

IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE

CASE NO : 3/03

In the matter of:

JOHN SIGODVO GAMA

Appellant

and

THE KING

Respondent

Coram

LEON, JP

BECK, JA

ZIETSMAN, JA

The appellant, despite his plea of not guilty, was found guilty of rape and was sentenced to 11 years imprisonment. The

- sentence was backdated to the 17th January -2001.

The appellant appeals only against the sentence. The facts of the matter as testified to by the Crown witnesses, are the following:

The appellant was at the time when the rape was committed approximately 25 years of age, and the complainant's age was 16 years. On the day in question, the 11th January 2001, the complainant and three other younger children, went into the forest to cut firewood. The complainant was using an axe to cut the firewood. Whilst she was busy doing so, the appellant approached her from behind and grabbed the axe. He then chased the younger children away and after threatening the complainant with the axe, he raped her. He then ran away to his home and changed his clothes. It is clear from the facts that there were aggravating circumstances that accompanied this rape. This being the case, the minimum sentence that the court could impose, was one of 9

The appellant is a first offender. In his submissions to us this morning, he said amongst other things that he was drunk at the time the offence was committed and that he had no real intention to commit the offence. However his actions at the time suggest that he was not really very drunk. He chased the younger children away, raped the complainant and then ran away to his home. He could not have been as drunk as he now suggests that he was.

The second point submitted by the appellant was that because he was carrying no weapon when he approached the complainant the act was not a premeditated act. It is true that he was not carrying a weapon but when he saw the complainant he seized her weapon, namely the axe, and then used that axe to chase the younger children away and to threaten the complainant. This is an aggravating feature


rape.

The appellant has submitted to us that he has now become rehabilitated, and says he will not commit a similar offence again. He says that if we give him a second chance, he will not misuse it.

The question we have to decide is whether the sentence imposed by the trial court was so severe as to entitle this court to interfere with that sentence. The minimum sentence that the trial court could have imposed was 9 years imprisonment, and it would therefore not be possible for this court to accede the appellant's request and to reduce his sentence by half. The most that could be considered would be a reduction of the sentence from 11 years imprisonment to 9 years imprisonment. But the question remains whether we can reduce the sentence in the circumstances of this case.

committing any misdirection and we can only alter the sentence if we regard it as grossly excessive in the

We have considered this matter but in view of the the offence, the use of the axe-as a weapon and the manner in which the complainant was threatened, raped and the younger children chased away, we consider this is not a case, where the sentence imposed by the trial court is excessive. As a result the appeal is dismissed and the conviction and sentence confirmed.



N.W. ZIETSMAN,



R.N. LECJr

I AGREE

I AGREE

