

IN THE HIGH COURT OF SWAZILAND

CAI: CASE NO.P 385-397

In the matter of:

THE QUEEN

VS

JOHANE BHUTANA MPANZA

CORAM : HASSANALI, J

FOR CROWN: M. NSIBANDZE

OR DEFENCE: MR. R. DHLADLA

(Delivered 14th May,1985)

HASSANALI, J.

The accused is charged with the crime of rape of Jenneth Khumalo. He pleaded not guilty.

Jenneth Khumalo the complainant, said that she was a student studying in Form II at Nsongweni School. On 16/11/84 she left school late and went to the place where she stayed in order to collect her clothes and board a bus to go home. However, when she reached the bus stop she found that the bus had already left. She said that she was with one Nhlengethwa at the bus stop when she saw the accused driving past. He came back tooting his horn and complainant indicated that she wished to go home. She then boarded his vehicle. While driving he suggested that she be his lover and asked her to draw closer to him in order to kiss her, but she refused to do so. He then drove some distance along the forest road, and then stopping his vehicle, asked her to get down. When she refused, he got hold of her, laid her on the seat, removed her panty, undid his own zip and against her will had sexual intercourse.

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She was in tears and resisted him all along but gave in at the end due to much pain. She said that she was a virgin, and that it was her first experience of sex. Many vehicles passed by during this period, but as it was a foggy night no one could see her.

Accused then dropped her near his home, and sobbing she walked to her home. Her mother who was with Soneni Khumalo asked her as to why she was crying and she said that she was raped by the accused. Later she and her mother confronted the accused at his place but he denied raping her.

Soneni Khumalo the next Crown witness supported the complainant when she said that the complainant came home crying and reported that she was raped by the accused. She denied that any ill feeling existed between her family and that of the accused. She visited the accused's home often as she was friendly with his wife.

The Complainant's evidence was further corroborated by the evidence of Dr. Dostvager. When he examined her he found her depressed and in a state of shock. Her hymen had been recently penetrated and her vagina was lacerated. There was whitish discharge containing spermatozoa and her examination proved painful. He said that examination becomes very painful in cases where a virgin is sexually assaulted, and in his opinion the complainant was a virgin when she was sexually assaulted.

The accused in his evidence stated that while returning after dropping his girl friend, he noticed the

Complainant at the bus stop. She signalled him to stop and got into his vehicle.

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They spoke very little while driving and on reaching his home, she alighted and walked to her nun piece. He denied that he raped her and said that she was not crying at any time. He also denied that Soneni had visited his home. He said that the relationship that existed between their families was not amicable and they were not on speaking terms.

Jenneth Khumalo, Soneni Khumalo and Dr. Oostvager from Mainstay of the Crown case and the Court has to consider whether the first two witnesses gave accounts of what took place. On the question of rape, there is the evidence of the complainant herself who said that she was raped by the accused on 16/11/84. The accused admitted that she was in his vehicle on that date but denies raping her. The complainant was amply corroborated by Soneni Khumalo who said that the complainant was crying when she reached home and when questioned by her mother, she said that she had been raped by the accused. Therefore the version of the accused that the complainant was not crying is inconsistent with her story. When the accused was asked as to reason why the complainant should implicate him, he said that it could be because of the strained relationship between their families. Here again this is inconsistent with the evidence given by Soneni, who said that she was on friendly terms with the accused's family. However, if any ill feeling did exist between their families as suggested by the accused, I would have thought that the complainant and her mother would have gone straight to the police without going to the house of the accused. And in the first instance the accused would not have given her a lift that day. Therefore in my view the question of a strained relationship between the families does not ring true.

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The Complainant remains unshaken under cross-examination. Her evidence is full and lacks no details, and I do not entertain any misgivings that she was raped.

Therefore on the totality of the evidence, I have no hesitation in accepting the evidence of the Complainant and the other Crown witnesses in preference to that of the accused and his witness and

I accordingly find him guilty of rape.

J.A. HASSANALI

JUDGE