CRI/A/23/83

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

SEKHOBE LETSIE — Appellant

v

R E X — Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice B.K. Molai on the 1st day of August, 1983.

On 30th May, 1983, I dismissed this appeal and intimated that my reasons for the decision would be filed later. These now follow.

The appellant pleaded not guilty to but was convicted on a charge of rape by the magistrate court of Maseru sitting at Semonkong, it being alleged that on or about the 15th July, 1982 and at or near Mokopung in the district of Maseru he unlawfully and intentionally had sexual intercourse with one 'Matselane Mosebi, a girl of about 17 years of age, without her consent. A sentence of 2 years imprisonment was imposed by the trial magistrate. The appeal was against both the conviction and the sentence.

The facts disclosed by the evidence were that the complainat's home was at Ha Lesua in the area of Ha Matlosa.

2/ On 15th July, 1983 ....

On 15th July, 1983, she and her mother (PW. 2) were visitors at a place called Mokopung. They spent the night at a house occupied by 'Malebohang on the stand of one Tatolo.

While the complainant and her mother were sleeping in the same house with 'Malebohang and a few other women, a certain woman who was carrying dresses in her hands came into the house. She was immediately followed into the house by the Appellant and another man. The appellant who was the local court president in the area inquired about the whereabouts of the owner of the place, Tatolo. 'Malebohang informed him that Tatolo was not in and she was the only person responsible for the place. Appellant then ordered the woman who was carrying dresses in her hands to leave the house and proceed to a nearby local court. When the woman asked for permission to put on her dress, the appellant and his companion forced her out of the house.

Later on, the appellant and his friend returned to the house and escorted away 'Malebohang herself and one of the women who had been sleeping in the same house. According to the appellant, the women were locked up at the local court until 9.15 in the morning when he released them.

After some time the two men came back to the house and ordered the complainant and another girl ('Macaola) out of the house. When the two girls were going out complainant's mother who was a sickly person resisted and tried to stop them from leaving the house. The appellant violently pushed her away and ordered the girls out. When complainant's mother suggested to go with the girls, appellant and his friend told her that,after all, they were going to lock up the girls in separate rooms from hers at the local court.

3/ Although he .....

Although he conceded that when he visited Tatolo's place for the third time that night he told complainant to go out of the house, appellant said he whispered to her so that her mother could not hear what he was telling her and complainant's mother, in fact, raised no objection at all to the girls leaving the house.

It was common cause that the complainant and her mother were seeing the appellant for the first time that night and he was a complete stranger to them. That being so, I found it highly improbable that complainant's mother could have failed to demonstrate her displeasure and reluctance at complainant's leaving the house on the order of the appellant, especially after the latter had been taking away a number of other women for undisclosed reasons. The trial magistrate rejected as unconvicing the appellant's story and accepted, rightly so in my view, as more probable the crown version that complainant's mother did resist and try to stop the girls from leaving the house.

Complainant's evidence further disclosed that after she and 'Macaola had been ordered out of the house, appellant and his friend esrorted them to the local court where the appellant forced her into his house leaving the other girl with his companion.

Inside his house the appellant ordered the complainant to take off her panty. When she showed reluctance and started crying, appellant told the complainant that that was not her mother's house. He caught hold of the complainant, forcibly threw her on the floor, violently pulled off her panty when as a result its elastic band broke, got on top of her and had full sexual intercourse with her without her consent.

4/ In his evidence .....

In his evidence the appellant told the court that after the complainant and the other girl, 'Macaola, had left the house and were waiting on the forecourt, he went to the former and proposed love to her. His proposal was accepted and the complainant willingly agreed to accompany him to his house at the local court where they would have sex. He accordingly took the complainant to his house and had sexual intercourse with her. In the process there was full penetration.

As proof that the complainant was, throughout, a willing party it was argued that she did not even scream or cry aloud when she was taken to appellant's house at the local court and that if she did the villegers would have heard and come to her rescue. The fact that she did not scream was, therefore, in itself corroboration of appellant's evidence that complainant had consented to accompany the appellant to his house where they would have sexual intercourse. I had no hesitation in rejecting that argument. On the evidence accepted by the trial court, the appellant and his friend had given the impression that they were arresting and escorting those women to lock them up at the local court. I have never heard of people who screamed and cried simply because they were being arrested and taken to a place where they would be locked up. The inference that because she did not scream or cry aloud when taken to appellant's house the complainant was, therefore, a consenting party to a subsequent act of sexual intercourse was, in the circumstances of this case, a <u>non-sequitur</u>.

