

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 15/2011

In the appeal of:

TSEKO ABRAM LAPISI

Appellant

and

THE STATE

Respondent

JUDGMENT:

MOLOI, J *et* PHALATSI, AJ

HEARD ON:

19 AUGUST 2013

DELIVERED ON:

22 AUGUST 2013

[1] The appellant came before us on appeal against the conviction on a charge of rape by the Regional Court, leave to appeal having been granted by this court on petition. The appeal was against the conviction only.

[2] The evidence of the complainant was that on the evening of the 11th of October 2008 she was walking from a garage where she was to meet someone. As she was walking a person unknown to her approached her from behind and grabbed her by her clothes in front of her chest with a hand

in which he was also holding a knife. The unknown person dragged her into the nearby premises and had sexual intercourse with her while she was pressed against a wall. When this happened the complainant was screaming and somebody from the adjacent house came out and the appellant, who ran away, was chased after, caught and brought back to the scene. The police were called and the appellant was arrested.

[3] Dasi Aletta Maqhosa testified that she was sleeping in her house next to the premises where the complainant was taken to. She heard screams for help and went out to see what was taking place. She saw a woman pinned against the wall and a man having intercourse with her while he shouted “shut up”. She called neighbours to assist and they eventually arrested the man that she recognised as the appellant whom she had known before. The complainant was distraught.

[4] The appellant testified that he met the complainant when he was from a tavern. He spoke to the complainant and they went to another tavern together where they had beer.

He made a proposal to the complainant and she accepted. He and the complainant agreed on having sexual intercourse. He penetrated the complainant with his male organ but they did not have sexual intercourse as they were interrupted. The appellant, when he disclosed the basis of his defence in terms of section 115 of the Criminal Procedure Act 51 of 1977 at the commencement of the trial, had admitted having been with the complainant on certain premises and that they had agreed to have sexual intercourse against payment to her of an amount of R100.00 (one hundred rand) but they were chased away by someone even before they could engage sexually and that the act was consensual. The two defence witnesses called could not take the matter any further as testified about having been in the company of both the complainant and the appellant where they all drank beer.

- [5] The trial court, correctly so in my view, found the corroborated evidence of the complainant to be reliable and as constituting proof beyond a reasonable doubt by the state. The trial court further rejected the defence version as false for being contradictory and being negating the plea

explanation given at the commencement of the trial. In the heads of argument the appellant contended that the trial court did not seem to have applied the cautionary rule applicable to a single witness and thus the state case was not proved beyond a reasonable doubt. This argument cannot hold as there was corroboration by two independent witnesses concerning the rape itself and consequently, the complainant was not a single witness in the classical sense. Dias Aletta Maqhosa and Chabalala found the appellant on top of the complainant performing the sexual act.

- [6] In the premises the appeal must fail and the following orders are made:

6.1 The appeal is dismissed;

6.2 The conviction on a charge of rape is confirmed;

6.3 The sentence of ten (10) years imprisonment imposed by the trial court on 12 October 2010 is hereby confirmed.

K. J. MOLOI, J

I concur.

N. W. PHALATSI, AJ

On behalf of the appellant: Adv. S. Kruger
Instructed by:
Legal Aid
BLOEMFONTEIN

On behalf of respondent: Adv. C.F. Steyn
Instructed by:
The Director of Public Prosecution
BLOEMFONTEIN

/SvdW