CRI/A/35/99
CR 99/99

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

LEKANYANE RANTSOTI **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 6th day of March 2000

This is CRI/A/35/99 in which Lekanyane Rantsoti has appealed against the judgment of the learned Magistrate in the court below at Leribe. He had been charged with the crime of Rape before that court, it being alleged that he had wrongfully, unlawfully and intentionally had sexual intercourse with Nteboheleng Nyenye, a Mosotho girl of about sixteen(16) years without her consent, and thus he committed the said crime.

The accused pleaded not guilty to this charge. I should hasten to straighten the record right away. Of the grounds of appeal which were submitted the first ground of appeal was abandoned before the arguments started in the pursuit of this appeal. That ground was in connection with the fact that the sentence of six (6) years' imprisonment was rather on the harsh side. So all that remained to be appealed against were specified in grounds 2 and 3 relating to conviction only while ground 3 is an indication that if the appellant so wishes he would supply further grounds of appeal. Suffice it to say then that the only ground therefore we are faced with now is one relating to conviction.

The complainant gave evidence before the learned Magistrate. She told the Court that she had been sent on 24th January 1999 by her mother to her brother's home and that she made for her brother's home at around 6.00 in the evening and made her way back home at around 7.00 p.m.

When she passed the accused's place the accused came out of his yard and caught up with her.

The accused is somebody that is well-known to the complainant and he used

to visit the complainant's home on a variety of occasions. They went together until the complainant was about reaching her home. While they were at the veranda the accused asked for a kiss from her but she turned him down.

The complainant says that was the first ever time that the accused asked for a kiss of her. She is adamant that she never kissed the accused before and that she was unwilling to do so this time. But now the accused got hold of her and the complainant asked him to let her be as well as pulling herself from the accused's grip.

After she had managed to break free the accused, she says, came and strangled her and pressed her against the house and thereupon raped her.

She says she was unable to raise an alarm because of the strangulation or the pressure on her throat. In elaborating on how the rape took place she says that the accused pulled out her panty and pulled out his penis and inserted it into her front passage and that when he was through he ran away.

The complainant says she charged him with the fact that she was going to report the incident but the accused's reply was "it doesn't matter as both of us will be

arrested together".

On reaching home, she says her mother examined her and afterwards that her mother and she left for the accused's place with the purpose of reporting the matter to the accused's mother.

The accused's mother was reported to and she reacted by saying that there was nothing she could do and that it seemed the accused would have to be arrested. Consequently they proceeded to the complainant's brother's place.

Well, to cut the long story short the complainant ultimately, and after a number of days, - this is where the whole thing becomes important, - she went to the clinic not the same day, and finding nobody of competence to deal with her or examine her at that clinic she, as a result, spent more than another 24 hours to get to Dr Jessie's place for examination.

There is a document on which I will not refer but which was made part of the record, but may be I should refer to it because the accused did insist that the evidence in it revealed nothing and I think it was proper that such evidence if there was, should

have been brought forward. In it Dr Jessie shows that he didn't find anything to corroborate or to support a claim of rape or intercourse for that matter. This is as far as that document goes. Of course it was not referred to by both Counsel before me and I think it was for good reasons that they didn't. May be I should come back to that afterwards, i.e. after dealing with the evidence.

The appellant's cross-examination of the complainant was very direct and very purposeful but unwittingly with his reference to Dr Jessie's document - because Dr Jessie was never called to give evidence - the appellant unwittingly attracted something which would not be of any use to him; but which once raised would require an answer. I am saying this because it is trite that in cases of sexual intercourse there has to be medical attention on the victim as quickly as possible after the event if the whole exercise of consulting a doctor is to be of any use because as Medical Science has established any examination taken or carried out after about 24 hours, it is not possible to establish whether or not there was sexual intercourse whether forceful or consensual at all. The examination becomes only purposeful during the life time of the sperms, i.e. the living spermatozoa in the seminal fluid because normally those things die, and don't survive beyond 24 hours.

The mother gave her evidence which corroborated the report that she got from her daughter plus on her own evidence indicating that she saw bad things in her daughter's private parts. The accused himself gave evidence. He testified that there was sexual intercourse between him and the complainant but that it was by consent. The crux of the matter is right at this particular point, i.e. whether or not there was consent.

He made a suggestion in an attempt to explain why the complainant reported the incident, namely, that because of the delay incurred before she got home fearing that the mother would reprimand her she made a claim that the delay was due to the fact that she had been held up and raped by him.

Some version in this vein was pursued at the addresses phase but was never actually put to the complainant nor to the mother at the crucial stage of their giving evidence. Be that as it may, however some latitude will have to be given to the fact that the accused was doing his best to cross-examine and that he is not trained in that regard. So even though this appears to be an afterthought, which in some rare occasions one could pardon at the same time one cannot overlook the fatal failure in it in an instance such as the present where this factor or omission is of such crucial

importance.

