

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. /1984

In the matter of:

the queen

vs.

BEN MGITSHWA NHLABATSI

CORAM:

DUNN, A.J.

FOR CROWN:

MR. ZONDI

FOR DEFENCE:

IN PERSON.

JUDGMENT

(Delivered on 30th April '84)

DUNN, A.J.

The Accused is charged with the crime of rape it being alleged that he had unlawful sexual intercourse with Linah Hlophe at Mhlume, on the 1st August 1983.

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

The Complainant told the court that the accused was married to her niece. She stated that she occasionally visited the accused and his wife at Mhlume where the accused was employed. On the 1st August 1983 she met the accused at a beerhall in Mhlume. She was with two other women. The accused gave her E10.00 and told her to buy some drinks. She did so and gave the accused his change. She stated that at about 8.00p.m. the accused came to her and told her that somebody wanted to speak to her outside the beerhall.

2

She went out with the accused and they walked towards a butchery at which point she asked the accused where the person that wanted to speak to her was. The accused did not reply her but instead grabbed her and dragged her into a cane field. He held her by the throat and tripped her and had sexual intercourse with her. The complainant stated that the accused had placed his knee on her stomach and lowered her panty on the one leg. After raping her, the accused took E5.00 which she had in her bra and ran away.

The complainant got up and went to make a report to the security guards. One of the security guards, Nhlanhla Dlamini, told the court that when the complainant was crying made the report of the rape, he arrested the accused. He put the complainant to the accused. The accused replied that the complainant had consented to the sexual intercourse and that he had promised to give her E5.00. Nhlanhla told the court that the accused explained that he had given the complainant more than E5.00 and that the complainant had lodged the report when he demanded that she returns the balance to him.

The complainant denied under cross-examination by the accused that she had had sexual intercourse with him prior to the day in question. She denied that the accused used to have sexual intercourse with her at his house in the compound and that this had been found out by the accused's wife. She admitted that the accused had at one time chased his wife and her away from his house. She stated that this

was as a result of a quarrel between the accused and his wife and denied the suggestion that the accused had chased them away in order to avoid friction between them as his wife had learnt of the relationship between the accused and the complainant. The complainant maintained that she had given the accused his change and that she had reported the accused for the sole reason that he had raped her. The complainant made a good impression on me. She is a mature woman and regards herself as the accused's mother-in-law. I have no reason to disbelieve the very clear and straight forward evidence she has given.

The doctor who examined the complainant at the Good Shepherd Hospital, Siteki, on the 2nd August 1983 was available to give evidence but the accused intimated to the prosecutor and confirmed in court that he did not object to the medical report being handed in as he had no questions to put to the doctor. The report indicates that the complainant had bruises on the neck which the doctor stated were indicative of a struggle having taken place. The doctor could find no evidence of any recent sexual intercourse.

That concluded the evidence for the Crown.

The accused in a statement under oath admitted having sexual intercourse with the complainant with her consent. He stated that he had had sexual intercourse with the complainant on previous occasions. He replied under cross-examination that the complainant had reported him because he demanded that she returns his change. He stated that the complainant received the bruises on her neck when he throttled her to

return his money. He stated that this had taken place after the sexual intercourse. The accused could give no clear answer as to precisely how much he had given to the complainant in the beerhall. The accused called Albert Mkhonta when he said would testify to the fact that he had an affair with the complainant. Mkhonta did not give evidence to that effect. He gave evidence of how he had learnt from the complainant that she had been raped by the accused. He stated that the accused had left a bicycle at his home and he had to make arrangements for the bicycle to be taken from his home when he learnt the accused had been arrested.

The accused informed the court that he had been informed by Mkhonta that he (Mkhonta) would give damaging evidence against him in Court. Mkhonta was called by the accused. The accused was unable, with the court's assistance to have Mkhonta give evidence on the matters which the accused had indicated Mkhonta would testify to. There is no reason for disbelieving Mkhonta or any suggestion that he has deliberately withheld any evidence beneficial to the accused.

I cannot accept the accused's evidence. The complainant must be believed in saying that she gave the accused his change in the beerhall. The accused's version that the complainant made the report against him because of her refusal to hand over his change is too fanciful. The idea of throttling the complainant when she refused to hand over the change was clearly made up by the accused in an attempt to explain the very telling findings of the doctor which are reflected in the medical report and which support the evidence of the complainant.

I reject as totally false the evidence given by the accused. The credible evidence of the complainant is in my view amply corroborated by that of the security guard Nhlanhla Dlamini and the medical evidence. I find the accused guilty as charged.

B. DUNN

ACTING JUDGE.