



IN THE COURT OF APPEAL OF SWAZILAND

Crim. Appeal Case No.733/04

In the matter between:

LAWRENCE PHUPHUTHA MANANA

APPELLANT

VS

THE KING

RESPONDENT

CORAM

R.N. LEON J.P. C.E.L.

BECKJ.A. N.W. ZIETSMAN

J.A.

For the appellant For  
the Crown

: In Person : A.  
Makhanya

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JUDGMENT

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**BeckJ.A.**

The appellant was convicted of having raped the complainant in her home in the early morning hours of the 25<sup>th</sup> of November 2001. He was sentenced to 15 years imprisonment, backdated to the date on which he was taken into custody. He has appealed against both conviction and sentence.

The complainant's evidence is that she was asleep in a bedroom, together with her 4 month old baby and her 11 year old brother, when a man burst through the door which had a faulty lock at about 2 am. She turned up the wick of the lamp to see a stranger carrying what she described as a "bolted stick". He produced a knife, grasped her by the

throat, pressed her down on the bed and told her to undress. She resisted. He then cut off her blue panty with his knife and raped her three times, and would have done so a fourth time but found himself unable to. She thereupon asked to leave the room on the pretext of wanting to fetch food for her baby, but he followed her to another room where she picked up a table knife and they grappled. She stabbed him somewhere above the left shoulder and the knife broke. He then made her wash the wound she had inflicted on him and told her to wash her private parts. He said he would kill her if she laid a charge against him. He then left her, by which time it was about 4.30am and he had been molesting her for some two and a half hours. She had seen his features and noticed that he had a rotten tooth, and she also had taken note of the sandals he was wearing, as well as the bolted stick that he carried.

Her evidence was corroborated by her young brother. He confirmed that a strange man kicked the door in and entered their room. He saw the bolted stick. He heard the man ordering his sister to lie down and he saw him cut off her panty with a knife. He added that he also saw the man stuff a tissue into the baby's mouth, and he saw that the man had a rotten tooth. When the man lay on his sister he was ordered to cover his head with his blanket and not to look. He said that eventually his sister went to another room, followed by the man, and he was unaware of what happened in that room.

After the departure of this man the complainant roused her neighbour who testified that at about 5am. the complainant came to her in tears bleeding from wounds to her neck and said she had been raped. The complainant then went to the Police to report the crime.

The Police Officer to whom she reported confirmed that the complainant had injuries to her neck, as well as on her thigh, and she handed him a torn blue panty. She was able to give him a full description of her assailant, his teeth and his sandals and a stick he carried. He took her to the hospital, after which he went with her to her home where she gave him a broken table knife. Later that day the complainant recognised the man who had raped her standing among a group of people and he was arrested. It was the appellant

and from his hut the Police recovered a bolted stick, a pair of sandals and a knife. He had an injury to his neck and he was taken to the hospital to be examined.

The appellant was examined by the same Doctor who had examined the complainant. The Doctor testified that the appellant had a wound to the left side of his neck that was compatible with a stab wound.

With regard to the complainant the Doctor found abrasions on both sides of her neck, and three puncture wounds to her left thigh. In the course of her evidence the complainant had said that her assailant had injured her thigh with his knife. The Doctor went on to say that her genital organs bore signs of violent intercourse, the fourchette was red, there were bacteria and spermatozoa and a foul discharge.

The Crown also led evidence of a properly conducted identification parade at which the complainants' young brother, as well as the complainant herself, identified the appellant unhesitatingly as the intruder who had burst into their room.

Both the complainant and her young brother identified the bolted stick and the sandals that the Police found in the appellant's hut as the stick that the intruder had carried and as the sandals that he wore.

In his defence the appellant said that it was not he who had entered the complainant's room and raped her. He conceded that he had a wound to the side of his neck, but claimed that this had been inflicted by an acquaintance with a screwdriver. That assertion was not corroborated by anyone. For the rest of it he said that he was at home for the whole of the night on which the complainant was raped. He called his brother to testify on his behalf, but all that the brother could say was that there was a cleansing ceremony that night at their home which he did not personally attend because he had to work that night. When he came home in the morning the appellant was asleep. He could give no evidence at all as to where the appellant was between 2 and 4.30am.

What was done to the complainant that night is not in dispute, and the only issue is one of identification. The evidence that the appellant was identified beyond all reasonable doubt as the intruder is utterly compelling and in my view the trial court has not been shown to have erred in any respect whatsoever in accepting it as conclusive.

As for the sentence, I can find no fault. It was an appallingly bad case of rape, protracted *ad nauseam* with violence by an armed assailant in the presence of a young boy at the dead of night in the home of the victim. The learned trial judge did not misdirect himself in any way in passing sentence and it is certainly not a sentence that creates any sense of shock in the light of the facts of the case.

Accordingly the appeal is dismissed and the conviction and the sentence are both confirmed.



**R.N. LEON J.P.**

