

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

KHOBOHELO MOKOMA

Appellant

VS

R E X

J U D G M E N T

Delivered by the honourable Acting Chief Justice Mr.
Justice J.L. Kheola on the 10th day of December, 1986.

On the 10th December, 1986 I summarily dismissed the appeal in this case in terms of section 327 of the Criminal Procedure and Evidence Act 1981 and indicated that my reasons would follow. The following are such reasons.

The charge against the appellant reads as follows:

"That the said accused is charged with the crime of rape. In that upon or about the 21st day of September, 1986 and at or near Thaba-Tseka township in the district of Thaba-Tseka the said accused did wrongfully and unlawfully and intentionally have sexual intercourse with 'Malihlahleng Makoetenyane a woman of about 20 years of age' without her consent and thus commit a crime of rape as aforesaid."

The appellant pleaded guilty to the charge and the public prosecutor stated the facts of the case as disclosed by the evidence in his possession as follows:

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"Crown evidence would show that on the 21-9-86 the complainant 'Malihlahleng was walking with another woman from ha Khalieli to F.T.C. The woman works at Khalieli's place. It was during the night. On the way the accused and another came to them. Accused and his friend were travelling in a vehicle.

Crown evidence would further show that the woman who was with the complainant knew the accused and that other man. The women stopped the vehicle and asked for a lift to F.T.C. When they left F.T.C. premises the two men and the women went away in that vehicle to Lihlabeng lodge. They later left Lihlabeng lodge and went to where the driver of the vehicle had been given accommodation. They got to the place and the driver and the other woman went into the house and left the accused and the complainant in the vehicle. The complainant left the accused in the vehicle and went to where she stayed. But when she was some distance away from the accused, the accused approached her.

Crown evidence would further show that the accused showed that he wanted to have sexual intercourse with the complainant but complainant refused. After they had crossed the donga near Thaba-Tseka Township the accused then twisted the complainant's arm. The woman cried out but the accused fell her down and put his hand on complainant's mouth to silence her.

Evidence would show that the accused then lowered the complainant's pantie and even tore it off. The accused then lowered his trousers and started having sexual intercourse with the complainant. After the act the accused left the woman there and went away. The complainant came to the charge office at once and reported the matter to Tpr. Mahleke.

After he had received the report Tpr. Mahleke and another police officer together with the complainant went to where complainant showed the accused could be found. This was at about 2.00 a.m. When they got there, they found the accused sleeping in a van. Tpr. Mahleke put questions to the accused in the presence of the complainant and the accused explained to the Police Officer.

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Following the explanation he gave the accused was then cautioned and given a charge of rape. The accused was arrested and the accused took the Police officer to the scene of crime.


At that place the complainant's hat was picked up. There was some disturbance on the ground for a distance ^{of} ~~to~~ sixteen (16) paces. The complainant's hat was seized as an exhibit and is marked exhibit "1".

Tpr. Mahleke referred the complainant to the doctor for examination. The doctor examined the complainant and found bruises on the knees, and also found vaginal smears. The complainant would show she had not allowed the accused to have sexual intercourse with her."

The appellant admitted the facts stated by the public prosecutor. After he was convicted of rape he stated in mitigation of sentence that although the complainant had accepted his love proposal, she never consented to have sexual intercourse with him.

In his grounds of appeal the appellant does not deny that he raped the complainant but merely complains that he pleaded guilty because the police had deceived him that if he pleaded guilty he would be given a very light sentence. If the appellant is of the opinion that a sentence of eighteen (18) months' imprisonment is not very light for the offence of rape, he must look ^{at} section 297 (b) of the Criminal Procedure and Evidence Act 1981 that death sentence may be passed by this Court upon an accused convicted before or by it of rape. The appellant must regard himself to be very lucky and must thank his stars for having appeared before a very lenient magistrate.

In the result the appeal against both conviction and sentence was summarily dismissed.


J.L. KHEOLA

ACTING CHIEF JUSTICE.

5th January, 1987.