CRI/REV/40/00
IN THE HIGH COURT OF LESOTHO
In the matter between :
REX
VS
TSOKOLO RANTHO

Review Case No. 40/2000 C.R. No. 5/2000
Review Order No. 9/2001 In Berea District

JUDGMENT

Delivered by Hon. Mr. Justice M.L. Lehohla on 15th day of June, 2000

The accused appeared before a Magistrate charged with the Crime of rape; it being alleged by the crown that he had unlawful sexual intercourse with 'Malika Baso, a female/girl of about 15 years without her consent.



The accused pleaded not guilty to that charge. The crown led evidence consisting of the complainant and several others and at the end of the day the accused who didn't give any evidence was convicted and sentenced to four (4) years' imprisonment. It is against this background that when the record came before the High Court on automatic review, the court directed the Registrar of this court, that is after it had perused the papers before it, to send the record to the magistrate for reproduction in type of sufficient copies to cover the court and the parties and that the Registrar should also write a letter to the accused inviting him to say why on the date this matter shall have been set down the sentence shall not be enhanced appreciably in the event that conviction is confirmed. This was way back on the 22/03/2000.

The record was duly dispatched to this court, and because of the accused's plea that he would love to have the record; in fact it does appear that the accused didn't receive the record which I had wanted him to receive in good time nor did he receive the letter, conveying the Court's intimations to him as a result when the matter came before me on the 15/06/2000. It was only then that he received these two (2) things. At that stage he was again advised by this court to secure himself services of a lawyer if he wished to have one, and the court is pleased to see today which is the 15th - the matter was postponed to the 15th - that he has availed himself of services of Mr.



Lesuthu of the Legal Aid Section.

Today the court has had benefit of argument from both counsel and their submissions. The crown maintains that the accused's trial was properly conducted and that he was advised as to the desirability of securing himself a lawyer even at the stage of the magistrate's court, and that he decided to conduct the case himself.

At that stage the complainant who was under age gave her evidence to the court below and emphasised that she was never in love with the accused and that this incident befell her on her way from or to the well where her mother had sent her to fetch water - this was at around 5 pm of the date in question which was 19/12/99. She said that she met with the accused who requested to have sex with her but she declined. Then the accused started to beat her up and her efforts to try and defend herself were to no avail such that in the process when she was being interfered with and pushed around, she got hold of the accused's blanket which got torn and she hung to the torn piece of the blanket which she showed to her mother at a later stage. The magistrate was shown this, as it was produced.

The accused makes no explanation anywhere about how this came about. The



accused put to the complainant that they were in love but she denied this. He further vehemently put to her that sex was by consent but she denied that. Mr. Lesuthu on his part indicates that the proceeding is an irregularity and in support of that he made a number of submissions one of which is that the magistrate doesn't show if there was an interpreter or not, and that the doctor didn't give any evidence but only handed in the record of his findings, and that in respect of the word hymen which seems to be one of the things that he examined he has written married and that because of this and other things this case is a fit one for retrial. But here we are concerned with a case of rape. In the celebrated phrase of justice Hannah in the Court of Appeal sitting in Swaziland in Velakathi vs Regina A/56/84 (unreported) it is indicated that "there is no rule of law requiring corroboration of the complainant's evidence in a case such as the present one but there is the well established cautionary rule of practice in regard to complainants in sexual cases, in terms of which a trial court must warn itself of the danger inherent 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 trustworthy witness ".

As far as I can see and as far as the evidence reveals there is no mistake in identity of the accused by the complainant. That's point number 1. Point number 2 there is no denial that sexual intercourse took place: so the occurrence of sexual intercourse is common cause.

So now, the only difference comes to where the accused says he is in love with the complainant and that sexual intercourse was by consent. But now convincing evidence led before the magistrate who accepted that evidence shows that there was no such love affair.