In argument, the most important aspect of the argument raised by the appellant's Counsel relates to corroboration; and while at that I wish to refer to what this Court has time and again stated concerning cases of this nature. For instance in CRI/REV/116/99 ***Rex vs Letšolakobo Lephoto*** (unreported) at page 13 this Court had something to say as indeed it did even in many other cases which had come for review before it - or even before coming to that let me talk about corroboration. This appears at page 15, namely, that the position in law regarding corroboration has been most aptly and most fruitfully stated in the Court of Appeal decision given while sitting in Swaziland in the case of ***Velakati vs Regina*** which is Case No56 of 1984 (unreported) at page 5. (I hope all prosecutors will bear this important decision in mind when dealing with rape cases). The learned Judge of Appeal said :

> "There is no rule of law requiring corroboration of the complainant's evidence in a case such as the present one. But there is a well established cautionary rule of practice in regard to complainant's in sexual cases in terms of which a trial court must warn itself of a danger in their evidence and accordingly should look for corroboration of all the essential elements of the offence. Thus in a case of rape the trial court should look for corroboration of the evidence of intercourse itself, the lack of consent and the identity of the alleged offender. If any or all of these elements are uncorroborated the court must warn itself of the danger of convicting and in such circumstances it will only convict if

> acceptable and reliable evidence exists to show that the complainant is a credible and a trustworthy witness".

In the other case that I referred to earlier namely ***Letšolakobo Lephoto***, the Court said :

> "Putting oneself in the shoes of the learned Magistrate who presided over this matter, one finds that the Magistrate was in no doubt about the trustworthiness and reliability of the witness who gave evidence of a rape itself.
>
> So this aspect of the matter falls four square within the guidelines or the parameters set out in ***Velakati*** where I repeat the court will only convict if acceptable and reliable evidence exists to show that the complainant is a credible and trustworthy witness".

Such is the situation even if the elements are uncorroborated.

Now in the instant case we have observed the evidence which was not challenged, namely, that the complainant said she was unable to raise an alarm because she had been strangled. Well, the defence Counsel has raised the possibility that there couldn't have been rape because the clothes of the complainant were not shown to have been torn.

One is tempted to dismiss this observation on the basis of the fact that, apart

from appearing to verge on speculation, if the strangulation was sufficient to enable the act of intercourse without consent to go on, then there wouldn't have been any necessity for tearing about the clothes of the complainant. In any case it is on record in the document referred to above as Dr Jessie's that the doctor observed "ABRASIONS ON RIGHT SIDE OF NECK" of the complainant. To me that is sufficient corroboration of strangulation which couldn't have been effective without suppressing and foiling complainant's attempts at raising an alarm by screaming.

Now the elements raised in ***Velakati*** also refer to the fact that there has to be evidence corroborating the identity of the accused and the complainant acquitted herself very well in that regard. In any case she and the appellant lived in the same village and the appellant used to visit her home on a variety of occasions. So she was in no doubt about who had committed the act she complained of.

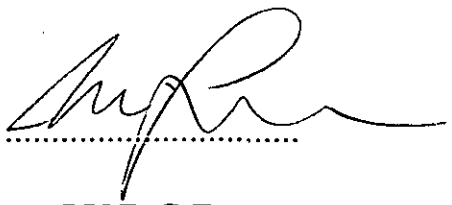
The last point raised in ***Velakati*** is one relating to lack of consent. One finds that under the circumstances stated it is clear that her consent was suppressed by means of strangulation which was effective in that regard. One important element of course is that of trustworthiness of the crucial crown witness, namely, the complainant.

The record, as one can make out, reveals that the Magistrate found the witness to be trustworthy and the reading of the record itself bears out this fact most satisfactorily.

This being the case one would find that the Crown in the court below had proved its case, and then all that now remains in what has often been stated about the sordid crime of rape, namely that it dehumanizes the complainant or the victim, and that it is not an acceptable way of expressing one's love for a female. It is often described as a fate worse than death. That it remains a capital offence in our law should suffice to illustrate the extent of reprehensibility society attaches to this crime.

It is for these reasons that I feel I shouldn't interfere with the conviction secured by the learned Magistrate but rather I should confirm it. As I stated at the beginning there was no appeal as to sentence. The appellant was well-advised not to appeal against sentence, if I may say. So the sentence of six years' imprisonment will

remain undisturbed. The appeal is dismissed.



JUDGE

6th March, 2000

For Appellant : Mr Mafantiri

For Crown : Mr Kotele