

IN THE HIGH COURT OF LESOTHO

In the matter between:

REX

v

PHOMOLO KHUTLISI

Before the Honourable the Chief Justice Mr. Justice
B.P. Cullinan on the 28th day of April, 1989.

For the Crown : Mr. G.S. Mdhluli, Director of Public
Prosecutions

For the Accused : In Person

JUDGMENT

Cases referred to: (1) R.v. Billam & Ors. (1986) All E.R.
985 (C.A.)
(2) R.v. Jankie & Anor. (2) CRI/REV/75 &
81/1988 (Unreported)

The accused was convicted of rape by the Subordinate
Court of the First Class for the Maseru District.

Accused pleaded guilty and agreed with a statement
of facts which disclosed a prima facie case. The plea was
plainly unequivocal. The conviction is accordingly confirmed.

The case was tried on 31st May, 1988, before the advent of the Revision of Penalties order 1988. That Order is inapplicable. At that stage the learned trial Magistrate's jurisdiction in the matter of punishment was two years' imprisonment. He committed the accused to the High Court for sentence, recording very full reasons for doing so.

The rape was an appalling one. The learned trial Magistrate observed that the rape was "a disgrace ... to the community in general". I am inclined to agree. The accused is aged but 19 years of age. The complainant, however was an old lady, aged 78 years. The rape was repeated in circumstances grossly degrading to the old lady. The accused pleaded guilty and thereby spared the complainant the trauma of a trial: the statement of facts however established that he had been caught flagrante delicto by the old lady's son. The accused is a first offender, but as Lord Lane C.J. observed in the English case of R.v. Billam & Ors. (1) at p.988 (see R.v. Jankie & Anor. (2) at p.4), where the offence of rape is concerned, "previous good character is only of minor importance". In all the circumstances I sentence the accused to Six (6) years' imprisonment with effect from 31st May, 1988, the

date of the conviction in the Court below.

Delivered on The 28th Day of April, 1989.

(B. P. CULLINAN)
CHIEF JUSTICE