

IN THE HIGH COURT OF SWAZILAND

CRI.CASE NO. 279/83

In the matter of:

THE QUEEN

vs.

ALFRED DLAMINI

CORAM: DUNN, A. J.

FOR CROWN: MR. R. ZONDI

FOR DEFENCE: MR. PUPUMA

JUPGMENT

(Delivered 27 Jan.1984)

DUNN, A.J.

The Accused is charged on count 1 with the rape of Jabulile Mbhamali at Tshaneni, on the 30 th April 1983.

On count 2, the accused is charged with the crime of malicious injury to property. It is alleged that the accused wrongfully broke the rear window of a police landrover, with the intention of injuring the Swaziland Government in its property.

On Count 3, the accused is charged with escaping from the lawful custody of the Police, whilst being held at the Mananga Police Station.

The Accused who was represented by Mr. Pupuma pleaded not guilty to the 3 counts charged.

The complainant, Jabulile Mbhamali gave a brief straight, forward and convincing account of the alleged rape. She stated that she went to the Tshaneni Disco at about 5.00p.m. on XXX

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boyfriend. He suggested that they leave the disco and go to his place. She refused and he hit her with a bottle in the face. She fell to the ground as a result of the blow. As she was on the ground, the accused who she did not know and had never seen came to her and introduced himself as a police officer. He offered to assist her in getting to a nearby clinic for treatment. She got up and walked with the accused towards the clinic. She stated that the time was about 4.00a.m. When they were a short distance from the clinic, the accused grabbed her and threw her to the ground, under a tree. The accused got on top of her; throttled her; pulled one side of her panty inwards from her thigh and had sexual intercourse with her. She stated that she was crying out for help and that she managed to do so everytime she was able to move the accused's hand from her throat. She stated that she sustained scratch marks around the neck as a result of the throttling by the accused.

The complainant stated that a security guard appeared and found the accused on top of her. The guard told the accused to get up. He enquired from her what the matter was and she reported that the accused had raped her. The guard attempted to handcuff the accused but he resisted. The guard requested the accused to accompany him to the road. At the roadride the guard requested another man to assist him in

arresting the accused. The accused broke loose and ran away. The accused was chased and with the help of members of the Royal Swaziland Police who had just arrived in the area, the accused was arrested and handcuffed.

The complainant stated that she made a report to the Police Officers.

Under a lengthy and careful cross examination by Mr.

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Pupuma the complainant denied that she had fallen in love with the accused 2 weeks before the 30.4.83. She denied that she had met with the accused in the disco pursuant to a prior arrangement. She denied having had drinks with the accused in the disco. She revealed for the first time the fact that the elastic on the panty around the leg snapped when the accused pulled the panty to have sexual intercourse with her. She further revealed that her dress tore along the neck line when the accused grabbed her. She stated that the police did not take the panty and the dress as exhibits.

Mr. Pupuma continued to cross examine the complainant on the events relating to the second count, of malicious injury to property. She stated that she had not seen the accused being put into the police landrover. She saw when the rear window of the landrover fell to the ground. She stated that the accused was at the back of the van at the time.

Overall, the complainant made a very good impression on me and I find no difficulty in accepting her evidence. It is possible, however, that she is not being completely frank when she states that she did not drink any liquor on the night in question. She had been in the disco from 5.00p.m. The security guard Phineas Mkhalihi whose evidence I will next deal with, stated that the complainant smelt of liquor when he spoke to her. The complainant's clear evidence is not, however, in anyway affected by this consideration.

Pheneas Mkhalihi a security guard at IYSIS stated that he was on patrol duties in the early hours of the 30.4.83. He heard a woman raise the alarm (inyandzaleyo). He followed the direction from which the voice came and he came across the

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accused and the complainant. The accused was lying on top of the complainant. Mkhalihi stated that he asked what the matter was. The accused got up and pulled up and fastened his trousers. He stated that the accused appeared startled. The complainant reported that the accused was having sexual intercourse with her by force. The complainant was eying.

Mkhalihi stated that he charged the accused and attempted to handcuff the accused. The accused resisted and he requested the accused to accompany him to the road. As stated by the complainant in her evidence, the accused ran away and was eventually apprehended with the help of members of the Royal Swaziland Police. Mkhalihi stated that the accused was handcuffed. The accused sat down and had to be picked up and taken into the back of the police landrover. The complainant told Mkhalihi that the injury she had on the face was caused by her former boyfriend, who hit her with a bottle. He stated that the accused appeared to be drunk.

