

IN THE HIGH COURT OF LESOTHO

In the matter between:

REX

Vs

MOTLALEPULA QACHA

Review Case No. 26/ 2011
Review Order No. 6/ 2011

CR 668/ 2010
Leribe District

ORDER ON REVIEW

This is a matter on automatic review from the Leribe district.

The accused, an adult male aged 23 years was found guilty of contravening section 3(2) of Act No.3 of 2003 read with section 3(1) of the same act being the Sexual Offences Act.

The accused was unrepresented in the case and he pleaded guilty of committing an unlawful sexual act with the complainant, Mateboho Ntseli, a female aged 35 years.

After entering a plea of guilty and it being accepted by the prosecutor, an outline of the evidence was given by the

prosecutor. Thereafter the accused said he did not accept that he sexually molested the complainant, but said he only beat her. The Court then entered a plea of not guilty and the crown lead the evidence of the complainant.

Complainant testified that she was a married woman with four children and that he knew the accused who lived in another village about 10 kilometers away from her village.

On the night in question she testified that she was asleep with her children as usual when she heard a sound in the house. She woke up and found matches to light her lamp. She then noticed accused standing in the room. She asked him what he wanted and how he had got into the house. His reply was "don't you see I want to sleep with you." He then hit her with the whip he had in his hand and suffocated her and demanded that she does as he told her.

The accused then pulled out her tracksuit and panty with one hand as he held her with the other and had sex with her. The children were crying as they saw this happening and accused got up and said he wanted to have more sexual intercourse with her. She then asked that they go out. They did so, but upon realizing that he had left his whip, accused went back to collect it, thereupon the complainant

fled and alerted her neighbours; 'Mateboho Qacha and Teboho Phatsoane who both proceeded to the complainant's place but found accused no longer there. They searched around and looked for him. They noticed that the curtain was torn and a window broken. She explained to the two neighbours what had happened.

Later the accused arrived again and when asked as to what had happened, he said complainant had taken his money. When they raised alarm and called more neighbours the accused fled.

In the morning a report was made to the chief and the matter was reported to the police. The accused was arrested and charged.

In his cross-examination of the complainant accused tried to establish that he went to complainant to get his money, but complainant denied that.

The second and third witnesses were Teboho Phatsoane and 'Mateboho Qacha. They both confirmed the story of complainant. The accused in his cross-examination of PW2 surprisingly put it to the witness that he had never been there that night, which the witness denied. He did not

cross-examine PW3 at all despite her evidence that she had been there that night; and that accused had been there when they got a report of the sexual assault on complainant to which accused had replied that he was owed money by complainant and they had agreed they would have sex to settle the debt.

Accused then gave evidence, which was to the effect that he had agreed with complainant and gave her money in the amount of M1500.00 to buy and sell liquor as it was her business. They would then share the profit. When he inquired on the profit the complainant produced M800.00 and then said the balance would be paid in kind if they had a love relationship. He said he was not interested in that and an argument started, which led to a fight and him beating the complainant. He testified that it all happened around 5.00 pm and not 10.00 pm as complainant had testified. He was asked in cross-examination as to why he had not put his case to the complainant and his lame excuse was that he thought he would be given a chance to tell her.

The defence of the accused was later to be shattered when

he called his witness, an uncle whom he said would testify that he was at home at around 10.00 pm on the night in question.

The uncle was DW2 and he gave his evidence which totally contradicted the accuser's version. He was cross-examined and the Magistrate recorded as follows;

“ Q : How are you related to the accused?

A : He is a son to my brother.

Q : I put it to you that you are not a witness to
the accused.

A : Yes I am not.

Q : The accused says at 10.00 pm he was sleeping
at home.

A : He is not telling the truth.

Q : No further questions”

The medical examination revealed that there had been physical violence and that complainant was beaten. There was penetration and physical findings on the head and face were that complainant had swollen eyes, almost closed and bruises on the right thigh.

The Magistrate then found the accused guilty as charged and by reason of the prevalence of the offence, the assault on complainant and shameful lies accused told the Court, sentenced him to twelve years imprisonment without an option of a fine.

I have given full consideration of the matter and find no reason to interfere with the finding and sentence of the Magistrate. I therefore, certify that the proceedings are in accordance with real and substantial justice.

L. A. MOLETE
ACTING JUDGE

28 July, 2011

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