

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

Appellate

DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPEL IN STRAFSAAK.

ALFRED MAKANYA

Appellant.

versus/teen

THE QUEEN

Respondent.

Appellant's Attorney A. J. J. J.
Prokureur van Appellant

Respondent's Attorney (K'lop)
Prokureur van Respondent

Appellant's Advocate S.A. Visser
Advokaat van Appellant

Respondent's Advocate P.E. Roux
Advokaat van Respondent

Set down for hearing on: Monday, 3rd Nov., 1958

Op die rol geplaas vir verhoor op:

2.4.5.7.8 (B) 9.45-11.30

Appeal dismissed. (No written judgment).

Coram: Hoexter, de Beer, Beyers, van Elster et Ogilvie Thompson, J.J.A.

Alaewerungen

L REGISTRAR.

3/11/58

J U D G M E N T

WILLIAMSON J:

The two accused in this matter are charged with the crime of rape, it being alleged that they raped a European woman Mrs. Joyce Clark near the Westrand Halt in the Krugersdorp district on the 12th September last year. To the charge they have both pleaded not guilty and the defence in essence on the part of both the accused is that neither of them were at the spot where the assault on this woman took place on the night in question; they know nothing of the assault at all.

The evidence for the Crown rests in the main on two witnesses, the complainant herself and the evidence of a non-European woman Mathilda who was a friend of accused No.1's wife and lived with accused No.1 and his wife. The complainant gave evidence in detail as to what happened on this night; she described how she came home to the Westrand Halt by train. She was at that time working as a nurse in Johannesburg and she had left her car near the station - she went home by train. Some time after 8 that night - about 8.30 p.m. - she got off the train at Westrand Halt, proceeded to her car parked there during the day, got into her car and put on the light inside; the car was a Willys jeep and she says it had a bright light in the interior of the car. She put her purse and a parcel with some groceries in it on the seat next to her and as she was about to start the car a non-European, a native, appeared at the right hand door holding a revolver, and he pointed the revolver at her

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and threatened her with it. He first of all talked about money; he took her purse and she then noticed another non-European, also a native man, at the other window. He opened the door and he took her parcel of groceries off the seat put it under his arm, and he walked round the car and joined the one she had first seen on the right hand side. Well I do not propose to go through in detail what happened but according to her she then went through a frightful experience; she
10 was pulled out of the car by these two men; she had the revolver held at her and forced to walk with the revolver held at her and threatened she would be shot, she was taken to a spot a little distance away and there she was raped first by the one man, the other man holding the revolver over her at the time and thereafter the other native man also - he did not actually penetrate her - satisfied himself sexually against her body. He thereafter performed further a grossly filthy act by urinating over this woman that
20 he had abused, and she was thereafter first of all accompanied back by one towards her car and then told to go. I am not going through the details; there is no need.

The accused both say they know nothing of this incident. The Court is completely satisfied as to the evidence given by this unfortunate lady who went through this dreadful experience. We have no doubt that in the main, making due allowance for the horror she must have suffered and the experience she went
30 through, her description is an accurate description of of the experience she had to endure. We are satisfied that she was raped at the point of a pistol by one of
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these non-European men and that thereafter the second one also sexually satisfied himself against her body, the first one at that time holding the revolver. Now the experience she went through was undoubtedly one which must have greatly disturbed her emotionally; she managed to drive away in the car and she was seen by the police and by a doctor that night. There is no need as I say to go through the story in any further detail but the offence which was committed was established beyond all doubt and it was committed in the general circumstances which I have indicated in the brief summary I have given of her evidence; the only difficulty in this case, a very grave difficulty, is the identity of the two men who performed the act upon that woman that night.

Now in the first place from her evidence it is quite clear that she did have ample opportunity of seeing the faces of these two men because she first saw them as they faced , one on the right of the car and the one thereafter on the left of the car towards the light of the car which was inside the car; she says it was a bright light, she saw them looking at her full face straight at her; she had that clear opportunity of seeing them. She today says that the two men she saw were the two men in this dock, accused No.1. and accused No.2. She says the man who was at the right hand window who had the revolver was No.2 accused; the man who came to the left hand window and walked round to the otherside was No.1 accused. She says that the man who first did actually rape her was No.2 accused; the man who as I say, satisfied himself sexually against her body thereafter was No.1

/accused.....

