

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRI. CASE NO. 277/84

In the matter of:

THE QUEEN

Vs.

LAURENCE BHOBZA MAKHUBU

CORAM: HASSANALI, J A

FOR CROWN: MR NDZIMANDZE

FOR DEFENCE: IN PERSON

CHARGE: RAPE

JUDGMENT

(Delivered 8 March, 1985)

HASSANALI, J.

The Accused is charged with the rape of one Dazy Lindiwe Ginindza on 2/5/84. He is charged in the alternative with the contravention Section 3(1) of the Girls and Woman's Protection Act No.39 of 1920, in that the complainant was at that time below the age of 16 years.

The accused was undefended and pleaded not guilty to the main and the alternative counts.

Dr. P.D. Wardlaw of the Raleigh Fitkin Memorial Hospital examined Dazy Lindiwe Ginindza, the complainant, on 3/5/84 at about 3p.m. According to him she had superficial cuts on her right hand. He also noticed that the vestibule was reddish and very tender at the opening, and formed the opinion that she was sexually assaulted.

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The complainant told the court that while returning home with some bread, the accused accosted her and tried to feel her bread so as to check whether or not it was soft. He then dragged her across the road into a bush. When she cried out he cut her hand with a knife. He next ordered her to take off her panty which she did through fear, after which he lowered his trousers, laid her on the ground and sexually assaulted her.

On reaching home, she reported to her mother, Vosho Ginindza that she was raped by Bhozoza who her mother examined her private parts. She further said that on the day in question the accused carried a stick with him which stick she identified in Court.

According to the Complainant, she had known the accused prior to this incident. When she reported the rape to her mother, she mentioned the man's name as Bhozoza. So she has correctly identified her assailant.

During cross-examination by the accused, when asked if he had discharged, she mentioned that her thighs were wet. She also said that he had a red clasp knife on him. To a further question, she said that he wore a green shirt and navy blue trousers.. The accused was then asked by the court to step down so

that the court could see the colour of his clothes. He had a green shirt and dark brown trousers. The complainant said that he wore the same attire on the day she was raped.

The complainant remained unshaken during cross-examination and seemed to be speaking the truth. Though

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there is a slight discrepancy as regards to the colour of the trousers, I am of the view that this was due to a genuine mistake and as such I do not consider this so serious as to create a doubt in my mind as to the credibility of this witness.

The Complainant is substantially corroborated by her mother, Vosho Ginindza. She testified that on a certain day in May 1984, the complainant arrived home crying, and said that she was raped by Bhozoza. When she examined the complainant she found some whitish substance and little blood in her private parts. She also had cut marks on her right hand.

When cross-examined by the accused, she said that she saw semen on complainant's thighs and blood in her private parts.

Inspector Magagula told the court that he recovered a stick at the scene of the crime which stick the accused identified as belonging to him.

The accused in his evidence denied that he raped the complainant. He claimed that between February and 5th May, 1984 he was at a place called Mpaka. He, however, failed to call any witness to substantiate this claim.

I find the evidence of the complainant amply corroborated The evidence of the accused that he was at Mpaka does not ring true and I reject it.

In the circumstances I find the accused guilty of rape.

J.A. HASSANALI

JUDGE.