

SOUTH AFRICA / JUDGMENT

Bantom v S (CA&R 320/12) [2013] ZAECHGC 19 (4 February 2013)

[2013] ZAECHGC 19

COURT

Eastern Cape High Court, Grahamstown

BEFORE

N G Beshe, J W Eksteen

CASE / FILE NUMBER

CA&R 320/12

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IN THE HIGH

COURT OF SOUTH AFRICA

(EASTERN CAPE –
GRAHAMSTOWN)

Case No.: CA&R 320/12

Date Heard: 30 January 2013

Date Delivered: 4 February 2013

In the matter between:

ANDRE BANTOM

.....Appellant

And

THE

STATE

.....Respondent

JUDGMENT

BESHE, J:

- [1] The appellant was arraigned before the Regional Court sitting in Adelaide on charge of rape. He was convicted as charged on the 7 February 2012. He is now appealing the conviction with leave to do so having been granted by the court a quo.
- [2] The appeal is premised on the basis that the trial court erred in accepting the complainant's version of the events due to the fact that she was not a credible witness and that there was no independent corroboration of her version.

- [3] The complainant who was 19 years old testified that on the evening of 8 May 2010 she was at Stinana's Tavern where she consumed two beers. She thereafter left the tavern. Next to a deserted house she met two male persons who held her and took her to a house nearby. She only managed to identify one of the two men as the appellant. The two men took her through the lounge into a bedroom where they made her to lie on the bed. Appellant undressed her and thereafter had sexual intercourse with her. His companion who was holding her and pinning her to the bed at the time when the appellant was having sexual intercourse with her, also had intercourse with her. After both men had had sexual intercourse with her she got up and ran out of the house. When she looked back she saw them running out of the house but she does not know where they went. When she left the house in question she put her pants on but she left her panties behind in the room where she was raped by the appellant and his companion. On her arrival at home she informed her mother of what had happened. She later took the police to the house where she was raped. The police recovered her panties next to the bed where she was raped in the presence of the appellant and another man. She pointed the appellant to the police but could not identify the second man as appellant's accomplice.
- [4] According to the complainant she knew the appellant because he used to borrow CD's from her brother. Although she did not know his name she identified him when they were inside the lounge area because the area was lit and in the street where she met with the two as there were street lights. She denied that she was in a relationship with the appellant, or that she had met him earlier at the tavern, or that she asked for R2 from him. She denied that upon leaving the tavern appellant and his friend accompanied her after she had prevailed on the appellant to come with her.
- [5] Appellant's version was that he and the complainant had been dating since December of 2010 (it turned out he meant to say December 2009), but that they had never had sexual intercourse before. On the evening in question he met the complainant at a tavern when he was playing pool with one Mina Bantom. In his company also was Basie Bruintjies. Complainant asked for R2 which he gave to her. She left and came back after a long time and suggested that they should leave. They then left the tavern accompanied by Basie Bruintjies. As they were walking complainant suggested that Basie should turn back. When appellant and complainant were next to the former's gate complainant entered the premises. Appellant followed suit.
- [6] Once inside the house they sat in the lounge. Whilst he was preparing a smoking pipe complainant got up and entered the bedroom. He remained behind in the lounge area. After some time complainant emerged from the bedroom and asked the appellant to accompany her as she was going home which he did. As they were still walking complainant remarked that appellant raped her. Appellant pointed out that he did not even touch her. They then parted. He went back to the tavern and informed Basie about complainant's allegations that he raped her. Thereafter he together with Basie proceeded to his home. The police arrived with the complainant alleging that he had raped her. The police also showed him a panty

which they found inside the bedroom where he had been sleeping with Basie.

