

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CBI. CASE NO. S.28/83

In the matter of

THE QUEEN

vs.

MFANUKHONA S. NTULI

CORAM:

HASSANALI, J.

FOR CROWN:

S.N. DLAMINI

FOR DEFENCE:

IN PERSON

JUDGMENT

(Delivered 3rd June 1983)

HASSANALI, J.

The Accused is indicted on the following two counts;

- 1) Committing rape on Nonhlahla Magagula
- 2) Assault with intent to do grievous bodily harm to Nonhlanhla Magagula.

He pleaded not guilty to both counts. At the conclusion of the case, Mr. Dlamini appearing for the Crown indicated that he was not pressing for a conviction on Count 2.

When Nonhlanhla Magagula, the Complainant gave evidence, it emerged that she works at Assegai Inn. On 28/8/82, she knocked off work at 8p.m. and walked home. While walking she noticed the accused trailing her. All of a sudden he pulled off his slacks and his shirt, came up from behind, kicked her and assaulted her on her face. Whereupon crying

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out for help she ran to the homestead of one Thoko Mkhwanazi. She flung open the door and ran into the bedroom. The Accused followed her, dragged her out of the room and stabbed her on her shoulder. He also kicked Thoko when enquired of him as to what the trouble was. At this time the accused was naked. He then dragged the complainant to the open, undressed her using force and against her will had sex with her. Thoko raised an alarm and one Jackson Methula came out. Seeing him, the accused took to his heels. The complainant reported the rape to Thoko and Jackson and then to the police. During the struggle the dress of the complainant got torn and her sandals were broken. There were blood marks on her overall, her dress and on her jersey. She sustained injuries on her knees, Upper lip, forehead and shoulder. She visited the scene of crime with the police that same night and found there the following items belonging to her - a tin of soft drink, a pair of sandals and a hat.

In cross-examination by the accused, she stated that usually some children accompanied her home but on that night, they did not come for her because they were busy preparing for their school test. She also said that though there were houses close to the scene of the crime, she could not seek refuge in any of them because the accused prevented her from doing so.

According to the testimony of Thoko Mkhwanazi, on 27/8/82 at about 9.30p.m. the complainant came rushing into her house shouting and crying out that the accused was killing her. The accused too in his naked condition entered the house with a knife in his hand. When she questioned the complainant

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as to what was wrong, the accused kicked her on her abdomen and stabbed the complainant on her shoulder. Thereafter he pulled the complainant out and had sexual intercourse with her. She (witness) went in and brought Jackson Methula. The complainant then told her that the accused had forcibly taken her and showed her the discharge. The police arrived at the scene immediately.

Jackson Methula testified that on 27/8/82 at about 9p.m. when he was fast asleep, Thoko awoke him. He went out and saw the accused lying on the complainant. Seeing him, the accused ran away.

D/Constable B.E. Dlamini said that the complainant reported that she was raped by the accused. On examination she had the following injuries:- (a) swollen mouth, (b) bruises on both knees. (c) a wound on the back. Later he went to the scene of the crime where he found signs of struggle. He also found the following items which belonged to the complainant:- 2 apples, a tin of soft drink, a woollen hat and a pair of sandals. Her overall, dress, and petticoat were covered in dust and blood. On the following day, Jackson handed over to him a knife which he said he found at the scene of the crime. He further stated that the accused admitted to the ownership of the knife but said that he used it only to frighten the complainant.

The accused in his evidence said that he did not rape the complainant but had sexual intercourse with her consent.

In cross-examination he denied that he told the police that the knife belonged to him.

The prosecution called 4 witnesses in support of their

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case. They were Nonhlanhla Magagula, Thoko Mkhwanazi, Jackson Methula and D/Constable Dlamini.

On the question of rape, there is the evidence of the complainant herself who testified that she was severely assaulted and raped by the accused on the night of the 28th August 1982 near the homestead of Thoko Mkhwanazi. The accused denied assaulting the complainant but admitted that he had sexual intercourse with her, with her consent.

The complainant gave a very convincing account as to what happened that night and I have no doubt whatsoever that she spoke the truth and did not invent a false story, in order to implicate the accused.

The evidence of the State does contain some very strong corroboration of the complainant's evidence -

(i) Thoko Mkhwanazi testified that the complainant was stabbed by the accused in her presence. The complainant was then dragged outside where the accused had sexual intercourse with her. This is supported by the discharge found on the complainant.

This constitutes corroboration of the version of the complainant that she was stabbed and sexually assaulted and it is inconsistent with the evidence of the accused that he had sexual intercourse with her consent.

(ii) The evidence of Thoko Mkhwanazi is substantially supported by the evidence of Jackson Methula.

(iii) D/Constable Dlamini testified that he examined the complainant the same night and found the

following

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injuries:- a swollen mouth, bruises on both knees, and a wound on the back, which further corroborates the testimony of the complainant that she was severely assaulted by the accused.

There is also the evidence of D/Const. Dlamini that the accused admitted to the ownership of the knife which was found on the scene of the crime.

(iv) The complainant also produced in Court her torn dress and a pair of broken sandals. She claimed that the dress got torn when she resisted the advances made by the accused.

The four features pointed out above, together with the evidence of the complainant constitute of a very important nature in support of the charge.

I am not satisfied with the evidence given by the accused. His demeanour suggested untruthfulness as there were contradictions in his own evidence. He impressed me as being a wholly unreliable witness.

Therefore on the totality of the evidence. I have no hesitation whatsoever in accepting the complainant's evidence in preference of that of the accused and I find him guilty of rape.

J.A. HASSANALI

JUDGE