Mkhalihi remained unshaken in his evidence under cross examination. His evidence fully corroborates that of the complainant There is absolutely no reason for Mkhalihi to have lied before this court.

Mazibuko was one of the police officers that assisted Mkhalihi in apprehending the accused. The complainant reported the rape to him and he formally charged the accused. The accused was handcuffed and placed in the police landrover. Mazibuko detailed constable Vilane to drive the landrover to a shopping complex at Tshaneni and to wait there as he, Mazibuko, had another matter to attend to. Mazibuko stated that when he eventually got to the shopping complex he found that the rear window of

the land-rover had been broken.

Constable Vilane stated that he was standing at the back of the Police landrover at the shopping complex. The accused who

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was alone in the back of the landrover kicked the rear window. The window broke into two pieces which fell to the ground.

Constable Vilane was present when the accused was placed in the cells at Mananga Police station. He Was being held on charges of Rape and malicious injury to property.

Constable Shongwe gave evidence that on the 30.4.83 he arrested the accused who he had seen running on the South African side of the border fence at Mananga. Shongwe had heard an alarm which was raised when the accused escaped from the cells. Shongwe handed into court the broken burglar bars which he found in the cells in which the accused had been kept.

The accused in a long, rambling statement, stated that the complainant was his girlfriend. He had fallen in love with her 3 weeks before the 30.4.83. By arrangement he met with her at the Tshaneni disco. They had drinks together. The complainant at some stage left him in the disco. After a long time he went outside to look for her. He found that she had been injured. He expressed his dismay on learning that she had been assaulted by her former boyfriend. He pointed out to her that her former boyfriend should pay for her treatment. The complainant said that she would not allow that as she no longer loved her former boyfriend.

The accused stated that he walked with the complainant towards the clinic. They stopped near a path and he held the complainant by the hands and spoke to her. The Security Guard men approached. He demanded to know what the matter was as the complainant was crying and bleeding. The complainant reported that the accused was holding her. The word hold was correctly interpreted and had not been used by the accused in siSwati to mean rape. The accused stated that Mkhaliphi charged him for

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holding the complainant. The complainant explained to Mkhaliphi how she sustained the injury on her forehead.

I do not find it necessary to continue any further with the accused's evidence on count 1. It is fanciful in the extreme. It is no challenge to the very clear evidence of the complainant and Mkhaliphi.

With regard to count 2, the Accused stated that when he was pushed into the Police landrover he was assaulted by 2 police officers who got into the back with him. One of the officers hit him with a fist and as a result his head hit against the rear window of the landrover and it broke and fell out. I reject this evidence outright. Mr. Pupuma could not press too strongly on this evidence and in my view he acted correctly in so doing.

On Count 3, the accused stated that one of the inmates of the cell in which he was kept advised him how he could remove the handcuffs with the help of the burglar bars. The accused stated that he attempted the procedure he was advised to follow and he succeeded in breaking the handcuffs. One of the inmates later pointed out that the cell door had been left open by a certain Malambe Police Officer. The accused stated that that was how he managed to escape. He stated that he was ill-treated in the cell and threatened with assault by the Police who showed a strong dislike for him when they learnt that he was a private in the Umbutfo Swaziland Defence Force. I cannot accept this evidence. No explanation was given for the broken burglar bars before the court. The accused could only hide behind the totally false explanation that the bars before the court are not the type that is fitted to the cells at Mananga Police Station.

Mr. Pupuma has submitted that there is no medical evidence to corroborate the complainant's evidence of penetration. Medical evidence is not the only evidence that can be used in this regard. The superior evidence of the complainant is amply corroborated by Mkhalihi, who found the accused on top of the complainant. The Crown's evidence is such as to leave no room for the submission by Mr. Pupuma that at the most, the accused can only be guilty of indecent assault.

I reject the evidence of the accused as totally false and accept the corroborated evidence of the complainant. I find the Accused guilty as charged on Count 1.

I find that the Crown has proved the guilt of the accused beyond all reasonable doubt on counts 2 and 3. I find him guilty as charged on those counts as well.

B. DUNN

ACTING JUDGE.