

IN THE APPEAL COURT OF SWAZILAND

In the matter of: AFP. CASE NO. 4/83

JOHN ISAAC BANDA

vs

THE QUEEN

CORAM: MAHOMED J.A.

MAISELS J.P.

ISAACS J.A.

JUDGMENT

(Delivered on 5th October 1983)

Mahomed J.A. :

The Appellant in this matter was charged with raping the first crown witness one Sidudla Mabuza at Siteki on the 21st June 1982.

The complainant gave evidence that on that day she was walking with two other boys at about 9.00p.m. when she was accosted by the Appellant. She says that the Appellant said that the complainant was his girl friend. She further testified that after the Appellant started pulling her and had slapped her, she managed to break loose and ran towards Dyson's house. She further says that at that stage she had to run without her shoes. At Dyson's house she ran into a shack where she saw the night watchman Maziya sitting at . the door. She further testified that the Appellant and two other persons then persued her. The Appellant eventually caught her, pulled her into the park, and says says the Appellant then raped her. Her panties were torn and produced in Court. She ran to the Police Station and was given accommodation for the night. She went to the hospital next day.

Under cross-examination she said that she was threatened with stabbing although she conceded that she did not actually see a knife.

The evidence of the complainant was corroborated in some measure by the nightwatchman Jonathan Maziya. Maziya confirmed

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that on the 21st of June 1982 he saw the complainant running away from the Appellant. He says the Appellant pulled the complainant away from where she was while two other companions waited outside. Maziya further said that he tried to protect the complainant but he was warned by the Appellant that if he wanted to live he should let her go.

The Appellant gave evidence and denied having had anything to do with the complainant on that occasion. Indeed he claimed that he was at home on the relevant day from about 2.30p.m. He admitted that he and his brother lived together. He said that this brother and another boy had

certain shoes in their possession when they were brought by the police.

The Appellant was then given an adjournment to enable him to call his mother Flora Mkhathshwa. His mother testified that the Appellant may have gone out during the day in question but that he was at home during the evening.

In pursuing his appeal on the merits the Appellant has contended that the complainant has falsely conspired to give false testimony against him because the Appellant had some four months earlier quarrelled with the complainant's sister one Thandi Mabuza. The Appellant claims that Thandie Mabuza is a former girl friend of his. The Appellant further contends that Thandi Mabuza had promised to avenge this assault and that the complainant in the present case was made persuant to this scheme.

I have carefully examined the evidence and I am not persuaded that the Chief Justice was wrong in the conclusion to which he came, in convicting the Appellant.

In the first place, when the complainant gave evidence it was not suggested to her in cross-examination that there was any such conspiracy.

During the course of his own evidence the Appellant did say that he and the complainant were not friends because he once

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assaulted her friend, but he did not say that this friend was the sister of the complainant or that this friend had promised to revenge the assault.

In the second place, the contention of the Appellant does not explain the independant testimony of the nightwatchman. The nightwatchman says that he saw the complainant being pulled away by the Appellant. The Appellant attempted to meet this difficulty during the trial by suggesting that perhaps the nightwatchman had clashed with the mother of the Appellant, but when the mother gave evidence she did not testify about any such clash.

In the third place, the learned trial Judge, who had the benefit of seeing the witnesses, found the mother of the Appellant to be an unsatisfactory witness. I am not persuaded that he was wrong in this assessment. Moreover the mother conceded at some point that the police entered the house that night soon after the Appellant dido If that is so, the mother's evidence does not corroborate the Appellant's version that he was at home from 2.30p.m.

because the police came at night. In these circumstances I do not find any grounds on which I could interfere with the conviction.

As far as the sentence of 7 years is concerned, it does not induce in me any sense of shock regard being had to the previous convictions of the Appellant, and the brazen manner in which he accosted and raped the complainant. No relevant misdirection has been shown to have been perpetrated by the trial Judge and no other ground, sufficient in law has been suggested, why this Court should interfere with the sentence imposed.

In the result, the appeal should in my view be dismissed and the sentence and conviction confirmed.

I. MAHOMRD JUDGE OF APPEAL

I agree:

I.A. MAISELS

JUDGE PRESIDENT

I agree:

I. ISAACS.

JUDGE OF APPEAL

The Appeal is dismissed.

I.A. MAISELS

JUDGE PRESIDENT