

IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE APPEAL NO. 34/82

In the matter between:

CONSTANTINE SIPHO MAZIBUKO Appellant

and

THE QUEEN Respondent

CORAM: MAISELS. P.

VAN WINSEN, J.A.

AARON, J.A.

Heard: 15th February, 1983.

Delivered: 15th February, 1983.

JUDGMENT

MAISELS, P.

The appellant was charged in the Trial Court with the crime of rape. He pleaded not guilty but was found guilty and sentenced to nine years imprisonment. In addition, having regard to his appalling record, he was warned that in the case of a future conviction he might be liable to be declared an habitual criminal. The complainant in the case was a woman who was picked up, as it were, to use a common phrase, by a man called Bonaventure. This was at a place called the Assegai Inn where she and Bonaventure had been drinking together.

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The appellant was also there. The complainant and Bonaventure went to Bonaventure's house and the appellant followed them. They all went into the house - the house in which the appellant stayed as a guest of Bonaventure some time before. I may say that the appellant has denied that he had stayed at this house before but it is quite clear that he had in fact done so. The evidence clearly established that during the course of that night the appellant struck Bonaventure and dragged the complainant out of the house, carrying with him an axe which was Bonaventure's property. There is not the slightest doubt that he thereafter raped the complainant. Her evidence in regard to the rape was amply corroborated and it seems that the Trial Court had no option but to convict the appellant despite certain unsatisfactory aspects of the complainant's evidence.

It so happens that the complainant's evidence was corroborated and the learned Judge made it quite clear that he only accepted that evidence in so far as it was corroborated.

The appellant says in his Notice of Appeal that he was dissatisfied with the manner in which the case was conducted.

He apparently is of the opinion that it was the duty of the State to provide him with a pro deo

attorney as he had no means of obtaining the services of an attorney. There was no obligation on the State to provide him with a pro deo attorney

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and I am unable to see any evidence to Justify the contention that the case was conducted in any irregular manner. The appellant also says that there were certain conflicting statements in the evidence of the Crown witnesses and he feels that these contradictions should have been to his advantage. The learned Trial Judge was fully aware of these contradictions There were also contradictions in the evidence of Bonaventure and the complainant. But he accepted the evidence of Bonaventure in so far as there was a conflict between him and the complainant, and this operated to the benefit of the appellant. There are no grounds on which it appears to me that the conviction of the appellant can properly be set aside and consequently his appeal against the conviction fails.

The question of sentence is a matter which has given this Court some concern. The sentence, as I have already mentioned, was one of nine years' imprisonment. The reason why the sentence was of this duration was based upon the fact that the appellant has, as I have already mentioned, an appalling record stretching over the last ten years. The appellant has told us that he is now twenty-eight years of age and his record shows that he commenced his career of crime when he was eighteen years old. All the convictions against him were convictions in which violence was used. One of his convictions was that of rape when he was but twenty years of age. On the other hand, many of the convictions were of a minor nature, despite the common

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feature of violence in connection therewith, A further feature is that it appears that the crime of rape is committed far too frequently in Swaziland. Rape is a serious crime and it may not be inapposite to quote from what was said by Mr. Justice Schreiner in the case of Rex v Karg, 1961 (1) SALR, p. 231, at p. 236. This judgment was given when Mr, Justice Schreiner was a member of the Court of Appeal in South Africa, and as is well known, he subsequently became a member and President of this Court, In the course of the judgment in the case to which I have referred Mr. Justice Schreiner said this:-

"It is not wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences that the Courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands."

The learned Judge of Appeal added that "naturally righteous anger should not becloud judgment".

As I have already stated, the question of sentence is one that has given this Court some difficulty, and after considerable

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hesitation, it has come to the conclusion that a reduction in the sentence should be made on the grounds that it is a sentence which is to some extent higher than this Court thinks should be imposed despite the appellant's record. Nonetheless, the appellant must go to jail for a long period of time and the sentence is altered from one of nine years' imprisonment to one of seven years' imprisonment.

The learned Trial Judge warned the appellant that he is liable to be declared an habitual criminal on future convictions. This warning is repeated by this Court. In the result, therefore, the appeal

against the conviction is dismissed. The appeal against the sentence succeeds to the extent that it is reduced to one of seven years' imprisonment and the warning given with regard to his liability to be declared an habitual criminal remains.

SIGNED \_\_\_\_\_

I. A. MAISELS, P.

I agree.

SIGNED \_\_\_\_\_

L. VAN WINSEN, J.A.

I agree.

SIGNED \_\_\_\_\_

S. AARON, J.A.