

SWAZILAND HIGH COURT

Dlamini, Mbodlomane Donald
Appellant

The King
Respondent

Cri. Appeal No. 38/2000

Coram

SAPIRE, CJ
ANNANDALE, J

For Appellant
For Crown

IN PERSON
MR. M. SIBANDZE

JUDGMENT (26/02/2001)

You were charged in the Magistrate Court for the Manzini Region held at Manzini before Magistrate Mr. Nkonyane with having raped a young woman who was, amongst other things, your friend's girlfriend. This rape is said to have taken place on the 22nd May 1999 at Fairview and once again the form SA 10 or cover sheet of the proceedings does not state properly how the offence was committed. but This is not fatal to the charge because the charge says that you were charged with rape and you were accused of having had sexual with A. The word "intercourse" has obviously been left out but rape could only mean intercourse in these circumstances.

There are other defects in the proceedings which are really not material and that is that you admitted the medical report without being properly informed as to what your rights were in regard thereto. You had the right to have the doctor called and as the medical report has no bearing in the matter of this appeal there is no reason why this defect should in any

way vitiate the proceedings.

I also draw to the attention of those concerned with the administration of justice and that is the prosecutors and the Magistrates that unless the presence of semen in these circumstances is proved by the actual people who tested the specimen, and the chain of evidence linking those specimens with the specimens taken, is proved in detail, no notice can be taken of such evidence which is hearsay and may be prejudicial. But in this case the evidence that the woman was raped is clear beyond reasonable doubt. It is a case, which is most unusual because we have an eyewitness to the actual rape. The woman complains that she was raped and she got an opportunity to call out and she was lucky as the magistrate says, that there was somebody there to hear and who came to the scene. It happened to be a community policeman who actually found you still committing the rape. You were taken into custody there and then so the person who committed the rape is the person in custody and that is you. Your denials are quite ineffectual and it is impossible to say that the Magistrate has in any way misdirected himself on the evidence.

The court of appeal will not interfere with the decision of a lower court on the question of fact unless the Magistrate or the presiding officer or the lower court has misdirected himself on the facts. If the evidence points one way and the Magistrate finds the other then it is possible. On the questions of credibility it is very seldom if at all that a court of appeal will allow an appeal.

In this case there is more than ample evidence to establish that you are the man who was having intercourse and you in your defence you do not claim to have had valid consent. The woman says that the person who had intercourse with her did not have her consent.

That being so the conviction must stand.

The sentence is within the jurisdiction of the Magistrate. He refused to predate the sentence, which has the effect that you in fact are spending a longer time in prison than the maximum otherwise have been the case. But that does not mean that the sentence he has imposed is an improper sentence. Your own stated view of the seriousness of rape is that if you found a person doing this sort of thing you would assault him till you killed him.

The sentence, which is being imposed, is a proper sentence for this sort of offence. This court and the other courts have constantly said that rape will not be tolerated. It must come to an end. If this court were to reduce your sentence it would be acting incorrectly.

Accordingly it is my view that the appeal on the conviction and on the sentence should be dismissed.

SAPIRE, CJ

I fully agree

ANNANDALE, J