

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

KHITIONE MPELI

JUDGMENT ON REVIEW

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 18th day of May 1990  
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You were brought before this Court because it was felt that in the event that the conviction is found to be proper, then the sentence that was imposed by the court below was inadequate. It was for this reason that the Court went out of its way to ensure that you were represented because it was a serious charge that you were faced with in the court below.

Today I have had the opportunity therefore to hear submissions by both counsel - that is counsel for the Crown and your own counsel.

Mr. Mdhluli for the Crown tells me that the Crown supports the conviction, and further submits that the sentence of five (5) years is manifestly inadequate.

It was raised on your behalf that there was no proper identification of the person who was seen committing the crime at the scene. It was said that the witnesses who saw the person who committed the crime only had a flitting glimpse at the culprit. It was however submitted on your behalf - in

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reaction to questions put by the Court that you happened, of course, to be around the vicinity and that it was at day time. The Crown properly or rightly, therefore, submitted that you were well-known by P.W.1 - the complainant - and P.W.3 - the old lady who interrupted you in the act.

You did in the court below, in putting the questions to the complainant, suggest to her that you were in love with her. Of course she denied that. She is a girl of hardly sixteen years. I am told that she is mentally retarded. Your age is given as forty-five (45). Even looking at it from a purely speculative point of view, it doesn't make sense that a young girl of that age who is even mentally retarded could fall in love with you apart from the fact that she denies that as false.

The Doctor who examined the complainant, albeit the following day, showed that there were sperms in her vagina. The eye-witness indicated and the complainant herself said that she was bleeding from her private parts and this was not the following day when she was seen by the doctor but immediately after the act. That is if we were to assume that in her endeavour to falsely implicate you she slept with another man in order to ensure that there were sperms in her vagina which she would purvey to the doctor who later examined her. But credible evidence shows that immediately after you stepped off her where you had topped her, she stood up, and she was unable to walk; and she was not able to speak because - and the doctor found this for a fact - that her throat was interfered with. She indicated that she was not able to shout because of the pressure you had applied on her neck.

For these reasons, I have no doubt in my mind that the Court below properly found you guilty as charged.

Regarding sentence, it has been submitted on your behalf that the rape was not repeated and that it was not a full sexual intercourse, because it was interrupted by one

/of the Crown

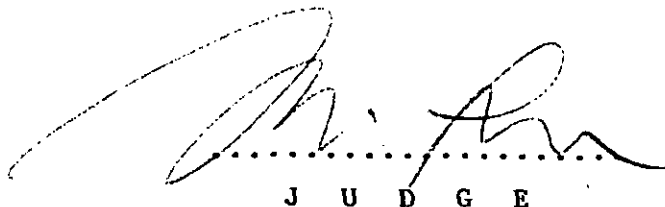
of the Crown witnesses. To my mind, the fact that there was an interruption is irrelevant because the sperms were found in the victim. There were also bruises which are consistent with the crime of rape. The hymen was torn.

It was also advanced as a point in your favour that you are a first offender; and that no weapon was used in the perpetration of the crime. Reliance was reposed on Rex vs Billan & Others (1986) ALL E.R.-a case by Lord Lane where the learned Judge gave guidelines as to the appropriate sentences to be imposed in cases of this nature.

While I accept as the true state of the law which was laid down by Lord Lane in that case as submitted by your counsel, I cannot overlook the fact that tremendous pressure was applied to the neck of the complainant. I cannot also overlook the point which is set out in that Honourable Judge's Judgment that it saves a complainant a lot of unnecessary trauma if she is not called upon to give evidence because there is a contest. Also, I cannot overlook the fact that in the same case, the Judge drew attention to the fact that a complainant is spared a lot of unnecessary trauma if an accused person pleads guilty, instead of having to go through the process of being cross-examined in the court of law, thus adding to her trauma.

It doesn't stand you in good stead that your wife has left you. The complainant is not responsible for that. The act itself was sordid and done to a person who, to all intents and purposes, is shown here as an imbecile or somebody of a deficient mental condition.

Having said all these, I find that the sentence that was imposed by the court below was extremely inadequate. The minimum sentence I am going to impose on you then is that you go to gaol for eight (8) years. Of course it has got to be understood that I am setting aside the sentence imposed by the court below.



J U D G E

18th May 1990

For Crown : Mr. Mdhluli

For Defence: Mr. Putsoane