

CRI/A/33/82

IN THE HIGH COURT OF LESOTHO

In the Appeal of

LETUKA      LETHALA      Appellant

V

R E X      Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P.  
Mofokeng on the 14th day of July, 1982

The appellant (hereafter referred to as the accused) was charged in the Subordinate Court of Qacha's Nek with the crime of rape it being alleged that upon or about 6th February 1982 and at or near White Hill he wrongfully, unlawfully and intentionally have unlawful sexual intercourse with Mothebe Tontsi (hereinafter referred to as the complainant) a girl of 14 years of age without her consent. He pleaded not guilty but was found guilty under Section 3(1) of Proclamation 14 of 1949.

/The accused

The accused met the complainant and other girls who had come from gathering wood. He spoke as a person who was in-charge of the forest from which the wood was gathered. He then sent away the smaller girls and left the complainant and Thakane Tontsi (P.W.2). He first attempted to act obscenely to Thakane Tontsi but she made great noise and ran away. Accused then turned to the complainant, who was by then terribly frightened, and had intercourse with her. She was heard crying. When the complainant joined the rest of the group she made a report to them. This complaint was repeated to Mapea and Moshoanae. The complainant was then examined by village women and her private parts were found to be inflamed. Medical examination confirmed that there had been penetration into the complainant's virgin. In his defence the accused did not deny meeting the complainant but denies that he had sexual intercourse with her. The accused did not advance his course at all. All he succeeded in doing was to ask real embarrassing questions of the complainant such as why he was not called when the village women were examining the complainant.

Section 3(1) reads, in part :

"3(1) Any person who has unlawful carnal connection with a girl under the age of sixteen years ..... shall be guilty of an offence and being convicted thereof shall be liable at the discretion of the court, to a fine not exceeding one thousand rand (maluti) or to imprisonment to any term not exceeding six years."

/There has

There has been no evidence led to establish the true age of the complainant. The learned magistrate, in the absence of such evidence, did not estimate the complainant's age as he was entitled in terms of Sec. 340 of the Criminal Procedure and Evidence Act 8 of 1981. (See Rex v Mokechane, 1976 L.L.R. 16). The only evidence on record is the complainant's hearsay evidence. This type of evidence is not acceptable where the accused is likely to meet such a heavy sentence. The accused cannot, in my view, be found anywhere on record, that it was explained to him (unrepresented as he was) that he stood to be found guilty in terms of the above-quoted section. (Makhasane v Rex, 1979 L.L.R.). However, there is evidence that the complainant was raped and the accused should be found guilty as charged i.e. of rape.

In the result the verdict that the accused is guilty under Sec. 3(1) of Proclamation 14 of 1949 is set aside and is substituted by the one of guilty of rape.

I personally feel that the sentence imposed by the learned magistrate is extremely lenient. The effect of what the accused has done to the complainant will remain with her for life. The psychological damage is extreme. Even though the accused has not appealed against the severity of his sentence, there is authority in this Court to the effect that where an accused notes an appeal, against conviction, he also stand the risk of

/his sentence

his sentence being increased. (Matia and Another v Rex, 1979 L.L.R.). The accused was sentenced to one (1) year's imprisonment. This is totally inadequate. The crime he has committed is a very serious and its psychological effects will be severe and lasting. The courts have repeatedly warned against the commission of this offence. The complainant is but a child to have been so sexually treated. The sentence imposed by the learned magistrate is set aside and is substituted therefor by the following :

"Two years imprisonment."

*W. H. L. v*

J U D G E .

For the Appellant . In person

For the Respondent: Mr. Khauoe.