

THE HIGH COURT OF SWAZILAND

REX

Vs

Saneliso Mandlazi

Cri. Tri. No. 23/99

Coram Sapire, CJ

For Crown Mr. J, Maseko

For Defence In Person

JUDGMENT (09/12/99)

The accused, Saneliso Mandlazi, is charged with the crime of rape in that on or about 1st August, 1998 and at or near Mangwaneni in the District of Manzini the accused, he a Swazi male adult did unlawfully and intentionally have carnal intercourse with Constance Mkhathshwa, a female 20 years without her consent.

The plea to this charge is not guilty.

The evidence led establishes that the complainant is a female minor of Mangwaneni in the district of Manzini who was then attending Noncedo Private School. She lives with her mother.

On the 1st of August 1998 in the early evening she was sent by her mother to fetch water from a nearby community stand-by pipe tap. Whilst at the tap collecting water she was approached by the accused. He tried to persuade her to become his girlfriend. The complainant was not agreeable to this and declined his offer. The accused was not satisfied, and did not accept this. He took her forcibly into a nearby house and in a menacing manner, forced her to have sex with him. After this had taken place, according to the complainant, the accused helped her to take the water in a wheelbarrow to the house, which is nearby.

The complainant did not immediately report this matter to her mother and she explains this by saying that she feared her mother's reaction and that she preferred to report the matter the following day to the Indvuna. This she did and the Indvuna informed her that she must tell her mother and she and her mother interviewed the Indvuna together. As a result of this a report was made to the Police. The complainant and her mother were able to identify the accused as the person who had committed the offence.

The Police tried to find the accused but were unsuccessful for a period of 2 or 3 weeks. During this period of two or three weeks however, after the Police had pursued their enquiry, the accused parents who had learnt of the complaint called at the house of the complainant's parents and were obviously regretful of what had happened and tried to make amends. That this happened of course does not take the crown case any further because what the accused parents must have said the accused had done cannot be taken as an admission by the accused.

When the accused person returned from wherever he had been, he accompanied his mother on a further visit to the complainant's house. While the parents of the accused tried to be conciliatory the evidence is from the complainant's mother that the accused took up the attitude that the complainant was his girlfriend and that the intercourse that had taken place was by consent. On account of this his attitude was that he had not done anything wrong and that there is no basis for the charge.

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This attitude is apparently founded in a widely held, but erroneous belief that a man is entitled to a woman, if the fancy takes him, and have her by force if she does not consent. That was the accused's attitude.

Having come together the role-players then went to the Induna's house and there they saw the Induna's wife as the Induna was away. She repeated the evidence given by the complainant's mother regarding what the accused had to say regarding the allegations against him.

Eventually they went to the Police Station where again a report was made to the Police in the presence of the accused. All were present, namely, the mothers, the complainant and the accused himself.

There, according to the Police evidence, a statement was taken from the accused that again repeated the same attitude that he had previously expressed to the complainant's mother and to the wife to the Induna. The accused according to the Police evidence made a statement to the Police which was taken down and acknowledged by the accused by his signature. The accused said that although a statement was read over to him this is not the one and although he admits his signature appears on the two pages comprising the statement he says that these two pages were completely blank when he signed them.

A curious thing of course is that the statement ends exactly at the point where his signatures appear. The police officer has said, and it does not appear to be contradicted, that this statement was made in a spirit of cooperation and that the accused was merely trying to exculpate him.

Even at that stage the accused mentioned a witness who he wished to call who he said would substantiate that the complainant was his girlfriend.

In these proceedings the accused has taken a different line. He claims to know nothing about the rape and he also claims only a vague awareness of who the complainant is. He says that he was at the house of his friend at the relevant time and that in this way he had an alibi. I am not satisfied that the day on which the accused

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says he was at his friend's house is the same evening on which the rape took place. Both the accused and his witness are more than vague on this.

What is of great importance is that the witness completely contradicts the accused present denial that he even knows this girl. This witness who seems to have been primed a long time ago before the accused had embarked on his present line of defence said that he saw the accused with the complainant together on several occasions and that the complainant was the accused girlfriend.

The accused person has referred to the complainant's evidence and pointed to a number of what he thinks are unsatisfactory elements in his evidence. Firstly he stresses the apparent mistake as to the time at which the complainant said the rape took place. The time is not important and a person's recollection of time is notoriously inaccurate. This would have been after nightfall and having regarded to the time which is 1st of August and the time is described with darkness, which had already fallen.

He also criticises the complainant for not having reported the matter to her mother immediately but her explanation is a reasonable one.

The complainant is a woman who was sexually active and well knew what intercourse was. She described that full intercourse had taken place. This intercourse was forced upon her by the accused and I have no reason to believe that her account of what happened is not substantially correct.

As far as the accused is concerned his evidence was unsatisfactory and as I say completely contradicted by his witness in court. His claim to justify the intercourse with the complainant on the grounds of him being a boyfriend confounded by the evidence he gave in court I have no doubt whatsoever that intercourse did take place but without the complainant's concerned. The accused is accordingly found guilty of rape.

SENTENCE

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The accused has been found guilty of rape. He has several previous convictions dating back some ten years or more which are completely disregarded from the assessment of the sentence which has to be passed on him now. The complainant is a young woman who appears to have been traumatized at the time of the rape but there is no suggestion of serious injury having been inflicted upon her in the physical sense. The assault was certainly regarded as serious by her as an attack on her dignity and upon her person. The accused has exhibited an aggressiveness here in court and a disregard for the personality of other people. When he found it necessary the accused did not scruple lying. He has been unable to come to terms that he has done something wrong. Because of this it is not possible for him to exhibit any signs of remorse which would cause me to alleviate the sentence which I have to pass on him. The commission of rape is regarded more and more as something which has to be eradicated in this society. It is unacceptable to the public for rapists to be treated leniently. Not only must the accused be punished for what he did but his punishment must be seen by others to be of such a serious nature as to be a deterrent to them also and to reflect the anger of society that such crimes continue to be committed unabated.

The accused will be sentenced to ten (10) years imprisonment. The period will be deemed to have commenced on the date of his arrest which is the 19* August 1998.

Sapire, CJ