

NDAKALA v THE PEOPLE (1974) ZR 19 (SC)

SUPREME COURT

DOYLE CJ, BARON DCJ AND GARDNER JS

8th JANUARY 1974 30

(Appeal No. 176 of 1973)

Flynote

Criminal Law - Evidence - Early complaint - Absence of - Effect of.

Headnote

The appellant was convicted of attempted rape, the complainant having been in the company of another woman. After the incident the 35 two women went to a club; they said nothing about the incident until the appellant came to the club asking to have returned to him certain articles he had allegedly given the complainant as a bribe.

1974 ZR p20

DOYLE CJ

Held:

The corollary to the principle that evidence of early complaint is admissible to show consistency is that the failure to make an early complaint must be weighed in the scales against the prosecution case.

Miss F N Mwachande, Legal Aid Counsel, for the appellant. 5

W M Tsosti, State Advocate, for the respondent.

Judgment

Doyle CJ: delivered the judgment of the court. The appellant was convicted of attempted rape. He was charged with rape, and the evidence against him was that of the woman who was raped, who was 10 alleged to have been in the company of another woman. The appellant is said to have seized the complainant, knocked her down and raped her. After the incident both the complainant and her friend went to a club where they did not immediately make a complaint. Their evidence is that after the offence the appellant had come along and tried 15 to persuade them not to report the matter, and had given a number of articles to the complainant as a bribe. Later he came to the club and asked for his articles back on the ground that he had not ejaculated. It is extraordinary that no complaint was made until the appellant came to the club demanding these articles back. I think all three members of 20 the court would find great difficulty in putting a reasonable and plausible explanation on this sort of behaviour. But in fact the learned magistrate did not deal with it at all. He did not ask himself the question: Was the behaviour of the complainant and her witness consistent with rape? Evidence is allowed to be given of recent complaint to show consistency 25 and it helps the prosecution case; the corollary of that must also be accepted, that if there is no prompt report that must be weighed in the scales against the prosecution case. In this case it was not.

We consider that the evidence in this case on the face of it was unsafe. If the learned magistrate had considered the points which appear to 30 make it unsafe and had explained them reasonably it might be possible that this conviction would have been sustained, but quite clearly in the manner in which it was tried it cannot be.

We allow the appeal and quash the conviction and sentence.

Appeal allowed