Asked why he went about arresting women on that night the appellant, with impunity, refused to answer that question and told the court that he would disclose the reasons for the arrests only when and if he were prosecuted for arresting them. In that event the court could not be expected to speculate on the motive behind appellant's

5/ unexplained series ....

unexplained series of arrests. It had to examine and decide on the available evidence what his motive for the arrests was. As it will be shown in a moment after the appellant had taken the complainant to his house and had had sexual intercourse with her, the series of those arrests came to an end. The trial court concluded, therefore, that on the evidence it was clear that the motive behind the arrests was to strike terror in the minds of all the women who had been sleeping in 'Malebohang's house and pave the way for an easy access to the girls whom the appellant and his frien wanted to abuse in the manner the appellant had done with the complainant. In the absence of any other reasonable explanation to the contrary, I could find no good reason to disturb the conclusion arrived at by the trial court on this point.

Although the appellant contended that inside his house he did not, as discribed by the complainant, forcibly had sexual intercourse with her there was unchallenged evidence accepted by the trial court that after he had had sexual intercourse with her the appellant released the complainant who immediately returned to her mother leaving behind her woollen hat. She did not even take time to put on her panty which she still carried in her hands when she came back to her mother at 'Malebohang's house. As soon as she came to her mother, the complainant tearfully reported the ordeal she had experienced in appellant's house. She showed the panty to her mother who also confirmed, in her evidence, that its elastic band was broken.

The trial court considered the evidence and rejected as false the appellant's contention that he did not forcibly have sexual intercourse with the complainant. It accepted as the truth the prosecution evidence that the complainant was not a consenting party and the appellant had had sexual

6/ sexual intercourse .....

intercourse with her without her consent. That, in my view, was the only reasonable conclusion to which the court a quo could have come on the evidence which clearly depicted the complainant as a person who was genuinely hurt by what the appellant had done to her.

It was common cause that in the morning of the following day complainant's mother reported the matter to the chief who referred the appellant to the police. P.W.3, W/O Makhotla, cautioned and charged the appellant who was put under immediate arrest.

No medical doctor was available in the area to examine the complainant at the time and it was not until the 19th July, 1982 that she was medically examined at Semonkong Heath Centre by a certain Dr. Gibson, presumably a visiting doctor. As it took place almost 4 days after the incident had occurred and naturally after the complainant had already washed herself, the examination did not reveal anything of importance and the medical report (Exh A) compiled by Dr. Gibson and handed in with the consent of the appellant was of little assistance (if any at all) in this case, However, in the light of the evidence it had accepted the trial court found that the appellant had committed the offence against which he was charged and, rightly so in my opinion, convicted him as aforsaid.

Coming now to the question of sentence, it must be pointed out that Rape is a very serious offence in this country. To convince oneself of this fact, one has only to look at S.297 of the Criminal Procedure and Evidence Act 1981 which provides inter alia :

> "(1) subject to sub-section (2) or (3),
> sentence of death by hanging .....
> (b) may be passed by the High Court
> upon an accused convicted before
> or by it of murder or rape".
> (my underlingings)

7/ There can .....

There can be no doubt that a death penalty is a serious sentence which the legislature in this country would not have prescribed upon a conviction on rape unless it took a very serious view of this type of offence. Indeed, in a number of decisions, the High Court has had numerous occasions to point out that rape is a serious crime calling for commensurately serious punishment. All that can be said, therefore, is that the appellant must consider himself lucky to have been tried before a magistrate with First Class powers who because of his limited jurisdiction could not, in the circumstances of this case, have imposed a sentence exceeding 2 years imprisonment.

I must, however, once more warn the appellant and people of his mind that as human beings our women and girls have rights which are protected by the law of this land. They will not be subjected to a treatment befitting only irrational animals. If the warnings of this court continue to be unheeded, I respectfully endorse the words of Mofokeng, J. in Review Order 41/82 Rex v. Lebonejoang Ramphobole and Mosiko Mosotho & Others that :

> "In the final end all rape cases may have to be tried in the High Court where suitable sentences may be imposed."

If anything, the sentence imposed by the trial magistrate sinned on the side of leniency and I was not, therefore, prepared to interfer.

In the premises, I came to the conclusion that this appeal ought not to succeed and I accordingly dismissed it.

B.K. KOLAI.
JUDGE
1st August, 1983.

For Appellant : Mr. Matlhare
For Crown : Mrs. Bosiu.