

CRI/A/36/91

IN HIGH COURT OF LESOTHO

In the Appeal of:

MOLUPI PITI  
MOFEREFERE PITI

1st Appellant  
2nd Appellant

vs

R E X

J U D G M E N T

Delivered by the Hon. Mr. Justice W.C.M. Magutu  
Acting Judge on the 17th day of March  
1994.

This appeal was heard in the absence of the Appellants because Mr. Phafane who noted the appeal said he had not been instructed in the appeal.

It seemed the appellants who were not legally represented at the trial had not been informed of the date of hearing of the appeal.

The Appellants were convicted of rape in 1989. They applied for bail pending appeal and it was granted.

Mr. Thetsane for the Crown did not support conviction. The Court decided to proceed with this appeal in the absence of the Appellants because the case was an old one. The Appellants were convicted in December, 1989 but their appeal came before the High Court in 1991.

The Appellants identification in the dark was highly unsatisfactory more particularly because stones were thrown around when the complainant was waylaid by several people. The identification of the Appellants was made all the more unsatisfactory because they had not known the accused before that day.

Only one witness the complainant was the identifying witness. That being the case, the cautionary rule was applicable. Furthermore this being a case involving a sexual offence there is another tradition of treating such a case with caution. See R. v. W 1949(3) SA 772 AD. As already stated, the rape had occurred in the dark. Three men were involved one of whom had a knife to overcome complainant's resistance with the threat of stabbing her with a knife.

It will be observed that cautionary rule is a matter of practice that has been constantly followed

as if it is a rule of law. See Malefetsane Phala Mabope and Others V. Rex C. of A (CRI) No.5 of 1986 (unreported). Some form of corroboration becomes necessary to reduce the risk of wrong conviction unless after due caution the trial court is satisfied that the merits of the single witness, her evidence is clear and satisfactory in every material respect. Where there is corroboration, the Court can check one witness's evidence against that of others. Even where some elements of some of the witnesses' evidence are not very satisfactory, by cross-checking, the court can gain the assurance that an innocent person is not being convicted. With a single witness this is not possible.

It will be noted that Broom J.P. in R. v. Abdoorham 1954(3) SA 163 or page 165E rejected the cautionary rule of R. v. Mokoena 1932 OPD 79 his view being :

"The court is entitled to convict on the evidence of a single witness, if it is satisfied beyond reasonable doubt that such evidence is true. The Court may be satisfied that a witness is speaking the truth notwithstanding that he is in some respects an unsatisfactory witness."

After making this observation Broom J.P. proceeded to set aside the conviction because the single witness: