

IN THE HIGH COURT OF LESOTHO

In the matter Between :

R E X

v

BOLOU SELEMANE

Before the Honourable Chief Justice Mr Justice
B. P. Cullinan on the 2nd day of June 1989

For the Crown : Mr S. Mdhuli

For the Accused : Mr T. Teele

J U D G M E N T

The accused was convicted of rape by the Subordinate Court of the Second Class for the Mokhotlong District.

It was the evidence of the complainant, an Intern Supervisor, that the accused, a student, raped her in her room, threatening her with a knife. When he slept she escaped. Before leaving the room she placed his clothing in water, in order to prevent his escape, or his pursuing her. She made immediate complaint to a neighbour, and they both summoned the police. The accused was found still asleep in the complainant's room, the knife beside him, his clothing still immersed in water.

The accused maintained that he had had sexual intercourse twice, with her consent, and then slept. Towards dawn she

wished him to leave, as she did not wish him to be observed leaving her room after dawn. He refused, saying he was tired. He did observe her leave the room, but thereafter slept, awaking to find the police in the room. He denied ever threatening the complainant, and in particular ever brandishing a knife.

The learned Counsel for the accused, Mr Teele, points to a number of aspects in the evidence, giving rise to enquiry. The first is that the complainant testified that the accused divested himself of his clothing, except his underwear, in order to wash himself. The appellant testified that the complainant took off his clothes, and asked him to wash himself. Mr Teele submits that the act of washing is not the act of a rapist. I must confess that the accused's account is the more realistic one.

Secondly, the complainant testified that while the accused was washing himself she attempted to escape by the doorway, but he caught her, as he was standing near the particular doorway. She admitted in cross-examination that there was another unlocked door in her room, connecting with a vacant room next door, yet she never tried to escape by that door, although the accused was not standing near it.

Thirdly, the complainant's evidence indicated at first that the rape took place around 9-10 p. m. When she was queried as to the intervening time, she put that act of rape much later - about 2 a. m. She testified that she escaped at the first available opportunity. I find it difficult to appreciate however why an alleged rapist waited three to four hours to effect his intention, or why no

opportunity to escape presented itself any earlier than 4-5 a.m. It is significant that she escaped as dawn was breaking, corroborating his evidence that she grew annoyed at his refusal to leave at that time.

There is on the other hand her act of immersing his clothing in water, but then she may well at that stage, embarrassed at his unwanted presence in her room, have decided to stage an alleged rape. There is the aspect of the knife, but there is only her evidence thereof. The investigating officer passed away before the trial: but as Mr Teele points out, not one, but two police officers went to her room: the second police Officer was not called, however. Mr Teele, who represented the accused at his trial, admitted the knife and clothing as exhibits. That does not establish where the knife was found by the police in the complainant's room: even if it was found on the bed, it would have been a simple matter for the complainant to have placed it there, before leaving the room possibly, or even surreptitiously after entering the room. Again, there is the aspect of complaint, but that goes merely to show the consistency of the complainant's evidence. The medical examination, despite the doctor's opinion that "rape might be possible", revealed, I am bound to say, nothing of any significance whatsoever.

In brief, there is much to be said for the version of both the complainant and the accused. If anything, the scales tip in his favour. In any event, the onus was upon the prosecution, and I do not consider that, on the evidence, it could be said that his version could not be reasonably true.

More importantly, the learned trial Magistrate never once warned herself of the need for corroboration in a sexual case. This case, I consider, is a classic example of the difficulties facing a Court in a sexual case, and illustrates why corroboration is necessary. Had the learned trial Magistrate adverted to the points enumerated above, and had she correctly directed herself in the matter I am in no way satisfied that she would inevitably have convicted the accused.

It would be unsafe to allow the conviction to stand. The conviction in the court below is set aside and the accused is acquitted.

Delivered at Maseru This 2nd Day of June, 1989.



(B. P. CULLINAN)
CHIEF JUSTICE