accused. She says that the man who first did actually rape her was No.2 accused; the man who as I say satisfied himself sexually against her body thereafter was No.1 accused. She gave her evidence in some detail in the preparatory examination many months ago. She repeated her evidence here, her evidence has been repeated in a completely satisfactory form, there is no reason to doubt that what she says she genuinely believes to be true. She identifies each man at different stages and the different parts that they took, and that story has been maintained in this Court and we are satisfied that she is a completely reliable witness in the sense that she is completely honest in what she says. She has an honest belief in the accuracy of what she says; we are also satisfied that she did have, because her opportunity of seeing them when she first met them, complete opportunity of seeing who they were. Despite the fact that we are satisfied that she is honestly saying what she thought and although she had this opportunity and has in addition told this consistent story, there does arise in this case a grave difficulty as to identification; and that difficulty arises in the main because at an identification parade which was held some days afterwards she did not point out either of the two accused who were standing with seven other men on a parade, an identification parade held at Krugersdorp. The parade was properly constituted and was a properly conducted parade; she was brought in after the parade had been assembled and she went up and down the line of these nine men on this parade. No.2 accused, Michael, had taken up place number four from the

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right hand side and No.1 accused, Alfred, had taken up number nine position from the right hand side. She walked up and down the line several times and had ample opportunity of seeing everybody on that parade and she tells us today that she had this opportunity. The officer conducting the parade Det. Sergeant Botha had described how she went up and down; she says she did stop in front of each of them; she stood in front of them, looked at them for an appreciable period of time; she stood in front of No.2, she also went and stood in front of No.1; she was asked the usual questions whether she saw anybody on that parade who was connected with the assault on her on the 12th September, and she then told Sgt. Botha that she did not see anybody; she was then taken from the parade. This was about five days after the assault, the 15th September. One can of course understand that at that stage the woman who had been through this terrible experience only five days earlier, might still be subject to great stress, be very upset, and her powers of observation and her other powers might be considerably impaired. But thereafter she went into a room, the office of Det. Sgt. Visser who was in charge of the case; whilst she was sitting in his room Sergeant Botha came into the room from a door behind her with the two accused; he had dismissed the other seven men on the parade; they were all prisoners in the goal and he brought these two men who of course at that time were under suspicion, to the room of D/Sgt. Visser where the complainant was sitting with her back to the door. He says that he then used words to the effect, "here are these two men from the parade". Now the

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complainant is under the impression that somebody said to her then or about that stage, "I want you to have a look at these two people", or words to that effect. I may say that neither Dec. Sgt. Botha nor Dec. Sgt. Visser think that such words were said; in fact they deny that such words were uttered, but whether they were or not, the complainant turned round and did look at these two men and immediately became faint; she got up and water had to be fetched for her; she was

10 terribly upset, but she became convinced at that stage that here were the two men who had assaulted her. Her actions and subsequent explanation of what overcame her at that time when she became faint make it clear that she then in her mind identified them as the two men who had assaulted her five days earlier. We have watched Mrs. Clark very carefully giving evidence and

20 we are satisfied that she is a very genuine person, who is genuinely trying to tell the truth. We are satisfied that she must have been very upset at the time, and there may be explanations as to why she did not recognise them on the parade but could recognise them and did recognise them immediately afterwards. She says in fact when she saw the two there in the room a very short period after the parade she remembered having seen No.1 on the parade; she did not remember having seen No.2 on the parade; she did not ever

30 recollect that she had seen him on the parade. Well no matter how certain she is of the identification, the Court, if that identification stood alone, would have to hesitate long before it could accept an identification made under these circumstances as being one which establishes beyond all reasonable doubt that

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those two men that she then identified were the men who had assaulted her. Identification, particularly identification of persons of a race other than one's own is always a difficult matter; identification of persons of one's own race is often a difficult enough matter and the Courts, as mentioned by Counsel, have had many examples of perfectly genuine witnesses positively identifying persons and being quite satisfied that they knew the persons, thereafter being proved to have been clearly wrong. Therefore it is always only after exercising great care and after careful consideration of the matter that the Court at any time accepts identification evidence as final proof without any other corroborating factor; but in this particular case, in view of the circumstances under which which the identification was eventually made, I think that the Court could not accept that identification if it stood by itself, as being satisfactory proof beyond all reasonable doubt that those two persons identified were the assailants.

