6/57

G.P.-S.117539—1954-5—5,000.

6/57

U.D.J. 445.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(Appellate DIVISION).
AFDELING).

(Exhibit G)

APPEAL IN CRIMINAL CASE.
APPÈL IN STRAFSAAK.

JACOBUS E. RETIEF

Appellant.

versus/teen

THE QUEEN

Respondent.

(On bail)

Appellant's Attorney D. Potbrucki *Respondent's Attorney*
Prokureur van Appellant (Box) *Prokureur van Respondent*

Appellant's Advocate E.A. Logie *Respondent's Advocate* B.G. v.d. Walt
Advokaat van Appellant *Advokaat van Respondent*

Set down for hearing on:— Tuesday 10th. Sept. 1957
Op die rol geplaas vir verhoor op:—

(Leave DCL) 3.11.1..8.10

(B) Mr. Logie 9.45 - 11.
Mr v.d. Walt 11.15 - 12.35
Mr. Logie replies 12.35 - 12.40

C.A.V.

Judgment
RETIEF
1957

Or.

IN THE SUPEME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION.)

In the matter between:

JACOBUS ERNST RETIEF .....Appellant.

and

REGINA .....Respondent.

Coram: Hoexter, Steyn, Reynolds, Beyers, JJ.A., et Hall, A.J.A.

HEARD: September 10th, 1957. DELIVERED: Sept. 19th, 1957.

J U D G M E N T.

HALL, A.J.A.:-

The appellant was convicted of rape by BIZZELL, A.J., sitting with assessors in the Durban and Coast Local Division and was sentenced to four years' imprisonment with compulsory labour and to receive a whipping of six strokes. Leave was granted to appeal against both the conviction and the sentence.

The appellant was a constable in the South African Police stationed at the Point in Durban. On the evening of the 24th January, 1957, after going off duty, he consumed a quantity of intoxicating liquor in his room in the police barracks. He took a motor cycle and side-car which was in

use at ...../2

use at the police station and went to look for a woman of his acquaintance who lived at Umbilo. He failed to find her and was on his way back to the police station when he saw the complainant, a Native girl named Maude Radebe, in the road. After observing her movements, he went up to her and arrested her, in the presence of two Native watchmen with whom she was talking, for contravening the curfew regulations, i.e. being in the street after 11.0~~o'clock~~ p.m.. The appellant admitted that his purpose in arresting the complainant was to get her away from the Native watchmen in order to have carnal connection with her.

At the time of the arrest the appellant said that he was a policeman and some argument took place between the appellant and the watchmen, one of whom, Richard Maphanga, was the complainant's uncle. The complainant,who had a child with her, was reluctant to accompany the appellant and asked him to let her off, but he refused. He ordered her to get into the side-car and she complied with the order, taking her child with her. She asked the watchmen to lend her sufficient money to enable her to bail herself out at the police station, but they had no money and she arranged that

they should...../3

they should come to the police station ~~the~~ next morning to find out what amount was required to release her so that her husband could come to her assistance.

The appellant started the motor cycle and rode away. After stopping two or three times, he turned into a dark road ~~where~~ alongside which there were a number of railway trucks and then went on until he reached a place where it was quite dark. There he accomplished the purpose for which he had arrested the complainant by having intercourse with her. After doing so, he drove her back to the vicinity of the place where he had taken her into custody.

The complainant stated that the appellant made the proposal to her that, if she would consent to do what he wanted her to do, he would let her go, but that she refused. She said that when he caught hold of her she struggled, that he got her onto the ground and when she tried to break loose he said he would shoot her and put his hand in his trouser pocket. He eventually succeeded in forcing her legs apart and had connection with her. She said that, during the struggle he tore her dress down the front. The appellant stated that he asked the complainant to lie down and she did so. She...../4

so. She pulled up her dress of her own volition and permitted him to have connection with her.

It is clear from the judgment that the Court a quo realised the danger which so often arises in cases of this kind that the complainant may have been untruthful in her denial that she consented, and that it nevertheless accepted the complainant's evidence and rejected the appellant's statement that she consented. In making this finding the learned judge stated that the complainant made a good impression on the Court and that she gave her evidence candidly and with an air of sincerity. He said that the appellant was shifty and evasive and made an unfavourable impression on the Court.