Now the false question put to the complainant will at the end of the day strengthen an inference of guilt on the part of the person who puts it. Of course the accused was not obliged to give any evidence but the evidence of the complainant to the effect that there was no love affair between her and the accused remained

unrebutted. The accused bears no onus to prove his innocence but where, as in the present case, he makes an assertion that he was in love with the complainant then he owes some duty of explanation, not to prove anything, but an explanation of how then the complainant could have behaved in the manner in which she did if in fact there was such a love affair and how did the blanket belonging to the accused get to her and part of it torn away in a manner that doesn't express passionate willingness on the part of parties who engage in that type of thing.

For those reasons I find that the accused was properly convicted, and that there is no need for any retrial.

Now coming to sentence, time and again this court has gone out of its way to quote endlessly the case of R vs Billam and others [1986] 1- ALL ER 985 at 987 to 988, and this case is repeatedly quoted this way as it gives very useful guidelines in sentencing in rape cases. In that case Lord Lane C.J. said, "there are however many reported decisions of the court which give an indication of what current practice ought to be and it may be useful to summarise their general effect". After suggesting that for rape committed by an adult without any mitigating or aggravating features a figure of five (5) years should be taken as a starting point, and that in a



contested case the starting point should be 8 years the learned Chief Justice proceeded as follows: The crime should in any event be treated as aggravated by any of the following factors:-

(i) violence is used over and above the force necessary to commit the rape.
(ii) a weapon is used to frighten or wound the victim.
(iii) the rape is repeated.

Taking that at age 20 the accused was just on the boarder-line between being a young man and an adult, and where if the rape was committed without being accompanied by any mitigating or aggravating features as stated above, five (5) years would have been sufficient.

In the instant case the complainant who was believed by the learned magistrate indicated that she was beaten up by the accused. So violence was an element over and above the force necessary to commit rape.



The learned Chief Justice referred to earlier, said in all such instances as enumerated above the sentence should substantially be higher than the figure suggested as the starting point of five (5) years.

As stated earlier at letter (H) on page 987 of R vs Billam, the learned Chief Justice indicated that" the variable factors in cases of rape are so numerous that it is difficult to lay down guidelines as to the proper length of sentence in terms of years. That aspect of the problem was not considered in R vs Roberts. There are however many reported decisions of the court

which give an indication of what current practice ought to be and it may be useful to summarise their general effect".

I have already indicated that the learned Chief Justice indicated that where rape is committed by an adult without aggravating or mitigating features the figure of five (5) years is advised as the starting point, and that where rape is committed by two (2) or more men acting together or by a man who has broken into or otherwise gained access to a place where the victim is living or by a person who is in position of responsibility towards the victim or by a person who abducts the victim and holds her captive, the starting point should be eight (8) years, where violence is used over and above force necessary to commit rape the starting point is eight (8) years again.

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At the top of the scale comes the defendant who has carried out what might be described as a campaign of rape committing the crime on a number of different women or girls. He represents more than ordinary danger and a sentence of fifteen (15) years or more maybe appropriate.

I have earlier indicated that we live in dangerous days of the scourge of HIV/ AIDS and Ms Maqutu has made her forceful/powerful submission in that regard and I firmly believe that females are entitled to protection against people who are inclined to forcefully enter females without their consent and thereby communicate to them a disease which is tantamount to a death warrant to the victim.

I see that the learned magistrate has taken into account the personal circumstances of the accused. She has indicated that he was relatively a young man and that he has no previous convictions, and also that according to the learned magistrate this warranted the sentence that she imposed or he imposed. But it appears that the magistrate leaned far too much in the direction of leniency and in the process over looked the judgments of this court which have been given from time to time or the question of the nauseating aspect of crime known as rape.

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I find that the four (4) years' imprisonment imposed by the learned magistrate was indeed derisive. In confirming the conviction I set aside the four (4) years' imprisonment imposed by the learned magistrate and in place thereof impose a sentence of (8) years' imprisonment. That's the sentence of this court.

M.L LEHOHLA
JUDGE
15th JUNE, 2000

For Crown: Miss Maqutu
For Defence : Mr. Lesuthu

copy : Magistrate - Berea
O/C Police - Berea
O/C Prison - Berea
O/C - Central Prison

CID - Police Headquarters
Director of Prisons
Director of Public Prosecutions