Now with that background I propose to examine the case against the two accused. I will take No.1 accused first. As I have said the complainant has identified No.1 accused as being the person who came to the left hand side of her car, who indecently assaulted her after No.2 had indecently assaulted her and as the man who was dressed in a particular way. We have it in evidence that in fact she did give an account of the clothing of the one man to the effect that he had an all-weather rain caot which had a large slit in the back, a slip-back coat; he had a brown hat, and that description was given to the police before she knew

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anything of No.1 accused as to who he was or as to how he was dressed. It so happens No.1 accused was dressed that night that way; that is established by other evidence; by his own evidence he was not necessarily so dressed on that night although he did wear that hat and coat regularly. He had such a coat, he had such a hat; not that they are very peculiar objects; the coat is of a common type; many coats have a slit in the back and he had a brown hat, a rather dirty brown hat but a common type of brown hat. Those two factors were combined. There was also a further interesting factor; that the coat which No.1 had was a coat in which inside were found some blood stains; inside the front flap of the coat. Then further this man whom she now identifies is the man who had been reported to the police as a man who had made an admission. Complainant did not know that of course, but he had on the Sunday after the assault took place, been arrested; the statement had been made to the police by the witness

20 Matilda. Matilda Thema is a very young native girl - I do not know what her age is but I imagine she is in her early twenties - she is a young girl, and she was living with accused No.1. and his wife; she was a friend of the wife. She told this story that on the Thursday evening, the day when this assault took place, the accused No1 came back to his home in the Westrand Location, which is not far from the point of assault at about 10 o'clock; he had gone to work that morning, he came in and he ran into the room where his wife and

30 Matilda were sitting and he went to bed; he had a parcel; she does not know what was in the parcel. He had on when he came in the raincoat produced before

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this Court, a raincoat similar to the one described by the complainant, a raincoat which was found afterwards to have blood spots on the inside; he also had on the brown hat which was produced before the Court being a similar hat to the one identified by the complainant in her description to the police; he just came in like that and went to bed. He got up the next morning and he told his wife and Matilda that he heard that a white woman had been raped the previous evening and he said
10 that he suspected a man in connection with this; it was a man called Fontya, a amn who had a revolver. According to Matilda, (this stage it was not very carefully investigated in her evidence as one did not quite appreciate what the evidence of the accused was going to be) this was said before he went to work. I may say that the accused No. 1 in his evidence admitted telling them that morning that he heard there was a rape; but he said that was not before he went to work; he says he came home for breakfast; he went to work
20 about 6.30 or 7 and according to hem he had heard in the meantime that there had been a rape; he saw a lot of police about; the police were in fact very active round about there; it was only about 200 or 300 yards from the place of the assault, and the police were actively investigating around there. He says that he learnt through' this that a European woman had been raped the previous night. He says he told them that morning when he came back for breakfast. There is a conflict between him and Matilda as to exactly when it
30 was that he told them altough in regard to Matilda it was not thoroughly investigated as to whether he went away and came back to breakfast or not. Her

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evidence was certainly, and gave the impression that it was before he went to work. He however further denied the latter part of her statement to the effect that he suspected a man called Fontya in connection with this, a man who had a revolver.

The next event of importance that took place, according to Matilda's evidence, was only on the Saturday. She said on the Saturday the accused came home from work at about 11 a.m. and that he obviously when he came home had had something to drink and was under the influence of liquor; he was then in a mood where he started telling them more; he started according to her evidence, boasting in this form; he told them that morning when he came home that as a matter of fact he was the man who had raped this woman; that he preferred having intercourse with European woman; he said something about his wife having an unpleasant odour as she did not use powders like European women, indicating that it was not the first or only time that he had had intercourse with a European woman and that the police would not catch him; they would never catch him. The wife and Matilda according to Matilda did nothing about this at that stage and I can not say that in the condition of things as they exist that that is very extraordinary; it may be desirable, but unfortunately it is not usual, for people to have a sense of duty and to go and report matters like this, particularly under the circumstances existing at the moment. But I think too much cannot be made of the point that on this very startling statement by accused No.1 nothing was done about making a report; but these two women apparently some time later in the

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day went off to Stand 99 of the Location where the wife had to pay some church dues; they were there some time talking to the people there and towards evening accused No.1 appeared there; he then assaulted the wife; he pulled her out of the house first and according to the evidence, his own as well, he did very furiously assault his wife outside. According to the witness Matilda he assaulted her to the extent that she was lying in an almost unconscious condition on the
10 ground; he also assaulted Matilda; according to him he only gave her slaps with the hand. At any rate he assaulted her although the exact degree of the assault is difficult to ascertain on the evidence; but his wife was assaulted to such an extent that she could not go home. According to him he had to go and get a friend from some other stand to help him get her home; he almost carried her; and Matilda ran away; she went and slept somewhere else that night and the next morning she met the wife and they talked it over and then
20 decided to go to the Police Station and enquire whether in fact there had been a rape on a European woman, and if there had been to tell the police that they knew the man who said he done it; and this, according to Matilda, they did. They did make a report to the Police station and as a result of that No.1 was arrested.

The evidence of Matilda was tested very thoroughly by cross-examination and in relation to the evidence as given many months ago in the Magistrate's Court in the Preparatory Examination (her evidence was given
30 I think in October last year), it did reveal one or two inconsistencies. I may say at once that I do not think the consistencies were in any way extraordinary

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or necessarily indicate her story to be false; there were two or three points where she was not giving exactly the same evidence now many months afterwards which she gave at the preparatory examination. One of the points was whether she saw the assault on the wife. In the Magistrate's Court she did indicate that she did not actually see the assault. She saw accused No.1 drag his wife outside but she did not see the assault outside. In the Magistrate's Court she said she saw more; one does not know the extent to which she was repeating what she had heard, witnesses are apt to do that and perhaps care was not taken to see that she was telling the truth what she actually saw and not what she had heard. That may be an explanation; but it was not a very serious conflict. There was also an inconsistency as to whether she saw blood, where she heard of the blood and whether it came from the accused's wife. The accused's wife did apparently bleed which is of some importance because of the blood on accused No.1's clothing; but again the general trend of what Matilda said in the Magistrate's Court and what she said here was more or less not the same; in an uneducated and not highly intelligent witness one may expect a not completely accurate recollection or later report, but there was nothing in any inconsistency which causes any servere suggestion that her story was false. But what is of more importance is examining the story of Matilda is this; there is little doubt that her story is told after some consul- and joint decision with the wife of the accused and after a serious assault upon the wife; and it was only then that a report was made to the police. Quite

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clearly whatever she may say may originate either from motives of revenge on the part of the wife or annoyance on the part of Matilda, or a desire of Matilda to help the wife get some revenge; obviously from some not highly principled motive a report was made, and very obviously when a person makes a report in such circumstances, a court must be very clearly satisfied in any way before it acts upon it, that the report was not entirely due to ,or coloured by or founded upon the motive in question.

Matilda had been assaulted and she was also a great friend of the wife who had been very seriously assaulted and therefore it is possible that these two women, or Matilda herself for that matter, concocted this whole story as to what the accused did on Thursday night, what he said on Friday morning and what he said on Saturday. There is the further fact that this witness is not a person of the highest moral character in the sense that she is presently under arrest on a charge of theft at Klerksdorp; she had not been tried yet but she has admitted here her guilt; there was no attempt to hide her guilt although she had not yet been found guilty. So we have there factors in relation to Matilda and her evidence and in addition we have the evidence of the accused himself; The accused denies completely the story of Matilda in regard to any admission by him that he was connected with this rape or that he suspected anybody in connection with the rape. He differed with Matilda in certain respects on other details, for instance as to when he told her and his wife about hearing of the rape. That may be a question of recollection and it does not seem of any

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vital importance in my view; but he does deny most emphatically that he ever told her that he was in any way connected with this rape, and what we have had to consider is whether or not in all the circumstances we can be satisfied beyond reasonable doubt that Matilda's evidence is in its material aspects true beyond all reasonable doubt. Now as I say she is a person who on her own admission is a thief, she is a person who had motives for telling false stories, she is a person who
10 was closely associated with another woman who had even stronger motives for being a party to the concoction of such a story. Obviously one would have to be very sure that one had correctly gauged her credibility before accepting the evidence of such a person in such circumstances where such serious allegations are made against a man who emphatically denies ever making the statements. It is a question of weighing her evidence against his evidence and of being satisfied beyond all reasonable doubt that hers is the truth and that his is
20 not reasonably possibly true.

We have watched the two witnesses very carefully; we have seen them both in front of us. As to No.1 of course one has to remember that he is standing before us charged with an extremely serious crime, and one does not therefore attach too great importance to the fact that a witness in those circumstances has hedged or has not been at all times truthful or has varied his story; but nevertheless there are matters which must be considered when his credibility is being
30 assessed against that of another witness. His story as told in this Court was inconsistent with the statement that he previously made in a number of mate-

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-rial respects. His evidence was inconsistent, when questions were put by the Court, with what he had previously said in chief in a number of material respects; particularly was this so in regard to his comings and goings and the times at which and how often he left home and when he left home on the Thursday afternoon and when he got back and also in relation to what he did on the Saturday afternoon, when the assault against his wife took place. His evidence
10 in chief in regard to what happened on the Thursday afternoon was that he got home at 4.15 p.m. that afternoon and then went to buy some groceries at Krugersdorp, and that he then got back at 6.45 p.m. and did not go out again. The assault on the complainant took place about half past eight. When it was put to him that was not what he said before, he varied the times; he then said he left his work for home at 4.45 p.m. and got home at 6 p.m. Of course one appreciates that a man in a difficult position facing a serious charge
20 and trying to recollect things may get confused, but there is no doubt about it that Accused No.1 was ready to make statements in the box without any consideration as to whether they were true or not, and I am compelled to say that he did make a bad impression upon the Court as a witness; he was not reliable and he was prepared to shift his evidence as he pleased.

Now Matilda I have indicated was a witness in regard whom there were a number of points on which one had to be very careful and there were points of criticism. But all the members of this Court having watched
30 her are satisfied that in the main her story was true. There is detail in that story, which has been

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repeated after many months here and under cross examination which has remained, which would be extraordinary detail for a young native girl to invent. Some facts were much more likely to arise from the mind of a man than from the mind of a young native girl, facts such as the odour of a European woman's body as compared to the odour of a non-European woman's body who did not use powder and soap. Such strange details would be extraordinary details for this girl to add to her story; of course it is not that she would be incapable of doing so, but we are satisfied, having watched her and having weighed the factors I have mentioned that her evidence is acceptable as to the fact that this man did make the statements on the Saturday, statements to the effect that he knew of this rape and was connected with it. The statement so made by him, as we find that it was made by him on Matilda's evidence which we accept, is a statement made by a man who was subsequently identified; it was however, an identification which standing by itself would not be one upon which a Court would accept as satisfying beyond all reasonable doubt the requisite that this man was shown to have been the assailant. But when that man identified as he was in a not entirely satisfactory manner, is a man who has made statements such as we find he did make and when his clothing fits in with the clothing which was described by the complainant, although it is common clothing, then coincidental factors together become in the view of the Court very weighty in the scale against the accused. One other factor is the question of the blood on his coat. Blood was found inside his coat. Now he has said that

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these blood spots were the result of the assault on his wife; there was an assault on his wife, and on the Crown case there was blood flowing as a result of that assault; we could not say beyond all reasonable doubt that it was not blood from his wife when he assaulted her, if those were the only facts established but when they are combined with other factors it is a circumstance of great suspicion that this man who makes this statement to his wife and to Matilda,
10 this man who is wearing a coat and a hat similar to those seen by the complainant, this man who was identified - albeit not quite satisfactorily - by the complainant, should have blood spots on the inside of his coat. By itself this would not weigh much in the scale but taken with the other facts it goes to indicate a further coincidence tending to point him out as the assailant. The blood which was inside his coat might possibly have got there through the assault on his wife although it is very difficult to appreciate
20 how it could have got there during an assault such as described by him; he says that he hit her and she fell down on him towards him and on to him. How the blood got inside the coat in those circumstances is difficult to imagine; it is more probable, though one cannot say with certainty, that the blood that was inside his coat could have got there if he was the man who assaulted the complainant, the second of the two men who assaulted her. The complainant has told us she was menstruating at the time. The second man who
30 assaulted her was too tall to have intercourse with her and he as I said satisfied himself against her stomach, standing up. It is very possible that his

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coat, then open, might come into contact with the private parts of this woman who was menstruating at the time. That seems a more probable explanation of the blood than the explanation given by him as to how it got there when he assaulted his wife and she fell against him. But as I say, one has not got to find in these matters that each of the aspects is established beyond reasonable doubt; one takes all the factors into consideration, weighs them all and sees whether, considering all those factors, a particular fact is then established beyond reasonable doubt. The blood, the statement to Matilda and his wife, the identification such as it was the fact (which cannot be taken too strongly but still is a further fact) that a witness who was available to him was not called, a witness who could have contradicted the whole of Mathilda's evidence the demeanour of the witnesses, and all the general circumstances, have satisfied all the members of this Court that No.1 accused was one of the assailants who criminally assaulted the complainant on the 12th September, and that he was the man who performed the second act, that is the man who she says assaulted her sexually on the second occasion satisfying himself against her stomach; he did not actually penetrate this woman.