Mr. Logie, who appeared for the appellant, contended that the Court had erred in assessing the relative values of the complainant's and the appellant's evidence, and he pointed out a number of instances from which he argued that the unreliability of the former's evidence was to be inferred. He said that the complainant's failure to take the number of the appellant's motor cycle was consistent with an absence of intention to report the matter to the police and that it was only because she found that her uncle, Maphanga, had taken the number that she was left with no alternative but to lay a charge of rape. As it

appears...../5

appears from the record that she had said at the preparatory examination that she saw Maphanga taking the number, it does not appear to me that there is any substance in the suggestion that she was forced by Maphanga to report the matter. In actual fact, both Maphanga and the complainant stated that she told him immediately she got back that the appellant had raped her.

The next point which counsel raised was that complainant said at the preparatory examination that her handkerchief fell onto the ground when the appellant pulled her towards him at the place where the motor cycle stopped before he had intercourse with her, and that he picked it up and put it in his pocket. Actually the handkerchief was found by the police near the place which the complainant had described, so that, he argued, the statement that the appellant put the kandkerchief in his pocket was incorrect and untrue, Counsel contended too that complainant's action in putting her arm round the appellant's neck was inconsistent with a lack of consent. This inference does not appear to me to be justified for the complainant said that, when the appellant was having intercourse with her, he picked up her arm and put it round

his neck, .../6

his neck, that she left it there for a short while and then took it away. She had previously said that the appellant had put both his arms around her and squeezed her and then asked her to have intercourse with him and counsel argued that the evidence given by the complainant at the preparatory examination was not consistent with the evidence given in the Court a quo.

It is clear that there is some inconsistency between the evidence the complainant gave at the preparatory examination in regard to both the handkerchief and the embracing and that which she gave in the Court a quo, but it appears to me that this may possibly be ascribed to the period of almost three months which intervened between the hearings, rather than to untruthfulness on the part of the complainant.

Counsel next submitted that there were railway workers near the trucks to whom the accused could have appealed if she was being forced by the appellant to have intercourse with him. It is quite clear from the complainant's evidence that she stated that she saw these railwaymen for the first time before the

appellant...../7

appellant told her that he wanted to have intercourse with her. Later on she saw their lights a long way away, but that was after the appellant had had intercourse with her and had told her to get into the motor cycle in order to take her back. On the first occasion she had no reason to appeal to them and, on the second, she said that they were too far away to be able to hear her call out.

It was argued that complainant's replies to questions regarding her wearing bloomers were not consistent and that her reaction to the appellant's enquiry whether she was wearing bloomers was not that of a woman being raped. According to the evidence, the complainant was not wearing bloomers and she said so when asked and I can find no inconsistencies in her evidence on ~~th~~ this point. There is moreover, so far as I can see, no substance in the allegation that she acted otherwise than a person who was being forced to have intercourse by a strange man would have acted in a lonely spot, late at night.

Mr. Logie suggested that Ncwane, Maphanga and the complainant conspired together to fabricate a false charge against the appellant and that the motives for doing so were

(a) revenge on Europeans generally;

(b) the unjustness of the arrest, and

(c) resentment that the complainant had been compelled by the appellant to purchase her release from arrest by

submitting...../8

submitting to intercourse. Counsel could not refer the Court to any evidence which substantiated his contention and there is, to my mind, no substance in it.

The final matter which was raised was that there was a lack of corroboration of the complainant's story and that, for this reason, the appellant should not have been found guilty of rape. In Rex versus D. and others 1951 (4) S.A.L.R. 450 (A) which was a case in which the complainant had been taken from the street, put into a motor car and conveyed to a place seven miles away, where men in the car had had intercourse with her, SCHREINER, J.A., said:-

"The fact that the complainant was unwilling to get " into the car, but was compelled to do so was to some " extent corroborative of her story that she was raped " and did not have intercourse by consent. Her unwilling- " ness was proved not only by her own evidence, but also " by that of Hughes. The fact that the evidence of the " appellants conceded some compulsion did not deprive " Hughes' evidence of its character of corroboration; it " simply further confirmed the fact that the appellants " got the complainant into the car forcibly and against

her will...../9

"her will. That fact did not, of course by itself disprove
" consent by the complainant to the intercourse, but it
" tended to make consent less probable.....The mere fact
" that the appellants admitted the compulsion and explained
" it did not mean that the proved compulsion ceased to
" render more probable the complainant's version that she
" did not consent to the intercourse and to render less
" probable their assertion that she did."

