



IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.19/2000

In the matter between:

**MBONGENI MABUZA
VS
REX**

CORAM	:	BROWDE JA
	:	STEYN JA
	:	BECK JA
FOR THE APPELLANT	:	
FOR THE CROWN	:	

JUDGMENT

Browde JA:

The appellant was charged in the High Court with rape. It was alleged by the Crown that on or about the 28th April 1998 and at or near MOyeni area, Siteki, in the Lubombo District. The accused had wrongfully and intentionally had unlawful sexual intercourse A without her consent.

The appellant pleaded not guilty and the evidence for the Crown consisted mainly of occupants of the house in which the offence is said to have taken place. The first witness was B who stated in evidence that she lived at Moyeni with the complainant, her aunt C and other children.” The witness as still at school and was 16 years old. She identified the appellant in court “the one who attacked us at home.” She stated that she together with the other occupants of the house were asleep on the 28th April 1998. She and her aunt were sleeping

on the bed. She felt someone grabbing her feet and when she tried to light a match, she was hit by a person there. That person turned out to be the appellant who ordered them to get out of the bed with which they complied. He informed them he had some people outside who had planted three bombs which he could activate. He ordered all the “kids” (which included the witness) from the bed, placed them on the floor and kept the complainant and C on the bed. She noted that she heard one of the women cry.

In the early hours of the morning, the appellant who was apparently still on the bed, fell asleep and the witness was asked by the complainant to call one Mr. K. The witness also said that the appellant had informed them that he had gained entry through the window in which there was a hole and that the person that she heard crying was the complainant.

Under cross-examination it was put to her by the appellant that what she had told the court was a fabrication. It appears clear however, that the appellant was on the bed in question that night since the witness said that he remained there until the morning and that is when in fact she saw him and realised that he was the intruder from the night before. The witness admitted that the appellant had a “girlfriend” in the house whose name was N but stated that she was not there that night.

The male K who was called by D at the instance of the complainant informed the court that when he got to the house of the complainant, the appellant was still asleep, on the bed which gave him the opportunity to call the police and have them take the appellant away. When he arrived at the house the complainant started crying “loudly” and he calmed her down. He spoke to the appellant when the latter awoke and stated the appellant said to him that the reason he went into that house was that he was drunk and that he wanted to sleep. The witness is cross-examined by the appellant but the last mentioned statement was not questioned by him. The complainant corroborated the evidence of T almost to its entirety. She said that the girlfriend of the accused N did not live in that house but lived away from there. She also stated that they were threatened with a gun when they were all ordered out of the bed and that ultimately when others were on the floor the appellant struck her and (inaudible) with open hands. He told them that he wished to have sexual intercourse with them and that he was not joking and “was not afraid of anything because he has killed people before.” He also mentioned the bombs outside which he could activate. She went on to say that the appellant after (inaudible) her on the left side of the arm stripped her and had sexual intercourse with her without her consent. After he had satisfied himself he fell asleep. She was of the opinion that he was under the influence of alcohol when he arrived there.

The only significant point in cross-examination was that the appellant made it clear that he denied having sexual intercourse with the complainant but for the rest of her evidence had little to say. Apart from the direct evidence given by the complainant herself there is ample evidence to prove that the appellant had sexual intercourse with the complainant. I refer to

the evidence of the young woman D who said when the other people in the room were ordered out of the bed and she heard the complainant crying and she said, “I could hear the sound of the bed as if something was happening.”

Then there was the evidence of the Detective Joseph Ndlela who said that when he was summoned to the home of the complainant the next morning. He entered and found the appellant still asleep, lying and the blankets over his body. He shook him several times and finally woke up the appellant. As soon as he stood up the Detective noticed that the appellant’s trousers and underpants were below knee level.

J. BROWDE JA

I agree : J.H. STEYN JA

I agree : T. BECK JA

Delivered on the day of December 2000.