

IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE APPEAL NO. 48/82

In the matter between:

SIPHO PETROS BHEMBE Appellant

and

THE QUEEN Respondent

CORAM: MAISELS, P

VAN WINSEN, J.A.

AARON, J.A.

Heard: 15th February, 1983

Delivered: 15th February, 1983

JUDGMENT

VAN WINSEN, J.A.

In this matter the appellant is charged on three counts of rape on a child of eight years of age. A sentence was imposed which, taking all three counts together, was an effective one of twelve years' imprisonment. This is an exceptionally shocking case. I say so in the light particularly of the medical evidence which was given by Dr Khayam after he had examined the complainant in this case. When the complainant was admitted to hospital, the doctor says she was very, very cold, she had no pulse, and was pale and unconscious because of

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the bleeding. At one stage he had doubts as to whether she would recover at all. It appears from his examination that she had been very severely assaulted, more particularly in her private parts, especially the walls of the vagina. She suffered damage to her rectum and her bladder and she was admitted to hospital where she remained for twenty days. It was necessary to Operate on her and she was placed under a general anaesthetic and the various tears in her body were then sewn up. As a result of the necessity of this operation, the doctor expresses the opinion that she may very well never be able to be pregnant.

As to the merits of the case, the child indicated that the appellant had had intercourse with her against her will on probably seven occasions. However, the State case against the accused was conducted on the basis that he was guilty on three counts. In the lower Court the appellant never put his guilt on these three counts into issue at all. When he was cross-examining the complainant, he never suggested to her that he had not committed rape on either one, two or three occasions with her. In fact, he asked her: "Why did I rape you?" When he was cross-examining Detective Constable Mkhweli, he put it to the constable that he had admitted that he had raped the child. He persists in that concession, if I might put it that way, in his grounds of appeal but he says he only raped complainant on one occasion. However, when he gave evidence in the lower Court he admitted to the Court that he had committed rape as charged in all

three of the counts.

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There can therefore be no question about the fact that he was correctly convicted on all three charges.

As to the sentence, in my view he rightly deserves the period of twelve years' imprisonment for his conduct. The Trial Judge says in the course of his judgment on sentence that this is one of the worst cases of rape he has ever had to hear. He said that the accused did not behave like a human but more like an animal in his conduct in relation to the child. With this assessment I agree. There are accordingly no good grounds on which this Court can and will interfere with sentence. The appeal is accordingly dismissed.

L. VAN WINSEN, J.A.

I agree.

SIGNED:

I.A. MAISELS, P.

I agree.

SIGNED:

S. AARON, J.A.