In the present case the unwillingness of the complainant to go with the appellant was corroborated by the evidence of Maphanga and Ncwane and there can be no doubt that it was solely through his exercise of his powers of arrest as a policeman that the appellant was able to force the complainant to get into his motor cycle. Moreover, the appellant admits that he used his official position in order to get the complainant into his power for the sole purpose of having intercourse with her.

The complainant said that she had a husband, that she had been to visit him that day and had had intercourse with him. There is no suggestion on record that she was a woman of loose character and there is no suggestion by the

appellant...../10

appellant that he offered money ~~to pay her~~ as payment for her compliance with his wishes. In these circumstances it may well be said that the duress which the appellant exercised makes it more probable that he was determined to achieve the object for which he had arrested the complainant even if she did not consent, than that she would be willing to have intercourse with a strange man, who had forced her to leave her own people and then sought to get her consent to an act which she knew to be in itself contrary to law.

Mr. Logie criticised the manner in which the Court had eulogised the complainant's demeanour and appearance and the candour and sincerity with which she gave her evidence. It is evident that there were inconsistencies between evidence which she gave at the preparatory examination and that which she gave in the Court a quo and there are some contradictions between what she stated in examination in chief and in cross-examination. She may, perhaps, not have deserved all the commendations which the Court accorded her, but it does not seem to me that these discrepancies are of such importance as to justify this Court in finding that the Court a quo was wrong in accepting the complainant's evidence and

rejecting...../11.

rejecting that of the appellant.

So far as the appeal against the sentence is concerned, I am of opinion that for a member of the police force to use his position for the purpose of getting a Native woman into his power with the object of forcing her to have intercourse with him is a most reprehensible act. A crime committed under these circumstances merits severe punishment and I do not consider the sentence too severe.

For these reasons the appeal is dismissed.

C.G. Hall

A.J.A.

HOEXTER, J.A.
STEYN, J.A.
REYNOLDS, JJ.A. ..... concur.
BEYERS, J.A.

J U D G M E N T.

BIZZELL, A.J.:

Jacobus Ernst Retief, the verdict of the Court is that you are guilty of the crime of rape.

The accused was charged in this case with the rape of Maud Radebe in Durban on the 24th January, 1957, or alternatively with having contravened section 1 of Act 5 of 1927 as amended by Act 21 of 1950 and Act 62 of 1955.

The accused pleaded not guilty to the main and guilty to the alternative charge, but these pleas were not accepted by the Crown, and the issue was whether the Crown had established beyond reasonable doubt that the admitted intercourse had taken place without the consent of the complainant.

The Court, bearing in mind the fact that a case of this nature requires special treatment, unanimously came to the view that the Crown had discharged the onus of proof, and that the accused was guilty of rape.

The broad outline of the facts is that on the night of the 24th January, 1957, the accused set out from the Point Police Station, Durban on a motor cycle and side-car for the purpose of obtaining sexual satisfaction from a woman he knew. While returning from his fruitless quest the accused in Williams Road, Durban, happened upon Maud Radebe, the complainant in the rape charge, who was then in the company of some Bantu nightwatchmen. He stopped the cycle and after a dispute with at least one of the watchmen he arrested the complainant for being out after hours. She had with her her child of six years, and after she and the

/child...

child had entered the side-car on the accused's instructions, he drove to a dark, deserted spot near the Maydon Wharf where intercourse between the complainant and the accused took place.

It was common cause that the accused was a policeman, and the Court was satisfied that the accused told the complainant and others in Williams Road and she then believed that he was a policeman, and the Court was further satisfied that he used his position and his authority so as to arrest her in order to get her away from one, Richard Maphanga, whom she calls her maternal uncle, and from one, Ncwane. The Court was satisfied too that the accused got and took the complainant with her child away from these people purporting to arrest her for a breach of the curfew laws but for the sole purpose of having sexual intercourse with her, and that he was determined to have intercourse with her.

The Court was also satisfied that the complainant believed that she had been lawfully arrested and accompanied the accused for that reason.

The Court does not think it necessary in the circumstances to mention the evidence supporting these findings. It is sufficient to say that these findings are, in the Court's view, amply justified by the evidence of the complainant and of the accused and of the two night-watchmen.

It is convenient at this stage, however, to mention a submission by Mr. Logie in regard to the complainant's belief that the accused had arrested her. The complainant said that the accused said to her in Williams Road: "I'll pick you up". It was argued by Mr. Logie for the accused that looking at her version the complainant must have realised that an immoral suggestion was being made

/to...

to her. The Court was satisfied, however, on all the evidence as to the circumstances in which she got into the side-car in Williams Road, that she believed she was to be picked up in the sense of being arrested and taken away.

