

THE HIGH COURT OF SWAZILAND

Mandla Teka Mnyakeni

Appellant

REX

Cri. Appeal No. 40/1999

For Appellant

In Person

For the crown

Mrs. Langwenya

JUDGMENT

(11/11/99)

The appellant was charged in the subordinate court for the District of Hhohho held in Mbabane it being alleged that he, an adult male of 33 years was charged with the offence of rape in that on the 5th of January, 1999 and at or near Checkers the accused did wrongfully, unlawfully, and intentionally had sexual intercourse with Lindiwe Dlamini without her consent and thus committed the offence of rape.

He pleaded not guilty and was found guilty and sentenced to 5 years with effect from 12 January, 1999.

The record discloses that the accused was informed of his rights to representation and elected to conduct his own defence.

The evidence of the offence was given by the complainant who described that on the 5th of January 1999 she was looking after her sick child at the Mbabane Government Hospital. She said that it was her first time to be in Mbabane City. The

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child was supposed to be discharged the following day and she left hospital to inform her brother, Nicholas Jita Dlamini who resided at Mangwaneni Area. She lost her way and went towards Sidwashini which is an entirely the opposite direction. While she was on her way a certain boy, as she described him, ran after her and caught up with her and made suggestions that they make love. She rejected this and told him that she has the father of her children as her lover.

They continued walking supposedly to the brother's place which she would be able to identify if she saw the graves at the cemetery. He told her that the cemetery was at Mangwaneni and she confirmed that that was the place she was looking for. He then undertook to direct her to the place and together they passed on to a place which he said was a short cut. But instead he took her to the bushes and undergrowth which is near the by-pass road in the Checkers area. This is entirely the wrong direction if one wants to go to the place which was indicated. She describes how there on the way she was assaulted and how he threatened her and claimed to be in possession of a knife with which he said he would injure her. They proceeded into the deep bush and he began to finger her. Although she asked him to stop he refused and persisted. Her refusal caused him to assault her slapping her across the face and eyes and he slapped her at least on two occasions. He also said that she was a fool who did not realise that he wanted to sleep with her. She eventually succumbed to him and showed him a spot which she felt was not too deep into the undergrowth.

She describes how a full intercourse took place and her description is graphic and could only be given by a person who is well acquainted with act of intercourse and if she is correct what took place is that the accused had full intercourse with her without her consent.

When he had completed his purpose, she says, he then accompanied her to the road from which she

had branched off earlier and they went as far as the Checkers area and he showed her the cemetery and gum trees saying that this is the route she should take but at her request he continued to accompany her, so she says, but now he was reluctant to do so.

This in itself is something strange if one thinks about it that a woman insists on his rapist to accompany her but if one recalls that she was new to Mbabane, she did not want to lose her way again and she thought that the appellant, having achieved his

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purpose was not longer a threat to her that she should request him to show her the way. She also wanted to keep him so that she could make a complaint to her brother and in this way receive redress.

In the course of this he also showed her his driver's licence and he produced the driver's licence at her request. Again this is a strange feature of the case but does not negate the account given by the complainant.

Then she describes how while still on the way a younger brother's motor vehicle approached from behind hooted and stopped as a result of which she approached them and explained all that had happened. She was referring to Mduduzi and Bhekizwe Dlamini who were in the motor vehicle. As she was explaining what had happened the assailant was still sitting where she had left him and where he had promised to wait for her.

Then the assailant who is identified as the appellant, came towards them and when they tried to grab him he ran away into a certain home and they failed to catch him. They then drove to the Police Station where she reported the matter and recorded a statement and she was then taken to Mbabane Government Hospital for examination by a doctor.

But before she went to the hospital she took the police to the scene of crime. She made it clear that she had complained to the assailant that she was sick by which she meant that she was undergoing her menstrual period at that time. She emphasised that the appellant had full sexual intercourse with her without consent.

The medical evidence in this case takes the matter no further and the decision by the Magistrate was rightly taken by an assessment of the evidence of both the complainant and the appellant.

His version is that he was accompanying the complainant because she on a previous occasion had taken possession of certain of his items including the licence. This whole story is a lie by the fact that the whole chain of circumstances was set in motion by the very fact that the complainant had not been to Mbabane before, had not previously met the appellant and was a stranger in the city. She specifically denies that there was any previous relationship between them and she denies the appellant's

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version that they had fallen in love but they had not yet become lovers in the physical sense. He denies completely having ever had sexual intercourse with her. His denial however is controverted by the circumstances and by the obvious misstatements which appear in his evidence.

The Magistrate on consideration of the evidence found that the appellant's evidence was completely untrustworthy and could not be accepted. He said of the appellant as a witness his evidence was hopeless and so confused that it made no sense at all. In this he cannot be criticised for that is exactly how the evidence reads and there are obvious discrepancies on questions of fact. The appeal court will not readily upset the findings of the Magistrate who had the opportunity of seeing both witnesses. Much of his case was not put to the complainant and in the end his evidence has to be rejected as false and not capable of reasonably being true in the light of the satisfactory evidence which is being given by the complainant.

In the circumstances the appeal will be dismissed and the conviction and sentence confirmed.

Sapire, CJ

Masuku J