

CRI\A\58\94IN THE HIGH COURT OF LESOTHO

In the Appeal of:

LEFA SAKA

Appellant

and

R E X

Respondent

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi  
on the 14th day of February, 1995

This is an appeal from the Magistrate's Court of Berea, it being alleged that upon or about the 5th April 1994 at or near Ha Mokonyana in the district of Berea, the said Appellant, an adult male did intentionally have unlawful sexual intercourse with Limakatso Mpoka. This Limakatso Mpoka being a female Mosotho of 17 years. That this was without her consent and that the accused did, thereby commit the crime of rape.

The appellant denied having had unlawful sexual intercourse with the Complainant. But instead he has admitted having had sexual intercourse with the consent of this girl. He therefore

pleaded not guilty. There has been four witnesses for the Crown in the court a quo. It was P.W.1 Limakatso Mpoka the Complainant, P.W.2 Tsietsi Mpoka the girl's father, P.W.3 was Moea Tupa, and the fourth witness was the doctor.

The accused gave evidence in his defence. I did not think his evidence was much useful. It did not appear to meet the real issues that were against him. But he was not defended. I think much of the blame can be put at the door of the magistrate's judgment. To start with, I would agree with the submission that not much of sufficient analysis was done of the evidence that was before the Court. We do not have anything in the way of stating what factors are in favour of the Crown's case. Not much was placed in the direction of indicating what matters did not stand in the Appellant's credit. I do observe that there is much of evidence that constitute hearsay evidence. That came through P.W.2, the girl's father. More specifically is the statement that this witness testified to as having been reported by the Complainant. P.W.2 and P.W.3 are said to have been eye witnesses, but surely they should have shed more light as to what they in fact saw happen. This is more so because it seems to be common cause that in fact intercourse did take place. It means therefore the Complainant and the Appellant were most probably found in the act. So that there should have been much more specific and abundant information as to what this alleged pulling

of and pulling about of the girl by the boy was about, what the girl was doing and what the boy was doing at that time. I would agree that there is a lot of doubt cast by the circumstances of the fact that this lumber jacket was said to have been laid down in an orderly manner suggesting that there was agreement or prior arrangement. On the other hand I do not find that there is any strange thing in the boy having ran away when he saw the girl's father. I think that is natural. Again, without suggesting that there should be conformity or total agreement throughout, that between P.W.2 and P.W.3, there should have been more evidence as to what they saw and what they heard that could sufficiently give an idea that there is truth in what they were testifying to. There should have been much more information that would tally as between the two witnesses.

I would place no value on the evidence of the doctor. I would agree with Mr. Sakoane that his evidence is colourless so to speak. The fact that he examined this Complainant a few days after the event, the fact that the doctor says that there was no hymen and fact that the doctor does not say that he found proof of intercourse, goes a long way to show that his evidence has no value.

As an appellate Court, I would normally be constrained towards commenting about the credibility of witness because that

area belongs to the magistrate who tried the matter. But this is the area in which the magistrate made no effort. He did not make any visible effort. It is possible that this Appellant raped the girl. As I said in the beginning the problems of this appeal have to do with the attitude of the magistrate. I find that this is an unsafe case to confirm the conviction. If the accused has in fact raped this girl he must consider himself very lucky. The appeal is allowed.

T. MONAPATHI  
JUDGE

For the Appellant : Mr. Fosa

for the Respondent : Mr. Sakoane