

SUPREME COURT OF SWAZILAND

APPEAL CASE NO. 16/2008

In the matter between:

LUKE LUCKY MHLANGA

APPELLANT

AND

REX

RESPONDENT

CORAM: ZIETSMAN JA

RAMODIBEDI JA

MAGID AJA

FOR THE APPELLANT: IN PERSON

FOR THE RESPONDENT: MR. N. HLOPHE

JUDGMENT

ZIETSMAN JA:

The appellant was tried by a subordinate court in the district of Lubombo sitting at Siphofaneni on two counts, one of rape and one of robbery. He pleaded not guilty to the rape but guilty to the robbery. He was found guilty on both counts. The matter was referred to the High Court for sentence and on 18th June 2007 he was sentenced to 10 years' imprisonment for the rape and to 5 years' imprisonment for the robbery. It was ordered that the sentences would run concurrently.

More than a year later, on 25th July 2008, the appellant wrote a letter to the Registrar of the High Court in which he stated-*"Kindly take note that I hereby apply for leave to appeal against sentence on the following grounds"*.

The only ground raised referred to the failure of the Judge in the High Court to backdate his sentence to the date of his arrest. He was arrested on 15th August 2006 and remained in custody pending his trial.

On 10th October 2008 the appellant wrote a further letter to the Registrar of the High Court. In that letter he indicated an intention to appeal against his conviction on the rape charge in addition to his appeal against the failure to backdate his sentence.

No application for condonation of his failure to lodge his notices of appeal timeously has been brought by the appellant. He is however unrepresented and when the matter was called he told us that he had been advised that an application for condonation would be necessary but that he did not know how to bring such an application. He also stated that he did not receive a copy of the record until last month (September 2008).

The appellant did not seek leave to appeal against the robbery conviction but only against his conviction for rape.

After considering the matter we decided to allow the appellant to appeal against his rape conviction. This took Miss Hlophe, who appeared for the Crown, by surprise and we then let the matter stand down until 2pm to give her a chance to prepare her argument. When the matter resumed at 2pm Miss Hlophe handed to us comprehensive and detailed heads of argument which she had prepared and had typed and copied in the short time available to her. Her effort in this connection is greatly appreciated.

The allegation on the rape charge against the appellant is that on or about 5th August 2006, and at or near Mkhweli area in the Lubombo district, the appellant wrongfully, unlawfully and intentionally had unlawful sexual intercourse with Nomvula Dladla, a Swazi female of 28 years, without her consent.

The evidence given by Nomvula Dladla (the complainant) was that she was followed on 5th August 2006 by the appellant while she was walking alone towards her home. He caught up with her and grabbed her by her shoulders. A struggle ensued during which the appellant bit the complainant's finger, throttled her and threatened to stab her with a knife. He then dragged her to a place which she described as being "in a jungle" where he raped her four times.

After raping the complainant the appellant fell asleep. The

complainant ran away and reported the matter to the witness Gamedze. The two of them returned to the scene of the rape and found the appellant still asleep there. He was not wearing his trousers.

The complainant identified the appellant as the person who had raped her and he was also identified by Gamedze who confirmed that he and the complainant found the appellant at the place where the rape had allegedly taken place and that the appellant was asleep and was not wearing his trousers.

The appellant was arrested by Constable Zodwa Dlamini. She stated in evidence that the appellant, when the charge of rape was put to him, told her that the complainant had consented to have sex with him. This allegation was denied by the appellant.

The appellant gave evidence. He denied that he was at the place where the alleged rape was committed on the day in

question. He raised an alibi as a defence and called three witnesses to support his alibi. The Magistrate rejected the evidence of the appellant, and he found the evidence of his witnesses to be contradictory and of no assistance to the appellant.

In his submissions to us the appellant alleged that the three Crown witness, namely the complainant, Gamedze and Constable Dlamini had all given false evidence against him. He stated that he did not know them and he could give no reason why they would have falsely implicated him in the rape.

In his letter of 10th October 2008 the appellant alleges that at his trial his right to cross-examine the Crown witnesses was not explained to him. The record shows that his rights were explained to him and he in fact proceeded to cross-examine the witnesses.

We are not persuaded that any irregularity occurred at the appellant's trial or that the Magistrate erred in reaching the conclusion which he did. The appellant's appeal against his conviction on the rape charge must therefore fail.

On the question of sentence, the appellant's only submission is that the commencement of his gaol sentence should have been backdated to the date of his arrest. This is conceded by the Crown.

In the result the appeal is dismissed and the convictions and sentences are confirmed save for the fact that it is ordered that the sentences, which are to run concurrently, are ordered to run from 15th August 2006.

Judge of Appeal

N.W. ZIETSMAN

Judge of Appeal
Acting Judge of Appeal

I agree

M.M. RAMODIBEDI

Judge of Appeal

I agree

P. A. M. MAGID

Acting Judge of Appeal