IN THE HIGH COURT OF SWAZILAND

Cri. Appeal No. 4/1996

In the matter between

Jairos Sikawuke Appellant

VS

THE KING

CORAM

S.W. SAPIRE, A C J

J.M. MATSEBULA, J

FOR APPELLANT IN PERSON

FOR CROWN MR. J. MASEKO

JUDGMENT

(21/01/97)

This matter has come to us initially as an application for admission to bail pending an appeal. The history of this matter is more than unfortunate. The case has been prolonged too long. The appellant was charged with the crime of rape particulars of which were that he being a young man of 20 years old had unlawfully had sexual intercourse with a child of 6 years. This happened in June 1994 and he was convicted in April, 1995. The applicant did in fact file a notice of appeal and it appears this present notice of appeal was out of time. But no record has been available for various reasons until now. And only on the 6th of December 1996 was the record certified as being correct.

This laxity in the Department could have resulted in a grave injustice. In the present circumstances however, no injustice has resulted. When the matter was called this morning as I said it was an application to be admitted to bail pending appeal. But both the Appellant and Respondent have indicated that they were able to argue the appeal immediately. We have had the advantage of reading the record. There appears to us to be little reason why finality in this matter should be any further delayed.

The evidence on which the Magistrate convicted the accused who is now the Appellant was clear and unambiguous. The complainant, a young girl of 6 was examined by a doctor on the day following the rape and he found conclusive indications that this girl had been molested, interfered with, and that there had been penetration of her vagina. She also bore scratch mark. She was bruised in her private parts and the hymen was torn.

The complainant's mother gave evidence. Her evidence was that of the complaint made to her by the child when the mother came home from work that day. When she gave evidence the appellant did not ask her any questions. Notwithstanding that he contends that the whole complaint is a story made up by the complainant's mother with whom he claim to be in love.

There was also evidence from the complainant's grandmother who actually saw the complainant in the company of the appellant going towards the very forest where the complainant says the rape took place. The child returned alone crying. And immediately made a complaint to the grandmother that the appellant had sexually molested her. Her dress was bloodstained.

The appellant asked questions from this woman which had little to do with the question of identification. He did however suggest to her that the complainant's mother was his girlfriend and this complaint was a result of a quarrel that she had with him. The grandmother knew nothing about that.

The complainant herself gave evidence in a perfectly acceptable manner and she was hardly cross examined by the appellant at all. The cross examination was directed only to the question of the clothing worn by the appellant. And she did say that he was wearing a pair of red trousers and a shirt.

The question of the appellant's apparel has got little to do with the case. He is clearly the man who the complainant was talking about and he is clearly the man who is known to the grandmother and the mother. There is as I say evidence beyond any doubt at all that this young girl was raped. And all the evidence points to the appellant as being responsible for this. The appellant did not give evidence and confined himself to submitting that the Court should acquit him because the complainant said he was wearing red clothes when he does not have any such cloths. That is hardly an argument which can stand up to the heavy weight of evidence linking him with this particular evidence.

I am satisfied that the Magistrate has not erred in convicting the appellant and that there is no reasonable prospect of success on appeal. His late filing of the notice of appeal can not be condoned.

Furthermore as far as the question of sentence is concerned, it is the sort of sentence which is appropriate to this sort of offence and it is the sort of sentence which the public demand for interference with children. It cannot be seen that people who commit these offences receive lenient sentences. Rape is serious enough when an adult woman is involved. When a child is involved this sentence just is nowhere near inducing a sense of shock.

As a result therefore the application for bail falls away and your application for condonation for late filing of the Notice of Appeal is refused. The case is now dismissed.

I AGREE

S.W. SAPIRE

J. M MATSEBULA

ACTING CHIEF JUSTICE JUDGE OF THE HIGH COURT