The second accused's case must also be considered in the same way. Now as I said in the case of No.1 accused the identification by the complainant is an identification upon which no Court of law in my view could act, standing by itself. That is an identification which in the case of No.1 accused has been so strongly fortified by the other coincidental of factors, /such.....

such as the story of Mathilda, the clothes and the other factors I mentioned. It was still an identification which could be weighed and taken into consideration. But the fact that one could find that in the case of No.1 accused the identification was fortified by other factors does not mean of course that the identification thus fortified in the case of No.2 In the case of No.2 accused it has to be reconsidered all over again. It may have been shown that complainant did pick out the right man in No.1 accused when she saw him in the office; but she might still be making a mistake in the case of No.2 accused. Now she is positive that he is the man she first saw and who held the revolver. Now in his case the only additional factor with which we were left was that a pair of underpants which he was wearing when he was arrested had blood on them. He is not a friend, he says, of No.1 although he says he knows No.1, and No.1 says he is not a particular friend; he lives nearby, very near No.1. He has given evidence of an alibi during the vital hours; he has said he was at the room of an uncle at the staff Mess at the Westrand Mine, his uncle being a cook there. He also made a statement originally to the Police, an exculpatory statement where he was that night and what he did and he has given evidence. Having watched him in the box, having had his statement put to him and having considered the matter we have found that he is an unsatisfactory witness. He certainly does not always tell the truth; but of course one realises he also is in a difficult position here charged with a serious crime; but he certainly was far from being a satisfactory witness.

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He has given an explanation as to how the blood came on his underpants; he has said that he had slept with his girl friend as he calls her, that night and that she was menstruating. Without any support for his statement I would hesitate long before I accepted his evidence as proving anything.

The Court decided to call the uncle - he was not called by the defence - and the uncle has said that he was there that night. I may say at once that the uncle's
10 evidence also was not very impressive. It may be that he is telling the truth, and that he was having difficulty in recollecting, but he was not an impressive witness, and his evidence conflicted in important detail with the evidence of accused No.2 himself as to when the latter got there and what he was doing. For instance the uncle said that the accused No.2. came there went sound asleep and had to be woken up at 7.30 p.m. to see some friends. The accused on the other hand said that he was sitting there talking to
20 people, some of them went on duty, and when they went on duty he continued to sit there until some other friends came. The story was not a convincing story, but there it is. We would have to be satisfied that this story is not reasonably possibly true, and the Court having considered the matter feels that it cannot say just that in the case of No.2 accused. It may well be that the complainant's identification is correct; she is positive he was the man but the Court is faced with the fact that there is evidence of another witness
30 called by the Court that the accused could not have been there; there is no supporting factor except for this blood on his underpants and the fact that he gave
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unsatisfactory evidence, and I think untrue evidence in certain respects. There is nothing else which can be in any way used to fortify or confirm the identification which as I said is an identification which cannot stand by itself. In all the circumstances accused No.2 must be given the benefit of doubt and he must be found not guilty.

The verdict of the court is accordingly that No.1 accused is guilty as charged. No.2 accused is found
10 not guilty and discharged.

MR. PHILLIPS ADDRESSES THE COURT/--

HIS LORDSHIP: Have you any idea of his age?

MR. PHILLIPS: My Lord he says he is 36 but to me looks older. To me he looks as if he is 50 I would say.

- S E N T E N C E -

F. WILLIAMSON, J:- You have been found guilty of a very serious crime and although you did not actually penetrate this woman yourself, you are guilty of rape because you assisted another man. You held a revolver over this woman while another man had full intercourse with her. You then performed a filthy act yourself on this woman and satisfied your lust against her body; your crime is one for which the supreme penalty could be demanded by the law. I am however, taking into consideration the factor that you are guilty of rape because of being an associate with a man who actually did rape. It is very fortunate also that this woman who went through this dreadful experience at the hands of you and your associate whoever he was,

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seems happily to have recovered from this horror she through. In all the circumstances I have decided not to impose the supreme penalty. You are sentenced to 12 years I.C.L. and six strokes.

MR. PHILLIPS APPLIES FOR LEAVE TO APPEAL.

Counsel for Crown opposes
application.

I will give my decision tomorrow
morning at 10 o'clock.
