REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A325/2013
DPP REF NO: JAP 2013/0348

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

....
DATE SIGNATURE

In the matter between:

FAKU, MOSES Appellant

And

THE STATE Respondent

J U D G M E N T

MAKUME, J:

[1] The appellant was convicted in the Regional Court Orlando on one count of attempted murder and sentenced to 10 years imprisonment. It is with leave of that court that he appeals against the sentence passed.

[2] The main ground of appeal against sentence seems to be what appears in the appellant's heads of argument namely that the sentence is harsh and not proportionate to the crime committed especially that 10 years imprisonment is the prescribed minimum sentence for the crime of attempted murder where a firearm was used and in any event where the accused person is a third or subsequent offender.

[3] His Lordship Moola AJ in the matter of *S v Mwase and Others* 2011 (2) SACR 462 (FB) at paragraph [26] said that where a court departs from the applicable minimum sentence then such court is at large to impose any sentence it considers appropriate using the applicable minimum sentence as a benchmark.

[4] In the present matter the appellant used a knife. He is a repeat offender. Had he used a firearm. That fact alone would have brought him within the provisions of section 51(2)(l) of the Criminal Law Amendment Act 105 of 1997 read with Schedule 2 Part IV. However, it is my view that a knife is as much lethal as a firearm and the trial court did not err in imposing a sentence of 10 years. The magistrate says the following in passing sentence:

> "*The present offence is one that involves totally unnecessary and brutal violence directed at a defenceless woman something that you have also done in the past.*"

[5] The appellant was convicted of assault on the 24th August 2007 for which he was given a wholly suspended sentence of 3 years suspended for 5 years. The five year period had not as yet expired when he committed the present offence. The magistrate was correct in describing him as a dangerous person who constitutes a danger to the community.

[6] In the present matter the appellant was driven by jealousy. He could not stand the sight of losing the complainant to another man. He chased the complainant and her new lover into a house with a knife. He then proceeded to drag and force the complainant to go with him despite her protestations. She was helpless. The new lover had run away in fear of being injured. The members of the community looked on helplessly as she was pulled along. It had to take some vigilant school children who took some action which saved the complainant but not before she had sustained an ugly stab wound on her chest.

[7] The appellant was not open to the court. He put forward a defence that was laughable despite the solid evidence of three eyewitnesses. He stood by his nonsensical defence.

[8] It was argued on behalf of the appellant that the learned magistrate did not consider the possibility of rehabilitation. Reference was made to the previous non-custodial sentences imposed on the appellant. With respect this argument is untenable. The courts have previously kept the appellant out of

prison with the hope that he would rehabilitate and turn a new leaf. This has not worked for he has repeatedly shown aggression towards women. He has accordingly abused the trust and opportunity he was afforded and should now pay the price.

[9] In *S v Pieters* 1987 (3) SA 717 (A) Botha JA stated at page 734D-F that the decisive question facing a Court of Appeal on sentence was whether it was convinced that the court which had imposed the sentence being adjudicated upon has exercised its discretion to do so unreasonably. If so, the Court of Appeal was entitled to interfere and if not, not. After pointing out at 734G-H that the determination of a specific period of imprisonment in a particular case cannot occur in accordance with any exact, objectively valid standard or measure the learned Judge of Appeal goes on at 734H-I to say that even if the Court of Appeal is of the view that it would have imposed a much lighter sentence it would not be free to interfere if it were not convinced that the court below could not reasonably have imposed the sentence which it determined.

[10] Assault with a dangerous weapon on any person is an appalling and outrageous crime worse still when perpetrated on defenceless persons like a woman as in this matter.

[11] The court *a quo* did consider the personal circumstances of the appellant as sketched out by his attorney and found nothing therein to warrant the imposition of a lighter sentence or a lesser sentence than the 10 years.

He is 42 years of age, single and has no children. He possesses of no property and lives with his aunt. He is self-employed as a recycler of bottles and averages a monthly income of R1 500, 00.

[12] There is accordingly, in my view, nothing special in his personal circumstances deserving that the court below should have shown mercy in passing sentence.

[13] I am satisfied that the trial court committed no misdirection in sentencing the appellant and that it cannot be said that the trial court did not exercise its discretion in sentencing the appellant properly and reasonably.

[14] In the result the appeal is dismissed.

M A MAKUME
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

I concur:

P M MABUSE
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING	17TH MARCH 2014
DATE OF JUDGMENT	20TH MARCH 2014
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