

THE HIGH COURT OF SWAZILAND

Meshack Tshwebe Hadzebe

Appellant

Vs

REX

Cri. Appeal No. 67/98

Crown

Sapire, CJ; Matsebula, J

For Appellant

In Person

For Crown

Mr. J. Maseko

JUDGMENT (04/03/99)

This is an appeal from the decision of the Magistrate Court of Manzini. The appellant was charged with the crime of rape it being alleged that he had sexual intercourse with Sibongile Dlamini without her consent. It is further alleged that the crime was committed in aggravating circumstances, as the accused, used a knife, to stab complainant and to threaten her life.

In this case the charge sheet itself apparently does not inform the accused of the consequences which would follow upon finding that aggravating circumstances were present. The Magistrate was, however, correctly at pains to inform the accused of the consequences, which would follow if he were found guilty of committing the crime in aggravated circumstances. It would be preferable if reference is made to the consequences in the actual charge sheet when it is actually and presented to the accused. I repeat once again that in such cases where the prescribed minimum sentence is 9 years imprisonment on conviction of rape with aggravating circumstances the matters cases should not come before any Magistrate other than a Principal Magistrate for he alone among Magistrates has the jurisdiction to impose the required sentence. I will deal further with sentencing at a later stage.

The conviction is attacked by the appellant on several grounds stated on his notice of appeal. Reading that document benevolently it appears that what the appellant really is saying is that while he admits that the rape took place, he denies that he was implicated therein.

We have read the whole record, which the appellant says, is not complete, but nothing has been shown to us to question that anything material on the record is not before this court. The essential aspect of the case is that the complainant saw and recognized the appellant as somebody she knew. Furthermore she made a report to the Police who, on the basis of that report, were able to identify the appellant in whose possession several items were found which the complainant says were taken from her in the course of the assault.

This court does not save, in exceptional circumstance upset the lower court's finding of fact. The Magistrate in fact looked for and found a degree of corroboration of the crown case greater than that which in terms of the latest cases is required. There are decisions in the Republic of South Africa, which have ruled that it is unconstitutional to require special corroboration of a woman's evidence in cases of sexual assault. Although Swaziland does not have a constitution in the same terms as that of the Republic of South Africa, the reasoning, which leads to the abandonment of tills requirement of corroboration, commends itself to this court. There is no reason why a woman's evidence should carry less weight than that of a man merely because she is a woman, and not corroborated.

In this case it is not necessary to express any disapproval of the Magistrate's reasoning because in the event he found that corroboration was to be found in the fact that items belonging to the complainant were found in the possession of the accused. Clothing comprising footwear and trousers were also found and the circumstances of the finding and their condition led the Magistrate to the

conclusion that the appellant's denial of being the rapist was false.

The conviction must stand. Sentence

The Magistrate had no jurisdiction to impose the sentence he did. That being so it is not possible for this said court to confirm the sentence of 9 years imprisonment imposed by the Magistrate, to one of 7 years. To this extent the appeal succeeds. I again draw to the attention of the Director of Public Prosecutions that cases such as the present where aggravating circumstances are present or are alleged to be present the matter should not go before any Magistrate other than the Magistrate having the jurisdiction to impose the minimum sentence.

Sapire, CJ

I agree and may only add that the sentence should in this particular case still be backdated to the 29 October as was done by the trial Magistrate.

MATSEBULA, J