- [7] It is indeed so that the complainant was a single witness regarding the actual rape. Mr Van der Spuy argued that there was no independent corroboration of her evidence in particular that the absence of injuries resulting from her being held by two men on each of her arms for over 200 metres is an indication that complainant had accompanied the appellant willingly. In terms of section 208 of the Criminal Procedure Act 51 of 1977, an accused may be convicted on the evidence of the single witness of any competent witness. There is no requirement in our law that the evidence of a single witness should be corroborated - even in respect of complainants in sexual cases. It is however trite that the evidence of a single witness should be approached with caution. Regarding criticism of complainant's evidence, there is no evidence that complainant was dragged for 200 meters. The complainant testified that she was not "dragged" against the ground, but she was on her feet the whole time she was held by the two men.
- [8] Mr Van der Spuy also took issue with the fact that apart from the doctor not having observed any injuries on complainant's genitalia, he also remarked that she was "surprisingly normal - not distressed". Mr Van der Spuy submitted that this was strange given that complainant testified she was still shaken and upset when she was seen by the doctor. Cross examination on this issue proceeded as follows:

Ms Makaula: Were you shocked as to what had happened to you that is the issue of being raped?

Complainant: Yes I was shocked.

Ms Makaula: So even when you were seeing the doctor or taken to him you were still shaken, still disturbed?

Complainant: Yes.

She did not say that she was upset. Be that as it may whether she was upset or disturbed in my view there may be a number of reasons why she did not exhibit signs of being disturbed or upset. I did not get the impression that the doctor who examined her was a psychiatrist or psychologist nor do we know what tests were performed by the doctor to assess complainant's mental state. In my view this cannot weigh heavily in the enquiry as to whether she was raped.

- [9] It was submitted that the complainant deliberately tried to mislead the court when she at first testified that the door at the appellant's place was merely pushed open, but later conceded that the door was locked by means of a padlock. What complainant conceded was that she had made a mistake and readily apologised. This appears to have been an honest mistake on her part not a deliberate attempt to mislead the court. She did not attempt to defend her initial version.
- [10] During the trial the appellant did not suggest that the complainant planted the panty in his bedroom or suggest the reason why she may have done so. When asked by the prosecutor whether complainant planted the panty in his room, he responded by saying "it could have

happened like that”. He also stated that he did not know why the complainant would falsely implicate him. It was however suggested in argument before us that a reasonable deduction from appellant’s version is that the complainant must have felt aggrieved by the appellant’s seeming lack of urgency when they entered the house and failure to give her his undivided attention. It was also argued that the complainant may have planted the panty in appellant’s room and made an allegation about rape because she would be in trouble with her mother for having been away from home for a considerable period. This in my view is mere conjecture.

- [11] Complainant on the other hand explains how it came about that she left her panty behind. That she was fleeing from her rapists, to the extent that she only wore her pair of pants once she was outside appellant’s house. In my view the magistrate in accepting the version presented by the state took into account all the evidence before him. Such evidence includes exculpatory evidence.
- [12] Appellant testified that he was involved in a relationship with the complainant – but states that he did not so much as “touch her” during the evening in question. Appellant denies that he made a statement to warrant officer Xayeka wherein he is alleged to have admitted that he had sexual intercourse with the complainant. Surprisingly though, two days after the date of the alleged rape, the statement he allegedly made contains a large part of his version and not complainant’s version. So it cannot be said that warrant officer Xayeka imputed what complainant told him to the appellant. In the statement he is alleged to have stated that complainant is the one who suggested they must leave the tavern, she prevailed on Basie to turn back. On arrival at his place they had sex with the complainant. After which the complainant sobbed and said that she had been raped and left. He proceeded to the tavern to fetch Basie. Except for the part about having sexual intercourse with the complainant, the contents of the statement are in keeping with his version in court. The question is; if he is not the one who told warrant office Xayeka this, how would he have known his version of the events of the evening in question.
- [13] In my view the version presented by the appellant is so farfetched that it cannot be said to be reasonably true.
- [14] That being the case the appeal stands to be dismissed. There is no appeal against the sentence. The appeal against conviction is dismissed.

N G BESHE

JUDGE OF THE HIGH COURT

EKSTEEN J

I agree, it is so ordered.

J W EKSTEEN

Appearances:

For Appellant: Adv van der Spuy instructed by Justice Centre, Port Elizabeth

For Respondent: Adv D Els instructed by National Director of Public Prosecutions, Grahamstown

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