

REVIEW NO. 8/02

IN THE HIGH COURT OF LESOTHO

In the matter between:-

REX

vs

MAKHALA SEKHONYANA

Review Case No. 8/02

CR 172/01

Review Order No. 2/02

In Qacha's Nek District

ORDER ON REVIEW

This matter has come to this court on automatic review.

The accused was charged before the Resident Magistrate of Qacha's Nek
of Rape it being alleged:

COUNT I:-

That the said accused is charged with Rape. In that upon or about the 25th day of August, 2001 and at or near Ha Ntoko in the district of Qacha's Nek the said accused did wrongfully and unlawfully and intentionally have sexual intercourse with one Mats'eliso Sehloho without her consent.

ALTERNATIVELY:-

That the said accused contravened section 3(1) of Women and Girls Protection Proclamation 14 of 1949. In that upon or about the 25th day of August, 2001 and at or near Ha Ntoko in the district of Qacha's Nek, the said accused did wrongfully and unlawfully and intentionally have unlawful carnal connection with a girl named Mats'eliso Sehloho who was under sixteen years thereby contravening the said Proclamation.

COUNT II:-

That the said accused is charged with Rape. In that upon or about the 25th day of August, 2001 and at or near Ha Nkoto in the district of Qacha's Nek, the said accused did wrongfully and unlawfully and intentionally have sexual intercourse with one Pusetso Lebofa without her consent.

ALTERNATIVELY:-

That the said accused contravened section 3(1) of Women and Girls Protection No.14 of 1949. In that upon or about the 25th day of August, 2001 and at or near Ha Ntoko in the district of Qacha's Nek the accused did wrongfully and unlawfully and intentionally have unlawful carnal connection with a girl named Pusetso Lebofa who was under the age of sixteen years thereby contravening the said Proclamation.

Accused had pleaded not guilty to the charged and the court finding him guilty on both counts of the main charge had sentenced accused to 9½ (nine and half) years in both main charges and ordered that sentences run concurrently. I do not know why the Learned Magistrate allowed sentences to run concurrently or the reason for 9½ years. Evidence was that in both counts complainants were 12 years old.

There can be no doubt that the prisoner went on a rampage of sexual harassment of young girls and that in his sexual rage the young girls were humiliated. They are young and things being the same are expected to mature into respectable womanhood. As a result of this rape there can be no doubt that their dignity and personality has been dented and perhaps obliterated thus removing them from circulation in marriage markets to which they rightly belong.

Needless to mention that severe sentence is required to mark the gravity of the offences to mark public disapproval, to serve as a warning to others, to

punish the offender and to protect women, see. R vs. Roberts and Roberts 74 CR App. R 242, C.A.

Powers of this court on review are wide, requiring to be applied judiciously; thus where the court intends to vary sentence, the court may require that there be representation to address it on specific issues. In the instant case this court is satisfied that the learned magistrate's conviction is beyond question and it is confirmed. As to sentence, having regard to the nature of the offence and circumstances of the accused, the court is not satisfied that the sentence imposed is a fitting sentence nor is the court of the view that representation is necessary before varying the sentence.

In Billam, 82 Cr. App. R. 347 C.A. the court is said to have issued the following guidelines as to sentence:

'For rape by an adult without aggravating features a figure of five years should be taken as the starting point in a contested case. Where rape is committed by two or more men acting together, or by a man who has broken or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive, the starting point should be eight years.

At the top of that scale comes the defendant who has carried out what might be described as a campaign of rape, committing the crime upon a number of different women or girls, he represents a more than ordinary danger and a sentence of fifteen years or more may be appropriate. (I have underlined)

Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time, a life sentence will not be inappropriate.

It was also held the crime should in any event be treated or aggravated by any of the following factors:-

- (1) Violence is used over and above the force necessary to commit rape.
- (2) A weapon is used to frighten or wound the victim;
- (3) The rape is repeated;
- (4) The rape has been carefully planned;
- (5) The defendant had previous convictions for rape, or other serious offences of a violent or sexual kind;

- (6) The victim is subjected to further sexual indignities and perversions;
- (7) The victim is either very old or very young; (The underlining is mine.)
- (8) The effect upon the victim, whether physical or mental, is of special seriousness.

I am not satisfied that the learned magistrate's sentence is in accordance with substantial justice and accordingly the sentence imposed by the court a quo is varied and the sentence of 9 ½ years is substituted with sentence of 15 (fifteen) years imprisonment in both Count I and Count II. Sentences will run concurrently.

The magistrate who imposed sentence is to call the prisoner before him or her and explain the result of these review proceedings. In the absence of the magistrate who imposed sentence an available magistrate is to act in that behalf.



G. N. MOFOLO
JUDGE

CC: Magistrate Qacha's Nek
O/C Police Qacha's Nek
O/C Prisons Qacha's Nek
Central Prisons
CID Police Headquarters
Director of Prisons
Director of Public Prosecutions
All Magistrates
All Prosecutors