

**IN THE HIGH COURT OF THE REPUBLIC OF
BOTSWANA HELD AT LOBATSE**

CRIMINAL APPEAL NO. 84/2000

In the matter between:

STEPHEN LEBORO

APPELLANT

Vs

THE STATE

RESPONDENT

**Mr Attorney Maphakwane for the Respondent
Appellant in person**

J U D G M E N T

LESETEDI J.

This is an appeal against conviction and sentence. The appellant was tried and convicted on a single count of rape contrary to Sections 141 as read 142 of the Penal Code as amended by Act No.5 of 1998. The particulars of the offence are that the Appellant on the 7th November 1998 at Sebego ward at Kanye in the Southern Administrative District unlawfully had carnal knowledge with Nkgopolang Ramakhubo without her consent. The evidence led by the prosecution show that on the evening of the

said day, the appellant met the complainant and some of her friends as they were from a wedding party. The appellant grabbed the complainant by the hand and dragged her whilst she resisted. This is the evidence by the complainant's friends who gave evidence in this court. According to the complainant's evidence, the accused threatened her with a knife, undressed her and had sexual intercourse with her without her consent. After he had satisfied himself he looked around for a weapon to kill her in order "to get rid of evidence." While doing so, the complainant escaped through the window. She was putting on a panty only when she made good her escape. She ran to her home and made an immediate report to her mother and a report was made to the police. The following morning some of the complainant's clothing were found in a container outside the complainant's home. This finding was also reported to the police. And the appellant later arrived with the complainant's

trousers, he was in the company of his parents who asked for forgiveness from the complainant's mother. The appellant gave sworn evidence in the court aquo. The appellant's evidence was to the effect that the complainant was his lover and that they had consensual sexual intercourse on that night. He called one witness who gave evidence in his defence. The witness told the court that he saw the complainant and the accused on that night go together harmoniously towards the appellant's home. He knew that the two were lovers because the appellant had told him so.

After analysing the evidence, the learned magistrate found the complainant to be a credible witness. He then sought corroboration and found it in the evidence of the other prosecution witnesses. Having so found, he considered and rejected the evidence of the appellant and his witness. After convicting the appellant, he sent him for an H I V

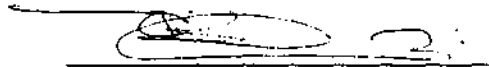
test. On the basis of the outcome the HIV test, the Learned Magistrate sentenced the appellant to years imprisonment.

The appellant has appealed against conviction on a number of grounds which have no merit. In some of those grounds he alleges that the prosecution wanted to mislead the court. There is no basis to question the finding of the learned magistrate. It appears to me beyond reasonable doubt that the complainant was forcibly taken by the appellant from her way home from the wedding party and dragged to the appellant's home. The consistency of her story can be found in the immediate report she made after leaving the appellant's home and it is the mother's evidence that she was crying. The crying is evidence of distress. After having found the complainant to be a credible witness, the learned magistrate properly looked for corroboration, such corroboration has to be in some

material respect. PW2 corroborated the evidence of the complainant regarding the dragging of the complainant from her way to the appellant's place. At no point during her cross examination of PW2 did the appellant ever indicate of having been in the company of his witness. Neither did he do so when cross examining the complainant. The complainant's evidence is also corroborated by the evidence of her mother in that she was depressed when she arrived at night. The Learned Magistrate was to accept that the evidence was corroborated. It appears to me that the law does not require that there should be corroboration on each and every aspect. Where there is corroboration of complainant's evidence in material respect and where the evidence when looked at globally, it appears that the prosecution has proved its case beyond reasonable doubt then the court having warned itself of the dangers of false conviction can convict. (See **SHIMI MORWANENG VS THE STATE CRA**

35/1999. The evidence against the appellant was quite clear. I therefore find no merit in the appeal against conviction. Your appeal against conviction is therefore dismissed. With regard to the sentence, there was no evidence to show that the appellant was at the time of the commission of the offence infected with the HIV virus. The sentence imposed by the Learned Magistrate in the court aquo can therefore not stand. It is set aside and in lieu thereof is imposed a sentence of ten years imprisonment.

DELIVERED IN OPEN COURT ON THE 13TH SEPTEMBER 2001.



I B K LESETEDI
JUDGE