The complainant's version of events after the accused drove her and her child away from Williams Road up to the stage where, after the admitted intercourse, he returned with her from the scene of the intercourse and dropped her and her child was given in some detail.

The essential features of her story are as follows:

The accused drove her and her child through the streets, the cycle stopping on two occasions. During this journey she got no answer from the accused when she asked him where he was driving her, and prior to their arrival near the spot where intercourse took place she began to be suspicious and even thought that he might kill her and her child by dumping them into the sea.

She said that when the motor cycle finally stopped it was in a dark place where there were no lights at all. He got off the cycle and told her to get out. When she did not get out the accused caught her by her jersey and dress at the neck and she was frightened and then got out.

He grabbed her by the arm near the wristlet watch and pulled her along causing her handkerchief to fall to the ground. He then said he was not a policeman and put his arms around her squeezing her to him despite her efforts to push him away. He then said if she would consent to what he wanted he would let her go. Her response was that she would not consent. In cross-examination she said she told him she had never done that sort of thing before.

They struggled and she fell. He pressed her down and asked if she was wearing bloomers, to which she

/replied...

replied that she was not wearing any. He then said he would shoot her and tried to part her legs with his knee, putting his hand in his pocket. Her dress was torn at this stage but she did not open her legs. He kept on pushing with his knee till he parted her legs. He then said that she was to lie still or he would kill her and her child. At this stage she submitted for fear of being shot, and intercourse took place. Then the child in the side-car began to cry loudly and complainant pushed the accused away and went to it. After this she got back into the side-car on his instructions and he drove her off putting her down en route. When she got out the accused said she was not to tell her uncle or he would shoot her. He drove off and she walked with her child back to where her uncle was in Williams Road.

The essential features of the accused's version were that when he stopped the cycle he got off and went two or three yards away from it. He then told her to come; she got out of the side-car and stood near him. He asked her to have intercourse but she said she had never done it before and was frightened. He told her to come, then they went through a fence at the other side of which he lay on her. She pulled up her dress and they had intercourse. He saw no bloomers and there was no talk about bloomers. He said the child cried and she went to it. Thereafter, they took their places in the motor cycle and sidecar. She then asked if anyone would see them to which he replied that all was safe. He drove off dropping herself and the child on the way. He said he had no revolver, had not threatened her and had embraced her before the intercourse. He said that she was not uneilling and he regarded her attitude as the usual attitude of a woman in those circumstances.

So much for the stories in the main of events

/between...

between the complainant being driven off and her being dropped after the intercourse. She said that she arrived at her maternal uncle's place of work and made a report to him. The maternal uncle told the Court that the complainant told him that the European who took her away had said he was not a policeman, that he had not taken her to a police station but that he took her somewhere else and had forcible intercourse with her. It is to be observed that the accused did not say in so many words that the complainant consented to intercourse. He said that she was not unwilling. However, the Court understood the accused's story to be that the complainant did, in fact, consent to intercourse.

The Court, bearing in mind the special treatment to be given to this class of case, accepted the complainant's evidence that the intercourse took place without the complainant's consent and rejected the accused's version that she was a consenting party. The complainant made a good impression on the Court - she seemed to the Court to be a normal, somewhat intelligent Bantu person with some presence and personality. The Court thought that she gave her evidence in a candid manner and with an air of sincerity, and that she was a person who appreciated the gravity of having intercourse with a white person.

On the other hand, the accused was shifty and evasive and made an unfavourable impression on the Court. When making this assessment the Court took into account in favour of the accused the fact that he was admitting to conduct which most people in South Africa would regard as shameful and about which it would be difficult to testify boldly or in a matter-of-fact manner. The Court also did not hold against him his discomfort in cross-examination when asked questions regarding his standards of honour, as compared

with what he expected from other people. The Court was satisfied from the accused's version that his urge for sexual relief was such that he was unlikely to be deterred from obtainining satisfaction.

The Court thought the versions of the accused and the complainant ought properly to be looked at in the light of the admitted or proved facts to which reference has already been made, and in the light of the fact that the Court found that the complainant was, and was entitled to be, apprehensive regarding the safety of herself and her child because of the conduct of the accused in taking her where he did, and in the manner he did, late at night without telling her where they were going, while letting her think she was under arrest.

