by the accused.

She denied under cross examination by the Accused that she was in love with the Accused. She stated that the accused had proposed love to her but that she had never accepted him as a lover. She denied that she had ever slept in the accused's house or that he had ever slept in hers. She denied that she had consented to the sexual intercourse. She stated that she had not cried in the accused's house because he assaulted her and told her not to cry.

I was impressed by the complainant. She was not shaken in her evidence by the accused. She openly stated that the accused had for sometime been proposing love to her and that she had never accepted his proposals.

The Complainant is corroborated in her evidence by Josephina Dlamini who is one of the 2 people the complainant says she was walking with. Josephina testified to the complainant's refusal to go to the accused when the accused called her and of the subsequent assault which the accused carried out on the complainant as he pulled her towards his house. Josephina told the court that she learnt on the next morning that the complainant had been raped. This was when

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the Police came to section 8 where the complainant and Josephina worked.

I have already referred to the apparent indifference shown to calls for assistance from rape victims and I just cannot understand how Josephina who Worked with and was a friend of the complainant could have retired for the night, leaving the complainant being pulled away by the accused, without reporting the matter to anybody. The attitude of Josephina is all the more difficult to understand because she did not know of any relationship between the Accused and the Complainant. Nevertheless, Josephina stated that she was afraid to intervene and she did not do anything.

Josiah Mahlalela who is a security guard at Simunye told the Court that the complainant made areport that she had been raped by the Accused. He stated that the complainant got to the Security Office at about 2.25a.m. The Complainant narrated to him the circumstances leading up to the rape. The narration given by Mahlalela is in line with the evidence given by the complainant. The Accused was arrested and handed over to the Royal Swaziland Police.

The Crown led the evidence of Joseph Magagula in order to corroborate the evidence of the complainant that she was pulled by the Accused against her will to the accused's room. In the summary of Evidence furnished by the crown it appears that this witness found the accused and the complainant arguing outside the houses at Simunye. The complainant was angry and was refusing to go with the accused. In court Magagula stated that he found the complainant and the accused arguing as to

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which house they should go. The complainant wanted the accused to go to her house and the accused refused to go there as he said men were not allowed in the women's quarters.

Magagula stated that he persuaded the complainant to agree to go to the accused's house. He stated that he walked with the accused and the complainant to the accused's house. The complainant went into the bed room with a cassette player. He stated that he subsequently left the accused and the complainant in the house.

Miss Ngubane for the Crown pointed out that Magagula had given evidence which was inconsistent with a statement he made to the Police on the 21st May 1983 in that he had not mentioned in that statement that he had accompanied the complainant and the accused into the accused's house. Miss Ngubane also pointed out that the witness had said in his statement to the Police that the complainant was angry and refused to go with the accused.

The date and time of the making of the statement were put to Magagula and the statement was read to him. He agreed it was correct and that he had appended his signature to it. He stated that he had forgotten to tell the Police that he had gone to the accused's house and that he had forgotten to say in court that the complainant was angry and was refusing to go to the accused's house.

The statement was handed in. Miss Ngubane has asked the Court not to attach any weight to Magagula's evidence. I reject Magagula's evidence. My rejection of his evidence does not, however, affect the crown's case as built up by the other Crown witnesses.

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In a statement under oath the accused stated that the complainant was his lover. He met the complainant on the day in question. She was in the company of about 6 other people. He did not assault her but simply requested her to accompany him to his room. The complainant suggested that they should go to her room as her room mates were away. He pointed out to her that he was not allowed into the women's quarters. The complainant said she did not want to go to his house because she might oversleep and be late for work. He assured her that he would wake her up.

Magagula then came on the scene and persuaded the complainant to go to the accused's room. Accused stated that Magagula accompanied them to the house.

He stated that he had sexual intercourse with the complainant with her consent that evening. When she woke up in the morning, they again had sexual intercourse before she left for work.

He was surprised when he was arrested by the Security guards.

The accused stated that prior to the 18.5.83 the complainant had spent several nights at his house. He had advised her that he had a wife and did not want the complainant to leave any of her clothes in his house. He stated that he had last had sexual intercourse with the complainant in April just before the arrival of his wife when he told the complainant not to come to his house.

Under cross examination the accused was hard put to explain why he had not mentioned Magagula's visit to the house, to

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the complainant and further, the fact that the complainant had gone into the bedroom with the cassette player. He stated that the complainant could have reported him to the Police because he did not want the complainant to live with him.

I find the evidence of the complainant amply corroborated. I find no reason for the allegation of rape if the

circumstances leading to the sexual intercourse were as contended by the accused. The Accused's evidence is in my view totally false and I reject it.

I find the accused guilty as charged.

B. DUNN

ACTING JUDGE.