

IN THE COURT OF APPEAL OF BOTSWANA HELD AT LOBATSE

CRIMINAL APPEAL NO. 25 OF 1988

In the matter between:

EPADILE NTSEKE - Appellant

vs.

THE STATE - Respondent

Appellant In Person
Mr. Baruti for the State

J U D G M E N T

CORAM: A.N.E. AMISSAH, J.P.
T.A. AGUDA, J.A.
B.A. DOYLE J.A.

DOYLE, JA.

The Appellant was convicted of rape and sentenced to five years imprisonment and four strokes.

According to the girl who was raped, Sonia, she was returning home with her sister from some traditional singing and dancing. The Appellant, whom she knew, followed them. When near her house appellant called out to Sonia and asked her to come home with him. She said that she had stomach pains and declined. She went into her house which she shared with her sister and her sister's husband who was also in the house.

Upon Sonia's refusal Appellant went into the house and hit her a few times with his belt. He then dragged her out of the house and according to Sonia forced her by threatening her with a knife to walk two kilometres to his house where he forced her inside with threats that he would stab her if she screamed or made a fuss.

Inside the house Appellant pulled off her panties which got torn and against her will raped her.

They slept the whole night together and in the morning at about 6 a.m. Appellant woke her up and told her to go home. Apparently she went peacefully home. When she got home she told her mother and was taken to the Customary Court.

She agreed that she had once spent a night at the Appellant's house but denied that any intercourse had then taken place. She agreed that the panties had been given to her by Appellant's female cousin: She later produced the torn panties at the Police Station.

Sonia's evidence was supported by her elder sister. According to her what happened in the house was that Appellant came into the house after Sonia refused to go. He beat Sonia with his belt and dragged her into the yard where he said he would stab her with a knife in her genitals and told her she must come to his house. She asked Appellant why he was insulting Sonia and he told her to keep out of the affair. She did not make any report to that as she was too scared.

Sonia's mother gave evidence that the elder sister came to her in the morning and told her that Sonia had not had a peaceful night. The mother questioned Sonia who cried and told her all about the rape.

Appellant's case was that he had had during the three weeks before the incident, a relationship with Sonia who came to his house when she had the opportunity. He agreed that he had asked her to come to his house that night and that when she refused he hit her a few blows with his belt. He had not wanted to sleep with Sonia

in her house as the sister and her husband were there. He denied that he had had any knife or had made any threats. After his somewhat brisk persuasion with the belt, she had come peacefully with him to his house where they slept together till the morning when he woke and told her to go home.

There are a number of matters which were not closely examined by the learned magistrate. First there was the fact that in the morning Sonia was not distressed. She was woken up by Appellant and told to go home and apparently peacefully did so. She did not report to her mother until her elder sister had informed her mother. Then the crying started but not before.

No reasonable explanation was given why the elder sister and her husband gave no help to Sonia. If Appellant had a knife in his hand, as Sonia says, why did they not intervene. A possible explanation is that they only saw some beating admitted by Appellant and did not consider the matter serious.

The Appellant's story was quite plausible and it was what he maintained from the beginning. The incident of waking her up and telling her to go home does not smack of the end of a night of rape. Appellant does not seem to have had any guilty feeling or appreciation of what Sonia might say when she got home.

The panties could have been torn by Sonia herself to support her story of rape after her mother taxed her about what happened

In my view if the learned magistrate had properly directed his attention to these matters, he might have had serious doubts about the guilt of Appellant, as I do having examined the record.

I would allow this appeal and quash the conviction and sentence.

B. A. Doyle

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B. A. DOYLE
JUDGE OF APPEAL

I AGREE

A. N. E. Amisah
.....
A. N. E. AMISSAH
JUDGE PRESIDENT

I AGREE

T. A. Aguda
.....
T. A. AGUDA
JUDGE OF APPEAL