

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

RALINKO MATOOANE

v

R E X

REASONS FOR JUDGMENT

Filed by the Hon. Acting Mr. Justice
J.L. Kheola on the 15th day of October, 1984

On the 24th September, 1984 I upheld the appeal and set aside the conviction and sentence. What now follow are my reasons.

The appellant appeared before the Subordinate Court for the district of Mafeteng charged with rape of 'Mamokete Mokhele on the 12th January, 1984. He was found guilty as charged and sentence to twelve months' imprisonment of which half was suspended for three years on certain conditions.

The complainant testified that on the 12th January, 1984 she was returning from the well and carrying a bucket full of water on her head. The appellant came to him and asked for some water. But before she could answer him he got hold of her and told her that he wanted vagina. During the struggle that ensued the appellant hit her several times with a stick till he finally overpowered her and raped her. She sustained bruises on the left upperarm, bruises on the left thigh and left hip and on both hands; two lacerations on the left little finger. These injuries were confirmed by the doctor who

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examined her on the 14th January, 1984. He also found some pressure marks on the neck which were consistent with strangulation. The complainant did say that during the struggle the appellant strangled her. She said that she had known the appellant for about two years prior to the alleged rape.

The first person the complainant met after she was raped was one 'Mateboho Selisane (P.W.2). She reported to her that the appellant had raped her. 'Mateboho examined her body and saw the injuries she had sustained.

The appellant's defence was a complete denial of the charge. He said that at the time the complainant was being raped he was about seven kilometres away from Tajane where the offence is alleged to have taken place. He was herding his father's cattle and was already driving them ~~home~~ where he milked them. He saw the complainant for the first time in Court but he was not in a position to deny that the complainant knew him because her husband was a friend of his (appellant's) father.

In his judgment the learned magistrate relied on the evidence of P.W.2 and said it was corroboration of the evidence of the complainant. It has been pointed out in a number of cases of this Court that in sexual cases the complaint made by the victim to the first person she meets after the offence is not corroboration required by law. (See Seeiso Kao v. Rex, 1980 (2) L.L.R. 307, Rex v. Qii, Review Order 20/78 (unreported)). The main purpose why the complaint is admissible is merely to show consistency and also to negative consent in those cases where the issue is whether the complainant had consented. It is thought that it is unlikely that a woman who has consented to sexual intercourse can immediately thereafter complain that she has been raped.

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There is nothing in the judgment of the learned magistrate to show that he exercised the necessary caution before he convicted the appellant of rape. In the case of Lebesa v Rex, 1976 L.L.R. 187 at p. 188 Cotran, C.J. had this to say:

" Whilst there is no need in law for "corroboration" of complaint's testimony, it is incumbent on the magistrate:

- (a) to look into the evidence to see if there are indices, apart from her statement, that gives confidence about the truth of her allegations; and
- (b) he should warn himself about the dangers inherent in accepting, in sexual offences, the testimony of one witness standing on its own."

I entirely agree with the learned Chief Justice. In the present case the trial magistrate misdirected himself by saying that there was corroboration from the person to whom the complainant made a complaint. It was probably because of this misdirection that the learned magistrate did not observe the cautionary rule. To make things worse he made no special finding as to the credibility of the witnesses. In his judgment the learned magistrate does not refer to the evidence of the appellant at all. He had to give his reasons why he entirely rejected such story. The appellant's story was an alibi which was, in my view, not shown to be completely false or totally improbable. The so called corroborative evidence of P.W.2 had nothing to do with the identity of the culprit, which was the main issue in the case. P.W.2 never saw the appellant in the vicinity of the scene of crime at any time before or after the offence was committed. As far as the identity of the culprit is concerned it was the word of the complainant against that of the appellant and it was the duty of the trial court to make a finding as to the credibility of the witnesses and show the demerits in the story of the appellant.

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I have come to the conclusion that the Crown failed to prove its case beyond a reasonable doubt. The appeal against conviction and sentence is allowed. The appeal fee must be refunded to the appellant.

[Handwritten signature]
Acting Judge
15th October, 1984

For the Appellant : Mr. Mda

For the Respondent : Mr. Kamalanathan