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**THE HIGH COURT OF SWAZILAND**

**Rex**

**v**

**Bongani Mbongeni Mabuza**

*Cri. Trial No. 121/98*

Coram

SAPIRE, CJ

For Crown  
For Defence

Miss M. Langwenya  
In Person

**JUDGMENT**

*(12/10/99)*

Bongani Mabuza, the accused person, is charged with rape. It is alleged that on or about 23<sup>rd</sup> April, 1998 and at or near Moyeni area, Siteki, in the Lubombo District, the accused did wrongfully and intentionally have unlawful sexual intercourse with Annah Msimango without her consent and did thereby commit the crime of Rape.

After the accused had pleaded not guilty the prosecution led evidence of the inhabitants of the house in which the offence is said to have taken place.

Two women who had been asleep were awoken on the 23<sup>rd</sup> April 1998 in the early hours of the morning. They gave accounts of what took place, which were in all respect the same. The accused had broken into the house through the window and had threatened the persons there sleeping, with violence. He chased the children out of the bed and that he got into the bed where the complainant was. He uttered threats as to

what he would do and that he had made arrangements he made outside for destruction should his word not be heeded.

The complainant informed the court that the accused had intercourse with her against her will and that she knows fully well what intercourse is. She stated positively that there had been penetration.

The following morning one of the neighbours, a Mr. Khumalo, was informed of what had happened and he informed the police.

The accused has pointed to a number of discrepancies in the evidence but I find that they are not material or significant in any way whatsoever.

The crown further called Dr. Abby Phillip who examined the complainant the following morning and found signs from which he inferred that the complainant had sexual intercourse in the last 24 hours. No reliance can be placed on this evidence, as there was no evidence of the laboratory examination of the swabs he took and his findings of the presence of gonococci and spermatozoa are not admissible. Without calling the laboratory personnel to testify as to their findings this evidence is hearsay. The effect of that evidence, had it been admissible, is doubtful.

There is also evidence of the Police Officer who arrested the accused after waking him up, still in the bed of the complainant, the following morning. According to the police officer the accused's trousers were below his knees. It is unusual for an accused person to remain on the scene of the crime. The accused argued that this was an indication of his innocence.

The accused himself, having been informed of his rights, chose to give evidence. He recounted that he had been drinking for most of the night and called at the complainant's home on his way to his own home in the early hours of the morning. He said he came to look for his girlfriend in order, I understand, to take her home with him. But the girlfriend was not there. He does not explain why he then remained in the house to which, according to him, he was admitted by one of the inhabitants Gerty. He did not call Gerty as a witness to support his story but

explained this by saying that she was one of those people who lived with the complainant and would therefore not support him.

I gave consideration to calling Getty myself, but decided that as neither the crown nor the accused person called her, I would not do so myself. The accused said he feared she would be lying witness. This witness according to the accused could substantiate his version and he deliberately chose not to call her. But the accused version, without this witness in support, is completely untrustworthy.

It is so unlikely that events took place as he describes them that having regard to the evidence of the complainant and the other woman in the house, it could not reasonably be true.

One has only to imagine the situation early in the morning when the accused arrived at this house in a drunken state, for that is how he describes it himself, that these women would admit him to the house to sit and chat with him until he fell asleep as he tells the court. How he got into the bed is another question and why the complainant or any of the inhabitants should give up their beds to him is something, which is unbelievable.

In addition the accused failed to put essential parts of his story to the witnesses. Only in argument when asked why these women should make up a story against him did he suggest that they had stolen money from him. That is purely an afterthought and is completely unbelievable and cannot be true against the positive evidence of the complainant and the crown witnesses. I can come to no other conclusion that they are speaking the truth and that the accused has told a completely unacceptable story in order to try and cover up what he has done. What he has told the court cannot reasonably be true and he must accordingly be found guilty as charged.

You are found guilty of the rape.

SENTENCE

The accused has been found guilty of rape. The complainant, is a young woman, into whose home he broke and terrorized the inhabitants of the house. He proceeded with threats of violence to have intercourse with the young woman without her consent. Although there is evidence that he had been drinking a lot that evening. It does not seem that the drink was sufficient to affect his ability to have sex and seems to have affected only his ability to control himself. In this sense the crime is to some extent mitigated.

But the commission of a rape like this shows complete disrespect for people's homes; it shows complete disrespect for the women concerned, it shows only humiliation in the presence of the inhabitants of the house. The accused does not show any sign of remorse, on the contrary his demeanour in court in answering his charge also indicates that somehow he still does not see that what he did was wrong. Would-be rapists must know that when a woman says no it is no. You the accused know full well that you have no right to have sex with people who do not accept you as a lover. You have no right to have sex with whomever you want contrary to their wishes. You cannot force a woman to have sex with you under circumstances as this, especially accompanied with threats of violence.

This constitutes a crime, which is becoming increasingly prevalent and a problem not only in Swaziland but also throughout the region. The message must go out from this court to all other courts in the country that this sort of behaviour is intolerable

You will be sentenced to 12 years imprisonment.

*S.W. SAPIRE, CJ*