

IN THE HIGH COURT OF LESOTHO

In the matter between:

REX

Vs

THABISI FITISI

Review Case No. 8/ 2011
Review Order No. / 2011

CR 70/ 2010
Thaba Tseka District

ORDER ON REVIEW

This matter from the Thaba Tseka Magistrate's Court is before me on automatic review.

The accused appeared before a magistrate with second class powers charged with contravening Section 8(1) of the Sexual Offences Act No.3 of 2003. It being alleged that on or about 6th March 2009 at Ha Ranthoto, in the Thaba Tseka district the accused, aged 19 years, unlawfully had sexual intercourse with the complainant, Molelekeng Hlabang, a girl aged 15 years at the time.

The accused pleaded not guilty; but was at the end of the trial found guilty and sentenced to six years imprisonment without the option of a fine. He represented himself at the trial.

PW1 was the complainant Molelekeng Hlabang, who testified that she was born on 16th April 1993. She had attended school up to standard seven at Ranthoto Primary School. She knew the accused and has seen her several times in her village. She testified that on the 6th March 2009, she was on her way from the village of Motsitseng going to her home. It was around 13hrs, and in bright day light. She was confronted by accused in a deserted area when passing through a field. Accused grabbed her and dragged her aside from her pathway into the veld and had sexual intercourse with her against her will. She went home and reported the incident to her parents. A report was made to the chief and then the police and accused was arrested.

Pw2 and Pw3 being the mother and father of the complainant both gave evidence and confirmed her story. Pw3 was the one who took accused to the police station after reporting to the chief. The witness was cross examined by accused who sought to deny having committed the crime and raised the defence of alibi. It was at the end of the trial rejected by the court.

Pw4 was the police officer No. 8846 police woman Ntoi who testified that when accused was brought to the charge office she found his explanation to be unsatisfactory and accordingly laid charge against him.

Accused had no questions to his witness and further accepted the medical report which was handed in. He indicated that he would have no questions to the doctor and the report had handed in as exhibit "A".

Accused gave evidence in his own defence and said he was at the cattle post at the time. He however could not specify the dates to conduce the court of the applicability of his alibi, being an illiterate person. He further admitted that he is known to complainant and had met her number of times.

The court at the conclusion of the trial, in a well reasoned judgment rejected accused's defence and convicted him on the basis that:

1. It had been proved that the victim was a child under 16 years.
2. The accused's defence of alibi was untrue and failed. The case had no possibility of mistaken identity on the evidence.

3. The testimony of the crown witness was credible and satisfactory; with accurate narration, while accused's defence was a fabrication and had to be rejected.

In the result, the court, correctly in any view, returned a verdict of guilty as charged.

The accused had no previous convictions. In mitigation he pleaded that he was the breadwinner at his home, he was worried with one child and four siblings and all of them including his wife were unemployed.

The Court then sentenced him to six years without the option of a fine after giving one consideration to all the relevant factors.

My impression is that the learned magistrate adopted a proper approach to both conviction and sentence and I accordingly confirm both to be in accordance with real and substantial justice.

It is so ordered on review.

L. A. MOLETE
ACTING JUDGE

21st February 2011

CC: All Chief Magistrates
All Magistrates
Magistrate Thaba Tseka
All Public Prosecutors
O/ C Police Thaba Tseka
O/ C Prison Thaba Tseka
CID – Thaba Tseka
Director of Public Prosecutions