

IN THE HIGH OF SWAZILAND

In the matter of: CASE NO. S.44/85

THE QUEEN

VS

STEVEN JAHA SHABANGU

CORAM: J. HASSANALI

FOR CROWN: MISS NGUBAIME

FDR ACCUSED: IN PERSON

JUDGEMENT

(Delivered 22nd April 1985)

HASSANALI. J

The accused is charged with:-

- a) Attempted rape on Amendo Dlamini
- b) Attempted rape on Bonisiwe Khanyile

He pleaded not guilty to both counts and was undefended.

COUNT ONE:

Amendo Dlamini who was admonished to speak the truth testified that on 11th November 1984 when she was with Bonisiwe Khanyile, the accused came from behind them grabbed them both, closed their mouths, and dragged them to his house. There he made Amendo lie down, undressed himself, got astride her and covering himself with a blanket had sex with her. While he was dressing after the act, her mother appeared on the scene. She examined her and reported the matter to the police. In cross-examination, she denied that her mother threatened to beat her. She said that the accused was drunk.

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Bonisiwe Khanyile substantially corroborated the complainant in her evidence. She said that the accused pulled her and the complainant to his house and shut them inside. Thereafter, he ordered the complainant to lie down and covered themselves with a blanket.

Dr. Phillip of the Good Shepherd Hospital, Siteki told the court that he examined Amendo Dlamini on 12/11/84. Her vestibule was bruised and her discharge was whitish with signs of infection. However, her hymen was intact. According to him her injury suggested that there was an attempt to penetrate.

Mary Majola, the other crown witness testified that she heard a commotion from the house of the accused. When she went there, she was told that the accused had some children locked inside. She peeped through a window and saw the accused sleeping with the bigger girl of the two girls (Amendo). He later opened the door and let the children out. They were both crying. The mother of Armendo then examined her.

Josephine Dlamini, the mother of the complainant said that Armendo was born on 22/2/73. On 11/11/84

acting on information received she went to the house of the accused to look for her child. There she met Armendo who told her that accused got on top of her. When she examined her she found that her private parts were bruised and that her legs were wet. In cross-examination she denied that she threatened the complainant.

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The accused who made an unsworn statement denied the allegation. He said that he was drunk and was asleep.

There is no dispute as regards the identity of the accused as he resides in the same location and is known to the people there. The evidence of the complainant is amply corroborated by the other crown witness and I am satisfied that she spoke the truth.

In the circumstances I find the accused guilty as charged in respect of Count One.

#### COUNT TWO

Bonisiwe Khanyile who was admonished to speak the truth said that while she was playing with Armendo Dlamini, the accused came to them and dragged them to his house. He ordered her to lie down and had sex with her. Then she heard someone knocking at his window. Accused then opened the door and let her and Armendo out. She further said that she was examined by her mother and later by the doctor.

Armendo Dlamini corroborated the complainant in her evidence. She said that the accused grabbed them both and dragged them to his house. There he made the complainant lie down, pulled up her dress, undressed himself and got on top of her, covering themselves with a blanket.

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Dr. Philip told the court that he examined Bonisiwe Khanyile on 11/11/84. He found that her vestibule was bruised, but her hymen was intact. According to him there was only an attempt at penetration.

Elizabeth Khanyile testified that her daughter Bonisiwe was born on 25/6/77. On 11/11/84 she found her crying at the homestead of the accused. Bonisiwe told her that she was raped by the accused when she examined her she noticed that her private parts were bruised.

The accused who made / an / unsworn statement denied the allegation.

The complainant though young in age gave a satisfactory account of the incident, as it had happened and I have no doubts that she spoke the truth. Her evidence is amply corroborated by the evidence of Armendo, Elizabeth Khanyile and that of Dr. Phillip.

In the circumstances, I find the accused guilty as charged in respect of count two.

J. HASSANALI

JUDGE