

IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.

In the matter between:

SIPHO MATHABELA APPELLANT

VS

REX RESPONDENT

CORAM : BROWDE J A

: STEYN J A

: BECK J A

FOR THE APPELLANT :

FOR THE RESPONDENT :

JUDGMENT

Browde J A:

The appellant was charged in the Magistrate Court for the District of Hhohho, with the crime of rape. It was alleged by the Crown that on the 7th January 1995 he unlawfully had sexual intercourse with Celiwe Abigail Dlamini without her consent. He was found guilty and sentenced to imprisonment for 5 years which was backdated to 10th January 1995.

The appellant appealed to the High Court where his appeal was dismissed in summary fashion no reasons being given by that Court for such dismissal. No application for leave to appeal was made by the appellant in the High Court nor was a certificate issued by the judge who heard the appeal in terms of Section 4(2)(b) of the Court of Appeal Act No.74 of 1954. All that the appellant did after the dismissal of his appeal in the High Court was to address a letter to the Registrar of that Court requesting that

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the application to appeal contained in the letter be forwarded to the Court of Appeal. This is not the proper procedure that should be followed when a criminal case originates in the Magistrates Court. (See the judgment of this Court during this session in NDWANDWE VS REX CA13/2000).

Having regard to the fact that the appellant was unrepresented we decided to hear the matter as if it was a properly brought application for leave to appeal. This necessitates an analysis of the evidence in order to decide whether there are reasonable prospects of success as far as the appeal is concerned.

The complainant is a 23 year old single woman to whom the appellant was unknown. She was walking towards her home at Msunduza at about 7pm on Saturday 7th January 1995 when she

was confronted by the appellant. The latter demanded money from her. She said she had none. This led to demands by the appellant to have sex with the complainant and threats of violence if she refused including that he would kill her with a knife which he then produced. While she was in fear of her life the complainant was raped several times, firstly where she was initially accosted, then on a mountain to which she was forced to go with the appellant and finally in his house.

After accompanying the appellant (still in fear of him) to purchase a chicken and then returning to his house the complainant managed to escape and to make a complaint to a neighbour. At that time she was crying and had obviously been deprived of some of her clothing since she was naked above the waist and was attempting to cover her breasts with a petticoat. She complained that she had been raped. She was taken to the police to whom she made a report that she had been raped. The police went to the appellant's house and found the complainant's effects including a headcloth and a pair of panties. The appellant had left the house before the arrival of the police.

At 1.30am the following morning i.e. 8th January 1995 the complainant was examined by a medical officer. Apart from a discharge that looked like semen and a scarred hymen the doctor found nothing abnormal. As the complainant was a normal sexually active young woman this was apparently not considered to be surprising. The complainant's evidence was corroborated by the neighbour of the appellant both in relation to her obviously distressed state and her partial nakedness.

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The appellant's version was that it was the complainant who demanded that he have sex with her for which, somewhat paradoxically, she demanded payment of E30,00. He went out to get change for E50.00 and when he returned to the house the complainant had left. He denied having had sex with the complainant. The appellant had no explanation for the complainant's nakedness nor for the complaints which I have referred to. Indeed on the appellant's version the complaints are inexplicable as is her partial nudity and her obvious distress at the time she arrived at the neighbour's house to complain.

There is no prospect that an appeal against the Magistrate's judgment might succeed and consequently leave to appeal is refused.

J. BROWDE J A

I AGREE:

J.H. STEYN J A

I AGREE:

C. E. L. BECK J A

Delivered on the 18th day of December 2000.