IN THE HIGH COURT OF SWAZILAND

CRIMINAL APPEAL NO.144/95

In the matter between:

SIPHO JOZANE MAZIYA	APPELLANT
VS	
REX	RESPONDENT
FOR THE CORAM :	S.W. SAPIRE A.C.J.
	J.M. MATSEBULA A.J
FOR THE CROWN :	MR. J. MASEKO
FOR THE APPELLANT :	IN PERSON

JUDGMENT

12/03/96

The appellant was charged before a Senior Magistrate of the crime of rape. Before the charge was put to him the learned Magistrate asked the appellant whether he was going to get the assistance of a defence counsel. A relative of the appellant one Solomon Maziya was called into the witness stand and stated that the relatives have tried to get a defence counsel for the appellant but because they had no money they failed.

The charge was then put to the appellant who pleaded not guilty.

A number of Crown witnesses were called by the Crown and

were cross examined by the appellant. The appellant was then informed at the end of the Crown case that he had a case to meet and elected to make the sworn statement and was cross examined by the Crown counsel. At the end of the cross examination the appellant indicated that he had no witnesses to call.

The Crown then addressed the learned Magistrate and asked that the appellant be convicted and he was also given an opportunity to respond to the address by the Crown. The Magistrate then considered the submissions by the Crown and the appellant, and considered those submissions against the background of the witnesses which had been called in the case. He was convinced that there had been sufficient corroboration and found the appellant guilty of rape and sentenced him to ten years imprisonment.

Briefly, the evidence of PW1 Dr. Radebe was to the effect that she had examined the complainant PW2 on the 19th February 1995 at 9.30pm at the Simunye Clinic. It was her evidence that she had found that the complainant was sexually assaulted and the complainant had also told the doctor that she had been raped. This is not corroboration of the rape itself but it is evidence to show consistency.

The doctor also observed that the complainant's shirt which was white and a black skirt had been soiled with mud. The doctor found multiple abrasions and scratch marks around the

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complainant's neck. The doctor said that she could not find any live spermatozoa but as has been pointed out to the appellant that sexual intercourse or rape does not necessarily require that there should be spermatozoa but the main thing is the insertion of the penis into the vagina which the complainant said had happened. The doctor's certificate was handed in as exhibit 'A' and the appellant did not dispute the doctor's evidence.

The Crown then called the evidence of Bonsile Goodness Maziya PW2 as the complainant in this case. She stated in her evidence that she was from church at about 6.30pm on the 19th February 1995 when she heard someone calling and asking her to wait. She said she looked at the back and saw a man approaching. The man was wearing a maroon shirt and khakhi shorts. She stated in her evidence that she did not know the caller but she identified the man in a maroon shirt and khakhi shorts. The man came and grabbed hold of her right hand and asked why was she running away when he was calling her. He thereupon used force and throttled her, she resisted but. the man eventually overpowered her and threw her on the ground and moved her panties to one side and proceeded to have sexual intercourse with her. She said she had not consented to this sexual intercourse. The rapist then told the complainant that he was going to keep her for the night in the veld. She pleaded with the ranist to let her go and even went so far as to show that she was now

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willing to be submissive to the rapist's demands and asked the rapist to accompany her to her house.

In the meantime the rapist had taken off his shirt during the struggle and sexual intercourse and he said he was going to look for his shirt which was left behind. The complainant also told the rapist that she had lost some of her items including a Bible and some other items. The rapist then said he was going to look for the items. The complainant then had an opportunity to escape.

She went home and reported to her mother, and again the court will note that the report even though it was in connection with the rape it is not corroboration of the rape but it is there to show consistency in the complainant's story. The person to whom she made this report was PW3 Elizabeth Vilakazi.

Elizabeth Vilakazi told the court that the complainant came in a very shambled manner, her clothes soiled which is corroborative of the fact that the doctor had also said so in her evidence.

The appellant was then given an opportunity to cross examine the complainant. He put the question to the complainant that at the time of the alleged rape he was at the bar and at his brother's home. He also put the question to the complainant that he had not been wearing a maroon shirt and khakhi shorts.

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The Crown then proceeded to call PW3 Elizabeth Vilakazi who is the mother of the complainant who in the court's view corroborated the complainant in every material respects in so far as the clcthes that the complainant was wearing and the report that she had made was consistent with what she had told the doctor.

The Crown then called the evidence of Florence Maziya PV4 who is a sister-in-law of the appellant.

She told the court that on the 19th February 1995 the appellant was staying with her and her husband. They had left for church on the 19th February 1995 and left the accused behind, and upon their return at about twelve noon the accused left immediately thereafter. The appellant did not come back until 9pm when they retired to bed. When they woke up the following morning at 5am the appellant had left but apparently from what they had seen he came home the previous day. The appellant did not come home until 10pm and when he did he had been injured.

The witness stated in her evidence that she had asked the appellant how he had been injured and the appellant told her that he was with his girlfriend when the police accosted them and fired shots at them. She also told the court that shortly there after the Simunye Security men came and arrested the appellant. And she told the court that when the appellant was arrested he was wearing a maroon shirt and

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a pair of khakhi shorts. These were the same type of clothes that the complainant had described.

The Crown then led the evidence of Constable Bheki Mamba who stated that after receiving a report he had gone to the security camp at Simunye where he interviewed the complainant who made a further report. They also went to the place where the complainant said the rape took place. They went into the sugar cane fields and the complainant showed him certain marks, when PW5 followed these marks he noticed a person approaching who was wearing a maroon shirt and a khakhi pair of shorts.

He stated that as soon as this man saw him he started to bolt and he had fired warning shots, warning the person to stop but the person ran away and disappeared in the water canal. He also stated that he had ultimately fired at the person and apparently injured him but he was firing below the stomach and he was not sure whether he hit him or not.

The appellant then put questions to the Constable to the fact that he Constable did not fire warning shots and he also complained that after he was injured he was not taken to the hospital immediately.

The appellant himself gave evidence and in short his evidence was to the effect that he was not present, he raised an alibi. In a sharp contradiction to the evidence

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given by the appellant's sister-in-law he said he had come back, and slept at the house but woke up the following morning to go and cut tree branches to sweep the yard. As he was approaching the river he saw some people coming, running and he decided to run away too. It was then that he said he was shot at.

I have found that there is ample corroboration that the appellant was the person who raped the complainant.

The sentence imposed by the Magistrate, having regard to the circumstances of the offence and appellant's recent previous conviction for rape cannot be faulted.

In the result I would find that the appeal must fail. I agree

J.M. MATSEBULA S.W. SAPIRE

ACTING JUDGE

ACTING CHIEF JUSTICE