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IN THE HIGH COURT OF SWAZILAND

CRIM. CASE NO. 92/1994

In the matter between

THE KING

VS

RICHARD SIBANYONI

CORAM : DUNN J.
FOR THE CROWN : MISS N. SIMELANE
FOR THE ACCUSED : MR S. KUBHEKA

JUDGMENT

24TH AUGUST 1995

The accused is charged on the main count with the crime of rape. It is alleged that on divers occasion from about March 1994 to a date to the prosecution unknown, the accused had unlawful sexual intercourse with his daughter, without her consent. Notice was given by the prosecution that it would seek to prove that this was a case of aggravated rape in terms of Section 185 bis of the Criminal Procedure and Evidence Act 67 of 1938. In the alternative, the accused was charged with contravening Section 3 (1) of the Girls and Women's Protection Act no. 39/1920 in that he had unlawful sexual intercourse with his daughter who was at the time, below the age of 16 years. The accused pleaded not guilty to the main and alternative counts. It is not in dispute that the complainant was born in July 1983 and that she turned 11 years of age in 1994. It is further not in issue that the complainant had had previous sexual experience by

the time she was examined by Dr Ntiwane of the Mbabane Government Hospital on the 10th December 1994. Dr. Ntiwane gave evidence to that effect and also handed in a report of his findings as part of his evidence.

The complainant, an intelligent and confident young girl, told the court that she lived with her mother, Eunice Mhlanga, who was PW3 and the accused at Ncabaneni. The accused had a second wife who also lived at the homestead. The complainant's mother was employed by the University of Swaziland at the Luyengo Campus and commuted by bus to and from work on a daily basis. The complainant was attending Ncabaneni Primary School. It was the complainant's evidence that on her return from the first day of school for 1991, which was at the end of January, she went into the single room which she shared with her parents and took off her uniform. As she did so the accused entered the room, locked the door, picked her up and placed her on his bed. The complainant was not successful in freeing herself from the accused. The accused proceeded to lower her panty and had sexual intercourse with her. The complainant told the court that when she cried, the accused threatened to shoot her with his gun, a rifle, which was in the room. On the following day, after school, the accused again placed her on his bed and had sexual intercourse with her. On this occasion when the complainant cried the accused pushed a cloth into her mouth. It was the evidence of the complainant that she was afraid of making a report to her mother. The complainant told the court that the accused had sexual intercourse with her on numerous occasions thereafter. She could not give an estimate of the number of times but stated that it could have been between 20 to 30 times. Throughout this period she did not report the matter to anybody. During this period the complainant fell ill.

She used to faint and suffer from head-aches quite regularly. Later on, she developed a rash on her private parts. Her mother took her to clinics for treatment, with no success. The complainant at one stage moved to her uncle's homestead in Nhlangano. She returned to Ncabaneni in about August 1994 when the accused again had sexual intercourse with her. Sometime in November 1994 the complainant was taken to the clinic in Luyengo. She had the usual complaints of fainting, head-aches, and the rash on her private parts. The nurse at the clinic referred her to visiting nurses from the psychiatric Centre in Manzini. She was interviewed by Nompumelelo Dlamini who was PW 4. In the course of the interview the complainant reported for the first time what her father had been doing to her. She spoke of the sexual intercourse and the threats by her father to shoot her. The interview was conducted in the presence of the complainant's mother, who also heard the report for the first time. A second nurse from the Psychiatric Centre visited the complainant's home on the 14th November 1994 in the company of a social worker. The nurse, Fortunate Zwane, spoke to the accused about the complainant's report. The accused then asked the complainant if she had indeed made the report. She replied that she had. The accused showed signs of distress but neither admitted nor denied the complaint's report. The accused was thereafter invited to the psychiatric Centre for counselling. He turned up at the Centre on the 17th November. According to Fortunate, the accused did not on that occasion deny or admit the allegations against him.

The accused gave evidence on oath. He denied his daughter's allegations. It was his evidence that the evidence against him had been fabricated. He told the court of the bad blood between him and the complainant's mother.

He stated that she complained that he spent more time with and showed more affection for his other wife. This state of affairs had according to the accused existed from about 1993.

The court is here faced with a complaint of a sexual nature. Such complaints are generally speaking very difficult to disprove. It is on the this basis that the court approaches evidence of such complaints with a degree of caution much along the same lines as it does when dealing with accomplice evidence. In addition to that, the court is here dealing with the evidence of a young child. Care must be exercised to ensure that thoughts or impressions have not been planted in the child's mind particularly in a case such as the present where there is the possibility of bad blood between the parents and the child thinks it advisable to give a story which she considers favourable to the parent the child feels closest to. I have considered the evidence in the light of these factors and feel satisfied that the complainant is a credible and trustworthy witness. The failure by the complainant to report the matter stemmed from the threat by the accused that he would shoot her. She may, in addition, have felt that her father was entitled to do what he was doing to her. With the passage of time, it may have become more difficult for her to report to her mother for fear of being taken to task for not reporting the matter earlier. The relationship of father and daughter may in itself have a bearing in the fear by the complainant not to report the matter.

The medical evidence has established that somebody had sexual intercourse with the complainant and that such sexual intercourse had taken place on more than one occasion. This evidence, that is the medical evidence, came

after the complainant reported the matter to the Psychiatric nurse and after the accused was confronted. The medical evidence tends to confirm the complainant's evidence. It is inconceivable that the complainant's mother would have put her up to making a false report to the nurse and then quite fortuitously thereafter to have the medical evidence supporting the fact that sexual intercourse had taken place.

The circumstances under which the complainant made her report, the medical evidence and the evidence of what transpired when the complainant's allegations were put to the accused at his homestead corroborate and are consistent with the complainant's allegations. I reject as false the accused's denial of the complainant's evidence.

The accused is found guilty of rape, as charged, on the main count.


B. DUNN

ACTING CHIEF JUSTICE