The Court thought that it was in the highest degree improbable that the complainant in the position of a woman under arrest, and concerned for her child's and her own safety, would change on the mere request of the accused, the author of her predicament, into a woman willing to have illegal intercourse with him - that request being made for the first time in this deserted spot without the slightest preliminaries before their arrival and without the request being accompanied by any offer of a favour or other consideration.

The complainant consistently with her evidence that she did not consent, made a report to her maternal uncle - the first person to whom she might reasonably be expected to have made a report. The terms of the report were given by her uncle and have been indicated already. Her evidence, of course, was to the effect that at the scene the accused had said he was not a policeman, and it seemed to the Court that this evidence of hers was in accordance with probability, because it would be the very sort of thing that the accused would be likely to say in order to extend the area for his

/identification...

identification outside and beyond the members of the police force, so as to include any person whatever who was in a position to ride a motor cycle and sidecar in Durban that night.

The evidence that she reported to her uncle that the accused said he was not a policeman is, of course, not evidence corroborating her evidence as to what he did say, but it seemed to the Court that the submission of Mr. Logie that because of the necessity to give an explanation to the watchmen she had plenty of time to invent a story for her release from arrest, and that the contents of her report were a concoction, could not be accepted. The Court felt that the last thing she would say was that the accused had said he was not a policeman. After all, when he drove off, everybody thought he was a policeman and it would have been an easy matter for her if she were concocting a story to explain her release, simply to say that the accused had let her go or that she had been released at the police station by his superiors. Any enquiried would have been successfully stifled.

Mr. Logie has criticised her evidence in other respects.

Mr. Logie submitted that she was taken from the main roads - that is correct; then he submitted that she made no attempt to escape and that she preferred a more deserted spot. These submissions, however, ignored the fact that she was under arrest, as she thought, and was bound to accompany him. The Court was satisfied too that escape was not at any time a solution to her predicament, even at the later stage when the cycle had finally stopped. There, of course, as indeed was the case everywhere she was taken - her child was with her and an ever-present obstacle to getting away from the accused, even if she thought of risking the

child or herself being harmed by the accused.

Mr. Logie submitted too that she had no reason to be afraid, and that it was impossible to understand her reactions if the threat of shooting was made for the first time when she was on the ground. But these submissions ignore the fact that she and her child were alone with the accused in a dark and apparently deserted place to which she had been taken by him, and the fact that she was fearful for their safety. In addition, of course, he had already used force according to her, to get her from the cycle and to the ground. The Court thought that her reactions and attitude were what one would reasonably expect from a woman in the circumstances in which she was.

Then Mr. Logie submitted that her statement that she had never done that sort of thing before was practically the equivalent of an intimation that she was prepared to on this occasion. But the circumstances in which this remark was made largely determine whether it was a protest or an indication of consent. The circumstances have already been referred to and the complainant's evidence indicated that it was intended as a protest. The Court came to the conclusion that in this context and circumstances this remark was a protest, and bore in mind too that the remark she said she made was corroborated by the accused himself.

Her evidence as to the presence of shunters was criticised too, but the answer surely is that she would not, if she were inventing her story, make it more difficult for it to be believed by saying that she saw the shunters twice, the second time, closely. Rather, the Court thought, would she not mention having seen them twice if she were fabricating. It is true she did not try to attract their attention, but she and her child were entirely in the accused's power.

/Then...

Then her evidence regarding her allowing her arm to rest on the accused's shoulder and her evidence regarding the handkerchief were criticised. The suggestion by Mr. Logie that her evidence of her leaving her arm on his shoulder was consistent with intercourse by consent ignores the fact that her evidence was that the accused put it there, and the fact that her state, on her version, was that of a frightened woman in effect, being ordered what to do.

There is no evidence to suggest that this particular gesture was an amorous response, and not even the accused said she put her arm on or around his shoulder. The complainant's sole contribution, on his version, was to lie down and pull up her dress on his mere request.

Then as to the handkerchief, she said the accused picked it up and put it in his pocket. She also said that when she saw it next day at the scene she realised she had dropped it. The effect of the complainant's evidence, however, was that she was surprised to see it where it was the next day. The explanation, the Court feels, is that she thought the accused had put it in his pocket but when she saw it on the ground she thought she must have dropped it as she said. But the Court did not regard her as untruthful in this respect.

Mr. Logie submitted too that her answer that she was not wearing bloomers was hardly what one would expect from a woman averse to intercourse. But the fact, even on the accused's version, is that she was not wearing bloomers. She could hardly have said she was wearing them.

