

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

LEATILE MOLETSAME

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 8th day of April, 1991

The accused was convicted in the Court below of the offence of rape perpetrated against a 13 year old girl of Maqoala in the Mphahle's Hoek district on 9th December, 1989.

The court below imposed a five year jail term in accordance with the minimum penalties Order 10 of 1988. The magistrate concerned was possessed of Second Class sentencing powers.

When the record of proceedings from the court below reached this Court it was decided that the accused should be alerted that it would be desirable on the hearing date that he should avail himself of the services of counsel who should be prepared to argue why the sentence should not be appreciably enhanced should the conviction be confirmed.

The arguments were concluded late in March and judgment was reserved till 9th April, 1991.

The following are reasons for judgment

/P.M.1

P.W.1 testified that on the day in question she was going to Tlokotsing when a young man called her by name and suggested that he would like to sleep with her. The complainant who did not know this young man asked how he knew her. The young man replied that he had previously seen her at a concert. There and then the complainant fled. In the process her shoe fell off. The young man who was apparently not pursuing the complainant used that shoe as a bait by means of which he enticed the complainant to come and collect her shoe. When the complainant came along the accused grabbed hold of her, beat her in the pelvis area with a stick, felled her to the ground and having pulled the complainant's panties he had sex with her. The complainant was crying throughout the period of the assault on her. She also told the court below that she was bleeding from her private parts.

The accused suggested to her under cross-examination that he was not in Lesotho during the period within whose extent the day in question fell. But P.W.1 told the accused the manner of his apparel on that day, including the accused's pair of white gum-boots.

P.W.2 Joseph Pitso who knows the accused very well adamantly told the court that the accused was not outside Lesotho during the period of the event. He testified that the accused was wearing a white pair of gum-boots on the day in question and was also carrying a stick.

He testified that he had seen the accused earlier that day. P.W.2 met him after he had learnt from P.W.1 that she was going to Tlokotsing. The accused even asked P.W.2 who the girl who had just crossed paths with P.W.2 was.

An hour or so afterwards P.W.2 heard P.W.1 shout at him. He discovered that she was crying. She was soiled

/with

with dirt and covered with loose grass at her back.

Asked by the accused why P.W.2 associated the accused with the offence P.W.2 stated that the manner of dress and description of the accused given by P.W.1 fitted the accused.

P.W.3 IWANOSHE Monare who did not know the accused or whoever was accompanying the accused following the road leading to Tlokotsing said one of the two had white gum-boots on.

The medical report which was accepted by the defence and admitted in evidence showed that the complainant's vagina was bruised, that it had a whitish discharge and appeared to have not had sexual contact before the event that led to the Doctor's performance of the examination which was painful. The hymen was gone. The vagina admitted one finger. There were injuries corresponding to the alleged assaults on left iliac crest and occipital region.

Regarding his defence the accused's story as to his whereabouts differed from the suggestion he had made to P.W.1 and P.W.2 that he was not in the country during the month when the alleged incident occurred.

The accused stated that in that month he went to the home of P.W.3 Rapoto Ralifero. P.W.5 supports the accused's story that on 6th December 1989 the accused came to his home; and further that they went to the passing out ceremony of initiates together. Significantly in his evidence in chief the accused makes no mention of white gum-boots. But P.W.5 who said that the accused was wearing white gum-boots that day was not cross-examined on this piece of evidence which lends support to P.W.1's story as to the identity of the accused by manner of his dress on that day.

Indeed under cross-examination the accused admitted that he had worn white gum-boots on that day.

/To

To my mind there is no doubt as to the act of intercourse suffered by the complainant. Medical evidence lends sufficient support to this.

There does not seem to be any doubt as to the identity of the alleged perpetrator of the offence even though he was not known to the complainant before then except facially. Uncertainty as to the name or lack of knowledge thereof is nothing as long as there is certainty as to the body. P.M.2 has lent enough support to P.M.1 in this respect.

There is a marked absence of gainsaying evidence by the accused compounded by his deliberate falsehood that he was out of the country when the offence allegedly took place.

It appears from the evidence that credible version corroborating the complainant's story in a respect implicating the accused has emerged i.e. that he was present in the area where the alleged offence took place, and was wearing white gum-boots.

It would seem to me that inherent danger has been avoided in the sense, first that the complainant has been corroborated in a respect implicating the accused, next that no gainsaying evidence has been advanced by the accused and finally that he is found to have been lying.

Needless to say there is no need to look for corroboration of the lack of consent because statutorily the complainant is incapable of ~~giving consent~~ to sexual intercourse.

It is clear to me that because of the existence of acceptable and reliable evidence showing that the complainant is a credible and trustworthy witness the learned magistrate's verdict cannot be faulted. That verdict is accordingly confirmed.

/With

With regard to sentence this Court takes a very grim view of perpetrators of sexual offences against children of tender years. Rape as such fills the right thinking members of society with revulsion anywhere in the civilised world. That it carries death penalty bespeaks the disapproval and abhorrence with which Lesotho law views rape. When perpetrated against young girls it seems only logical that a sentence that is ~~coextensive~~ to the resentment with which rape is viewed in this country should be imposed. Needless to say this type of offence ~~traumatises~~ the victim for life. The use of the stick to compel submission, in my view, aggravates the offence.

Accordingly therefore the accused is sentenced to nine (9) years' imprisonment.

J U D G E

3th April, 1991

For Crown : Miss Moruthane

For Defence: Mr. Fosa