

IN THE APPEAL COURT OF SWAZILAND

HOLDEN AT MBABANE CRI. APP. NO.15/81

SIMON MVEMBIYANE MASHABA (Appellant)

vs

REGEM (Respondent)

CORAM: MAISELS, P.

DENDY YOUNG, J.A.

ISAACS, J.A.

JUDGMENT

(delivered 27th January, 1982)

MAISELS, P.

The Appellant was indicted in the High Court on a charge of raping a young girl of 14 years of age. He was found "guilty" and sentenced to five years imprisonment with effect from the 12th November 1980. This was the date upon which he was alleged to have raped this young girl.

On the 13th November the young girl, to whom I shall refer as "the Complainant", was examined by Dr. Nacianales. He described the patient as being in severe shock; the examination was painful when he inserted fingers; the hymen was lacerated; there was contusion on her vestibule between the clitoris and urethra. There was also some haemorrhage from the laceration. She reported to the doctor that she had been raped.

It appears that the Complainant had been working for the Appellant as a cook but she slept at home. Her employment was at a bridge construction site where the Appellant occupied a tent.

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On the day in question the Complainant said that she had been working at the tent cooking, at about 12.30 she went outside apparently to enable the Appellant to have his meal, when the Appellant called her into the tent and told her to take her panties off - he had shut the entrance to the tent. The Complainant stated that the Appellant asked her to sleep with him and she asked why and said she did not know why he wanted her to take her panties off. The Learned Judge doubted whether the expression "sleep with me" had been used but stated that this was probably a form of expression as a reconstruction of what actually happened because of some diffidence in coming out with the exact words alleged to have been used by the Appellant. I agree with the Learned Judge that nothing turns on this point. The Complainant stated that the Appellant grabbed her, took off her panties against her will, and when she cried out, took a knife from a box, showed it to her and overpowered her. He had his arms around her from behind and pushed her on to his bed. The Complainant stated that she struggled and got up but the Appellant pushed her on to the cement floor of the tent, lay on top of her, pulled up her dress, and inserted his penis into her. She said she saw that he had unzipped his trousers. Having got on top of her he made certain movements while she was trying to break away. She felt that she was wet and she stated further that the Appellant told her that if she cried and made a noise he would kill her.

After he had accomplished his purpose he got off her, opened the entrance to the tent and asked her to give him his tobacco, but she ran away, intending to go home. On the way home she met Robert Matsebula, who asked her why she was running so fast, and she told him what had happened to her.

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She then went to her mother and to her father and reported what she alleged had been done to her by the Appellant. Her mother examined her and saw that her panties were red with blood. The family then took the Complainant to the Police and she was examined by the doctor the next day. The reason why she was not taken to the doctor the same day was because it was by then late and the doctor was in Manzini. The defence put up by the Appellant was, to say the least of it, somewhat extraordinary, and to my mind carries with it the imprint of fabrication. He said that he had given the complainant R5 to buy pigs meat from one LaNkosi. This the Complainant denied. She was then asked by the Appellant "Is it not correct that after I had sent you, you returned with the story that you had met certain girls before reading LaNkosi's place and they assaulted you?" The Appellant then alleged that the Complainant had returned to say there was no pigs meat and she was then asked, according to the Appellant "Did I not then tell you to stop crying and that I was about to knock off and we would fetch your father to find out why you had been assaulted?" The Complainant denied this and said it was not correct. The Complainant's story is corroborated, in my judgment, by the blood on her private parts and by her crying. She consistently complained to Matsebula and her parents of what happened. It is in the highest degree improbable that certain girls had assaulted the Complainant in a manner which can only be described as being consistent with her having been raped. I find it quite impossible, as did the Learned Chief Justice, to visualise how the girls came to injure the Complainant's private parts. If ever a case of rape was fully proved against an accused person the present, in my judgment, is one.

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The sentence of five years imprisonment was, in my view, the minimum that could have been imposed in a case of this nature. The crime of rape is a serious one and is all the more serious when a young girl is taken advantage of by an adult in the manner which the evidence in this case reveals.

The appeal is dismissed.

SIGNED:

MAISELS, P.

JUDGE PRESIDENT

I agree.

SIGNED:

DENDY YOUNG

COURT OF APPEAL JUDGE

I agree.

SIGNED:

I. ISAACS

COURT OF APPEAL JUDGE