

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MPHO GRIFFITHS

Appellant

vs

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla on the
7th day of March, 1995

The conviction is confirmed for reasons that, as the learned Counsel for the Crown indicated, there is no ritual as to the type of language to use in order to bring to the attention of trier of fact that a crime such as Rape has been committed. Omission of the magical words i.e. "without consent" should occasion no handicap where it is clear that application of force was used to suppress consent. The elements have been proved, namely, that it was without the consent of the complainant that sexual intercourse took place between her and her assailant who applied force to suppress that consent. There is enough in the document here to show that the act committed on her was without her consent but I am one to readily admit that the matter has been handled rather sketchily and sloppily concerning sentence.

Indeed nothing has been done by the learned magistrate to even attempt to comply with the requirements of the statute that, on appeal and within a certain period set out in the statute reasons should be given for sentence or even for conviction for that matter - for the whole proceeding.

At this juncture I would therefore in order to try and save time make an inquiry from the appellant in order to find for myself what his personal circumstances are for purposes of sentence because nothing has been done in that regard and therefore the court is at large as it has been invited by Counsel for the appellant to find for itself what otherwise should have been done by the Subordinate Court.

It is important to indicate that the accused here was charged with a crime of Rape to which he had pleaded guilty and was at the end of the day sentenced to two years' imprisonment. The accused was unrepresented in the Subordinate Court. As I have earlier stated, the question of verdict that was returned was a proper one because in my view Rape was proved to have been committed. Another thing which was raised by appellant's Counsel I think relates to scanty nature of facts in a case such as this one which is governed by Section 240 Act 9 of 1981 of our Criminal Procedure and Evidence concerning people who plead guilty to a charge and outline is made of the facts of the case which should, if the proper conviction should follow, reveal the elements of the crime charged.

It is imperative that the prosecutor should bring forth the elements of a crime charged because a mere repetition of the charge in the outline of the case does not amount to evidence. Evidence or summary of evidence is something else.

As I have indicated the learned magistrate did not delve

into the personal circumstances of the accused and therefore it was imperative for purposes of saving time for this court to take upon itself the task of investigating the personal circumstances of the appellant. In the process it surfaced from that endeavour by the court that indeed the appellant is a very ignorant type of man who looks after stock, who doesn't earn any pay for his services as a man tending stock because this stock belongs to his parent and also because though he is looking after someone else's stock it appears to me that he gets no pay in respect of that someone else's stock because his family's stock is grazed and pastured at the cattlepost of that someone else's. Of course when this question was suggested to the appellant he didn't at all appreciate this. His answer was irrelevant but this is the view this court takes because it came from his own mouth that he looks also after the stock of the owner of the cattlepost. He came from a fairly large family. But people who are supported in that family as dependants are only two presently; and those are he himself and his sibling who is still at school.

Having said this I should point out that Rape is a very serious crime and that the appellant has been convicted of that offence. If the question of his youth had not been taken into account this court would have considered on conviction to have had the sentence enhanced because from the look of things this has been a gang rape which would have warranted stiffer sentence. But because the magistrate failed in my view to do what he should have done namely to give reasons for the sentence that he has imposed it was difficult to know what moved him to impose the

sentence revealed in the record. I am constrained to set aside the sentence that was imposed by the magistrate because of the fact that no reasons have been given for it. On its own this court imposes a sentence of two years' imprisonment.

This is in line with the procedure adopted by the Court of Appeal where because of an irregularity committed by the High Court in enhancing sentence from two years' to four years' imprisonment set aside the irregularly imposed sentence and substituted it with a regularly imposed four years' imprisonment. See Seholoholo vs Rex C. of A. (CRI) No.2 of 1984 (unreported).

J U D G E
7th March, 1995

For Appellant : Mr. Kolisang
For Respondent : Mr. Mofelehetsi