CRI/A/2/01

IN THE HIGH COURT OF LESOTHO

In the appeal of:

BOLAE MORAHANYE APPELLANT

And

REX RESPONDENT

JUDGMENT

Delivered by the Honourable Mr. Justice B.K. Molai on
20th day of March 2002

The appellant stood trial in the Subordinate Court of the Chief Magistrate, here in Maseru, on a charge of rape, it being alleged that upon or about the 19th day of August 2000 and at or near Lithabaneng, in the district of Maseru, he unlawfully and intentionally had sexual intercourse with Neo Ralesalla, a girl aged 14 years, without her consent.

When it was explained and put to him, the accused pleaded guilty to the charge. He was found guilty as charged and a sentence of 12 years imprisonment, without an option of a fine, imposed.

The facts (and these were admitted as correct), disclosed by the prosecutor in the outline of the evidence in his possession, were that the complainant lived here in Maseru with her aunt, Mathari Makhabane, who was the appellant's lover. At about 5:00p.m. on the day, in question, 19th August 2000, Mathari Makhabane sent the complainant to deliver a certain message to the appellant at his place, Borokhoaneng, here in Maseru. The complainant obliged. After she had delivered the message to him, the complainant was requested by the appellant to make tea for him. She did make the tea as requested by the appellant. Thereafter the complainant wanted to leave the place and return home but the appellant grabbed and threw her on a mattress. He stripped the complainant of her panties and forcibly had sexual intercourse with her, without her consent. The appellant detained the complainant at his house where he had sexual intercourse with her the whole night, without her consent.

When the complainant did not return home on the evening of 19th August 2000, Mathari Makhabane looked for her but all in vain. At about 10:00a.m on the following day, she met the complainant in the company of the appellant who explained that they were returning from a place called Phamong and he was taking the complainant home. However, when she was asked where she had been, the complainant explained that the appellant had forcibly had sexual intercourse with her the whole night without her consent.

On the following day, 21st August 2000, the incident was reported to the police who immediately mounted investigations. The complainant was referred to a medical doctor who examined her and compiled a report. According to the medical report which was handed in as exh "A", the examination of the complainant's vagina was painful and allowed two fingers. Her panties were

stained with white discharge. Her hymen was ruptured and penetration had definitely taken place.

On the above stated evidence the appellant was convicted and sentenced as aforesaid. The appellant has not appealed against the conviction and rightly so, in my view, as there is simply overwhelming evidence, which he himself admitted, that he had, indeed, had sexual intercourse with the complainant, a young girl of about 14 years old without her consent and, therefore, committed the crime of rape. The appeal is only against sentence, on the grounds that it is excessive and raises a sense of shock.

It is trite law that sentence is pre-eminently a matter for the discretion of the trial court. This court, sitting as appellate court, will not, therefore, lightly interfere with the sentence imposed by the trial court, unless, of course, it can be shown that in sentencing the appellant, as it did, the trial court misdirected itself or that the sentence was so excessive that it raised a sense of shock. **(R v. Mapumulo and others 1920 AD 56 and 57; S v. Anderson 1964 (3) S.A. 494 and 495).**

It is to be borne in mind that the appellant was sentenced by the Subordinate Court of the Chief Magistrate. Paragraph (a) of subsection (1) of section 61 of the **Subordinate Courts Act, 1988 (as amended)** empowered the trial court to impose a sentence of a fine not exceeding M40,000 or, in default of payment of the fine, to serve a term of imprisonment not exceeding 20 years. Indeed, if it were of the opinion that greater punishment than it had power to inflict, for the offence, ought to be inflicted, the trial court could, under the powers vested with it by section 293 (1) of the **Criminal Procedure and Evidence Act, 1981,** have

even committed the appellant for sentence by the High Court where he might have faced a death penalty, in terms of the provisions of section 297 (1)(b) of the **Criminal Procedure and Evidence Act, Supra.** The trial court was invited to consider a number of factors, in mitigation of punishment. It did take into account those factors in assessing what punishment would be appropriate for the appellant. Consequently, I am unable to find that in sentencing the appellant, as it did, the trial court, in any way, misdirected itself.

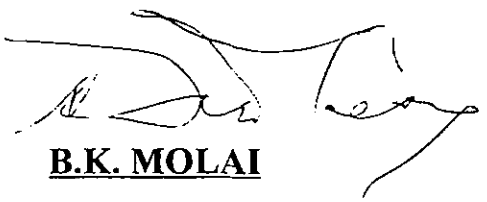
It was argued, on behalf of the appellant, that there was no evidence indicating that the complainant had seriously been assaulted, as it normally happened in cases of this nature. A sentence of 12 years imprisonment imposed by the trial court was, in the circumstances, not only excessive but raised a sense of shock.

As outlined and, indeed, accepted as correct by the prosecutor and the appellant, respectively, the evidence showed that the appellant, a 32 years old man who was married and had children, grabbed, threw the complainant on the mattress and carnally ravaged her by force throughout the whole night. That, in my view, was a serious assault on the complainant who was but a child of only 14 years old. In his reasons for sentence, the learned trial magistrate had, **inter alia,** this to say on the issue:

> " I cannot loose sight of the fact that rape is itself a heinous crime, and in this case the offence is aggravated by the fact that the complainant is a child of tender years who has been deflowered by the accused, and the trauma caused on her by the incident is likely to have a lasting effect."

I endorse the trial court's view. The argument does not persuade me and it will not, therefore, be proper for this court to interfere with the sentence imposed by the trial court.

In the result, I come to the conclusion that this appeal has no merits and ought not to succeed. It is accordingly dismissed.



B.K. MOLAI

JUDGE

For Appellant : Mr. Teele

For Respondent : Ms. Maqutu