



Photo by Karen Hurt, SPEAK Magazine

RAPE IS A CRIME OF VIOLENCE

Every day there are at least four rape cases in the magistrate's court in Mdantsane in Ciskei. Often, though, it is the woman who seems to be on trial, not the rapist. *Claire Keeton* went to one of the cases

Nomsa (not her real name) stands in the witness box with clenched fists. The 13-year-old schoolgirl looks straight ahead and tells the court how she was raped.

With surprising calm, the Standard 5 girl describes the attack. She was coming back from the bus stop on 31 August last year when it was getting dark. She saw two boys near the church. One went away. The other pulled her along by her arm to a deserted bushy area.

Nomsa told him to leave her. She screamed and he took off his jersey to close her mouth. He got on top of her.

"He took out a knife from his pocket and said if I don't take off my panties he will stab me. I refused. He cut me on my thigh and pulled up my skirt. He pulled down my panties and threw them far away.

"He opened my thighs roughly and he raped me. I screamed.

"Then he heard people talking and said I should keep quiet. I did not. I cried. Then Bra Mzi saw him and asked him what he was doing. He ran away. Bra Mzi found me on the ground," Nomsa says.

Bra Mzi - Mzimkulu Mdingi - agrees with what Nomsa says: "I heard a scream," he says.

If a woman or girl is forced to have sex, it is a crime

"I met two other young men and asked them could we run down and see what was taking place. I looked around. A young man ran away and left behind this child. We tried to chase him but he ran faster than us.

"I asked what was taking place and Nomsa said she had been raped."

Madoda Dyonana, the boy accused of raping Nomsa, says she was his girlfriend. He claims she loves him and agreed to have sex.

He says he proposed love to her at a children's party a few weeks earlier and she accepted. He says they held hands.

Nomsa replies: "There was nothing between us. We never held each other's hands."

Dyonana's friend, Simphiwe,

continues on opposite page

RAPE IN MARRIAGE: *still no improvement in the law*

Last year, for the first time in South Africa, a Ciskei court found a man guilty of raping his wife. Now the Ciskei Appeal Court has decided he is not guilty of rape after all

The law in South Africa says a man cannot be found guilty of raping his wife because marriage gives the man the right to have sex with his wife, even if she doesn't want to.

Last year a Ciskei judge found businessman Raymond Ncanywa guilty of raping his wife (see SPEAK June 1992). He said in any "civilised" country, the husband and wife are equal partners with control over their own bodies. This was a breakthrough for women's rights.

But Ncanywa did not accept the court's decision and took his case to a higher court, the Appeal Court. There the judge decided that there is no law in Ciskei which makes it a crime for a man to force his wife to have sex with him.

Reacting to the Appeal Court decision, Deborah

Komose of the ANC Women's League in the Border region says: "It is high time women stand up for their rights. Women and their children are victims of rape in many homes. They have a democratic right to refuse to have sex and not be forced into it."

Nomonde Tokwana of the PAC's Azanian Women's Organisation (AWO) says: "The whole judgement is most humiliating. We in AWO call for its immediate review."

Professor Louise Tager of the Law Review Project in Johannesburg says: "The original conviction was unusual and a good sign. Now the whole thing has suffered a set-back."

She said the law about rape in marriage has not been changed yet because South African women's organisations have not fought hard enough against it. ☉

says it was clear at the party that the two had a relationship. He also says he heard Nomsa agree to sex with Dyonana.

The senior prosecutor (the state lawyer who is bringing the case against Dyonana) accuses *Dyonana and Simphiwe of lying.*

One of the first questions he asks Nomsa is whether she had an affair with Dyonana. "No," she says without hesitating. Asked if the act of sexual intercourse was very painful, Nomsa says yes.

Dyonana says he did not know Nomsa was so young. Asked how he could have left Nomsa behind with three men if he loved her, he said he ran away because he was afraid of being attacked.

The magistrate says: "Nomsa made a report there and then when she saw people had come to rescue her that it was rape. Now would she have done that if she had agreed to sex and was enjoying what was happening to her?" he asks.

He says Nomsa's screams also showed she did not agree to sex. He points out her story was supported by Mdingi. He says there is no way the two of them would have come together to make up evidence.

The prosecutor asks the court

to view the rape in a "serious light" since the crime is very common.

The magistrate finds Dyonana guilty of rape. He sentences him to three years in prison, because Dyonana, who is about 19, is still young.

No MEANS No!

The *Sunday Star* got criticism from several readers for quoting a sentence from a book *Why men don't get enough sex and women, enough love*. The sentence said that often when women said No to sex they meant Yes. All credit to the *Sunday Star* for publishing an apology. The *Sunday Star's* editor says: "We plead guilty to thoughtlessness ... **NO really does mean NO.** Any man who doesn't respect this right and who then forces a woman to have sex with him in the belief she really means Yes is, simply, a rapist."



"She was shocked. She was dizzy and did not sleep so well. She was afraid of that man. Yes, he should go to prison," says Nomsa's mother.

Later that day, Nomsa is back at school. Her mother says Nomsa is glad the court found Dyonana guilty. "She was shocked [after the rape]. She was dizzy and did not sleep so well. She was afraid of that man. Yes, he should go to prison," says Nomsa's mother. ☛