It was suggested that her act in pushing the accused away when her child cried at the stage when the accused was on top of her and finishing the act of intercourse, was a natural reaction and, therefore, hardly that of a woman in

/abject...

abject fear. Well, the Court accepts that it was a natural reaction, but at this stage, of course, the accused had achieved his purpose and there would exist no longer the sexual desire which had earlier caused him to take her to the spot, or would cause him to threaten her safety. Her pushing him away at that stage to go to her child was what one would expect her to do in the circumstances she described.

It was suggested that the fact that she had made no attempt to take the number of the cycle when she was dropped after the intercourse was indicative of a state of mind inconsistent with the lack of consent, but it would be too much, the Court felt, to expect her at that hour and in those circumstances to set about collecting evidence to bring him to book.

It was said too that her version in regard to her uncle's taking the number of the cycle was unsatisfactory in that at the preparatory examination she had said that she saw her uncle writing down the number of the cycle, whereas she said in this Court that she did not see him writing it down. Her evidence in this Court was also that she had not said what had been recorded in the preparatory examination. But however that might be, the Court did not regard this discrepancy, if such it be, as detracting from her veracity. When she gave her evidence in the preparatory examination she knew her uncle had written down the number, and that could very well be the explanation for the evidence she is recorded as having given, if she gave it.

Mr. Logie also submitted that she only went to the police station to lay a complaint, because being provided with the cycle number she then had no other alternative. But when she arrived at her uncle's place of work she was under the impression that the accused was not a policeman,

/and...

and, as she said, there was no purpose in going to the police without the information given to her by her uncle about the number. It seemed to the Court that her conduct was quite normal because until she knew of the number, identifying the accused would be an impossible task.

There were some discrepancies in the evidence of the complainant, examples were when she told of the time of her first arrival in Williams Road, and of the fact that her uncle was not then there; the reasons for wanting and not getting money from her lover at Isipingo. But these the Court said did not affect the worth and value of her evidence on the substantial issues. It would be strange indeed to find a witness who gave a faultless account of the many minor matters in which he or she had been involved, and which were available to be canvassed by a practised cross-examiner.

One further aspect to be mentioned is that of the complainant's previous convictions. The evidence of these she gave candidly and without reluctance. The Court did not understand Mr. Logie to base any part of his main argument on the facts of these convictions. The Court, however, did not regard them as detracting in the slightest from her credibility.

Mr. Logie finally submitted that the complainant could have been actuated by one or more motives so as to falsify what occurred. The first was that she could have resented having bought her freedom, but not even the accused's evidence provides any basis for that submission. Then he says she was contemptuously dismissed after her body had been used, but again there is no evidence of a contemptuous dismissal. Neither the accused nor the complainant regarded the circumstances in which she was dropped after the intercourse as contemptuous.

/Thirdly...

Thirdly, he submitted that had the night watchman gone to find her at a police station and discovered she had not been near one, it would have created difficulties for her, therefore, she had to invent the story that she was raped. But all she need have said was that she had been released and certainly not that the accused was not a policeman.

Fourthly, Mr. Logie submitted that the complainant and the nightwatchman, Ncwane, moved by racialism, had invented this story of a rape, and Mr. Logie submitted that it was clear from Ncwane's evidence of his feelings when the accused arrested the complainant that he was exhibiting racialistic tendencies. This submission involves Ncwane and the complainant having put their heads together about a spurious charge, but leaving that on one side, the Court did not regard Ncwane's evidence in that light. The Court thought, on the other hand, that Ncwane, as an experienced ex-policeman, was justified in resenting the accused's treatment of the complainant and that he was simply giving a truthful account of events and his feelings.

The last submission made by Mr. Logie was that the complainant might have had a grudge against the police because she thought she had been unjustly accused of theft in the past and that she has turned illegal intercourse into rape. There was not the slightest evidence to support this submission however, but it involves the further link that the complainant consented to intercourse with an unknown policeman on the spur of the moment in order to get revenge upon some other policeman or policemen.

In addition, so far as anyone knows, the accusation in any theft case against the present complainant would normally have come from the complainant in that theft case, and it was nowhere suggested that any of the police

/were...

were responsible for a complaint of theft, whether warranted or not.

Those are the reasons for the verdict.

Counsel for the Crown intimated that the accused had no previous convictions.

Counsel for the Defence addressed the Court on the question of sentence.

(The Court adjourned to consider sentence).