



**IN THE HIGH COURT
OF SWAZILAND
JUDGMENT**

Criminal Case No. 139/16

In the matter between

Rex

And

Leonard Silindza

Neutral citation: *Rex v Leonard Silindza* (139/2016) [2017] SZHC 160
(28 July 2017)

Coram: **MAMBA J**

Heard: **20, 21 March 2017**
02, 03 May 2017
13 June 2017

Delivered: **28 July 2017**

[1] *Criminal Law – on a charge of rape – rape survivor being daughter of the accused. Rape occurring over a period of years without being reported by the rape survivor. Rape survivor being fearful of the accused. Rape survivor living with the accused and not her mother. Non-reporting explainable.*

[2] *Criminal Law – law of evidence – sufficiency and cogency thereof – accused well known to the rape survivor and therefore identity of accused not in question – complainant raped over years and falling pregnant as a result. DNA not excluding the accused as the father of the child. Accused remaining silent and not tendering evidence in his defence. Crown Case proven against the accused beyond a reasonable doubt.*

- [1] The complainant in this case is the daughter of the accused person. She was born on 28 November 2001. Her mother is Celiwe Vilakati, who gave evidence as PW3. She was born out of wedlock and since about the age of 3 years, she was separated from her mother and lived with the accused at various locations including Nkoyoyo, Tonkwane and Mpolonjeni, on the outskirts of Mbabane Town.
- [2] At all times material hereto, she lived with her father, the accused together with her younger siblings and her father's girlfriend. They also had, at some stage, a domestic helper in the house. Her mother was a vegetable vendor in Mbabane. Before moving in to live with the accused, she stayed with her mother at Mangwaneni and Qobonga locations, both in Mbabane.
- [3] The complainant testified that her father was very harsh to her. He ill-treated her and would occasionally severely assault her for any minor apparent transgression in the house. She feared him.
- [4] The complainant told the court that the accused started off by provocatively or sexually touching her on her thighs whilst she was ill and was 8 years old at the time. She had just graduated from kindergarten.

When she resisted the accused's sexual advances and cried, the accused muzzled her mouth with wattle tree leaves and prevented her from making noise or crying out loud. He then raped her. This must have been about the year 2009, considering that she was born in 2001. The sexual assault or molestation continued until the complainant fell pregnant in 2015. She gave birth to her child in April 2016.

[5] The complainant told the court that because of the beating or assault she suffered or experienced at the hands of the accused, she feared him so much that she could not report the rape incident to anyone, including her mother. She testified that she did not trust anyone and feared that if she reported her rape ordeal to either the police or anyone in the community, this would be reported to the accused who would severely assault her for it. She also informed the court that the accused did not allow her to visit her mother.

[6] The complainant was, however, compelled to reveal her rape ordeal to Bongekile Khumalo. This was after she fell pregnant and Bongekile noticed that her physic had changed and confronted her about. At first she denied that she was pregnant but later on told her the truth about her pregnancy. The complainant also testified that her denial was based on her fear of the accused and the shame she would endure in her community.

She was in Grade VI at the time she divulged her rape ordeal to Wendy Khumalo.

[7] Bongekile (Wendy) Khumalo testified as PW2. She told the court that the complainant told her that the accused had been raping her in 2014. Bongekile also informed the court that when she suggested or sought permission from the complainant to report the matter to her own mother, the complainant refused or dissuaded her from doing so, citing her fears that the accused had threatened to kill her if she ever told anyone about the matter.

[8] PW3 confirmed that she stopped living with the complainant when the latter was about 3 years old. Although she occasionally visited the complainant during their early days of separation, she never thereafter had any meaningful contact with her until she was about 9 years old. They fortuitously met in town and the complainant informed her that the accused had told her that her mother had died some time ago. Later the two would meet briefly under the close watch or supervision of the accused. The complainant once confided in her that the accused was ill-treating her and wanted to stop living with him.

[9] The matter was reported to the police in September 2015 by the authorities of the school where the complainant was studying and the accused was subsequently arrested on 29 September 2015 and charged with the crime of rape. He denies the charge.

[10] Subsequent to his arrest, and birth of the complainant's child, blood samples were extracted or obtained from both the accused and the said child. The DNA swabs scientifically called buccal mucosa, from the accused were harvested or obtained by Dr. S. Shabangu (PW8) at the Mbabane Government Hospital on 19 May 2016. These swabs were referred to in exhibit C. These were obtained from the lining of the cheeks, back of the lips or inside the mouth of the accused. PW8 stated that before obtaining these swabs, he explained everything to the accused and the accused after signifying his understanding of what was being explained to him, allowed the doctor to carry-out the exercise.

[11] The movement of the DNA swabs, including those taken from the said child, between their points of origin in Swaziland to their destination at the forensic laboratory in Pretoria has not been challenged or put in issue by the defence.

[12] Warrant Officer Dereshen Chetty of the science laboratory in Pretoria gave evidence as the fifth Crown Witness. After conducting or subjecting the DNA samples referred to above, to the required scientific tests in the laboratory, he came to the conclusion that the accused cannot be excluded as the father of the child in question. He said the probability of the accused being the father of the child was 99.99%. This is near conclusive. His report is exhibit B in these proceedings.

[13] The accused closed his case without leading any evidence. He did not call any witness to testify on his behalf either.

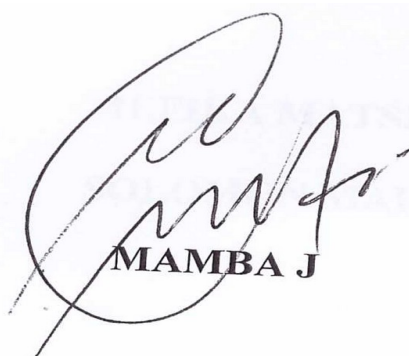
[14] The identity of the accused is not in issue in these proceedings. The accused is the father of the complainant and both lived together in the same house or home for over 11 years. Again the DNA results establish that the accused is the father of the complainant's child. That, in the absence of evidence to the contrary confirms the evidence of the complainant that the accused had sexual intercourse with her. She stated that she did not consent to the sexual intercourse. She was nonetheless incapable of giving such consent. She fell pregnant when she was just 14 years old.

[15] The complainant has given a straightforward account of what the accused did to her. She stated that the accused started raping her when she was just

8 years old. She used to assault her and threaten to kill her, if she reported his devious deeds to anyone. She feared him and believed that he would carry out his threats if she disobeyed him. She did not trust anyone, including the police and thus did not report the rape incidents to anyone. She finally got the courage to do so when she was pregnant and confronted about it by Bongekile Wendy Khumalo.

[16] The Crown has, in my judgment, proven its case against the accused beyond any reasonable doubt.

[17] For the foregoing reasons, the accused is found guilty as charged.



MAMBA J

FOR THE CROWN: MS. L. HLOPHE

FOR THE DEFENCE: MS. N. NDLANGAMANDLA

