

REPUBLIC OF SOUTH AFRICA



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

DPP REF NO: 10/2/11/1 – 2020/036

CASE NO: SS 094/2020

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


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SIGNATURE

DATE: 6 August 2021

In the matter between:

THE STATE

And

JIYANE, THOKOZANE

ACCUSED

JUDGMENT ON SENTENCE

MUDAU, J;

- [1] The accused has been convicted of various serious offences as set out in my judgment on the merits. The accused was convicted of rape in relation to counts

5, 6, 8, 10, 11, 14, 15, 17, 18, 20, 24, 25, 29, 30, 33, 37 and 38. He was convicted of robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977 in respect of counts 3, 7, 9, 12, 16, 19, 23, 28, 32, and 36. He was also convicted for kidnapping in respect of counts 4 and 35. Finally, he was convicted for fraud in respect of counts 21, 31 And 34. The incidents occurred over a period of approximately six months. The accused, no doubt, is a serial rapist. The matter is before the court for sentencing purposes. I am required to impose appropriate sentences on the accused for all his transgressions.

- [2] It is trite that the determination of an appropriate sentence requires that proper regard be had to the well-known triad of, the crime, the offender, and the interests of society. In *S v Matyityi*,¹ the court stressed the importance of proportionality and balance between the crime, the criminal, and the interests of society. It is important for the court to maintain an appropriate balance between the triad. In *S v Banda and Others*, the court said:

“The elements of the triad contain an equilibrium and a tension. A court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the others. This is not merely a formula, nor a judicial incantation, the mere stating whereof satisfies the requirements. What is necessary is that the Court shall consider, and try and balance evenly, the nature and circumstances of the offence, the characteristics of the offender and his circumstances and the impact of the crime on the community, its welfare and concern. This conception as expounded by the Courts is sound and is incompatible with anything less.”²

- [3] Because of the fact that the accused raped each of the complainants in counts 5 and 6; 10 and 11; 14 and 15; 17 and 18; 24 and 25; 29 and 30; 37 and 38 more than once that includes grievous bodily harm in respect of the complainant in count 29 and 30 , the prescribed sentence in each instance is life imprisonment, unless substantial and compelling circumstances justify a less severe sentence.³

¹ 2011 (1) SACR 40 (SCA).

² 1991 (2) SA 352 (BG) at 355A-C.

³ See s 51(1) of the Criminal Law Amendment Act 105 of 1997, read with Part I of Schedule 2.

In respect of count 33, the complainant was raped once, the minimum prescribed sentence is ten years' imprisonment, in the absence of substantial and compelling circumstances.⁴ Each of the aggravated robbery charges in respect of counts 3, 7, 9, 12, 16, 19, 23, 28, 32, and 36 also attracts a prescribed minimum sentence of 15 years. In determining whether substantial and compelling circumstances exist to justify the imposition of a less severe sentence than that prescribed, all of the factors traditionally taken into account are up for consideration.

- [4] At the hearing of the sentencing procedure, the accused testified in mitigation of sentence. The court also accepted the report prepared by Ms Mazibuko, a probation officer in the employ of the Department of Social Development, who compiled a report regarding the accused and his personal circumstances, which was handed in by consent of the parties. The contents of a report compiled by Lt Colonel Myburgh of the SAPS, attached to the Investigative Psychology Section, Criminal Records and Crime Scene Management, Division Forensic Science Services, was accepted by counsel for the defence and the State. The report was also handed in by consent.
- [5] The accused was born on 10 October 1997 out of wedlock. He was therefore 22 years old when the first offence was committed in October 2019 until March 2020 in relation to the last incident. Currently, he is two months short of his 24th birthday. His father, whom he never met, died when he was very young. Consequently, he was raised by his mother as a single parent. However, he is the youngest of five children from both sides of the family. He left school in grade 10. He has no formal employment history. The accused lived, before his arrest, with his mother and elder brother. The offences that the accused has been convicted of are all serious. Those that stand out, the rapes as well as aggravated charges, as I indicated, are subject to mandatory minimum sentences.
- [6] As indicated in the judgment on merit, the accused put in place a simple, but well-thought-out plan, in which he lured the majority of the victims to secluded places in the veld but in his immediate neighbourhood where he carried out the

⁴ See s 51(2) of the Criminal Law Amendment Act read with Part III of Schedule 2.

rape and robbery offences. To recap, the various female victims, between the period October 2019 and the arrest of the accused in March 2020, were befriended on social media. They were promised employment in either the entertainment or hospitality industry and some met him in pursuit of love relationships. The accused had created a fake profile and used the name and photos of a well-known local television actor, Ney Maps. What stands out in each incidence is the accused's resort to violence or threats in order to force the complainants to comply with his orders. So, when he robbed and raped the complainant in counts 3 to 6, he threatened her with a knife. When he robbed and raped the complainant in counts 7 to 8, he punched her with a clenched fist. She was forced to perform oral sex on him without him wearing a condom and so was the complainant in respect of counts 9 to 11. He compounded her humiliation by raping her whilst on her period after the accused had removed her sanitary pad. The complainant in counts 12 to 15 was assaulted so hard that she bled through her nose and was also choked. The complainant in counts 16 to 18 was not only forced to perform oral sex on the accused, but was raped after the accused's condom broke.

[7] The complainant in counts 19 to 21 was not only choked but poked with a broken glass during the incident. The complainant in counts 22 to 25 was not only forced to perform oral sex on the accused but was also threatened with a broken bottle and choked. The complainant in counts 26 to 31 was punched severely, kicked on her face, stoned, and also threatened with death if she did not comply with his orders. In respect of counts 32 to 34 the complainant was choked and slapped with open hands. She subsequently became pregnant but had to terminate the pregnancy as she could not live her life with the memory of the incident. In respect of counts 35 to 38, the complainant was choked during the incident. An additional aggravating feature is that in all instances, he deprived the complainants of their liberty and held them against their wishes for extensive periods of time.

[8] It is clear from the evidence of the complainants, albeit emanating from the merits before conviction, that the harrowing, degrading and traumatic experiences they were forced to endure at the hands of the accused has had a profound, adverse

emotional effect on all of them. The complainants are still plagued with nightmares. All of them say that what they endured is an experience they will not easily forget. The trauma that they all suffered at the hands of the accused was tangible as they were forced to relive the incidents when they testified. They teared up and cried during the trial. The proceedings were often interrupted to accommodate the complainants in that regard. They were no doubt embarrassed for having fallen victims to the accused's misdeeds. In *S v Chapman*, Mahomed CJ stated:

"Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim."⁵

[9] I must also take into account the interests of the community. In *S v Van Deventer*⁶ the court confirmed that society's 'natural indignation' should be recognised in determining an appropriate sentence. The state introduced a report dated 22 July 2021 by consent of the parties - Exhibit FF from "The Business Standard" which reflects that our country tops the list of 10 countries with the highest rape rates. The figures reflected are astonishing, but not totally surprising. The rate is some 66 196 incidents per 100 000 people. It is common knowledge that society is outraged at the ongoing sexual violation of, in particular, women and children. Society's interests would not be served by a sentence which is disproportionately light having regard to the seriousness of the offences.

[10] As stated by the Supreme Court of Appeal in cases such as *S v Swart*⁷ and *S v Vilakazi*,⁸ serious cases will usually require that retribution and deterrence should come to the fore and that the personal circumstances of the offender, by themselves, will necessarily recede into the background. In *Vilakazi*, the court held, "[o]nce it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in

⁵ 1997 (2) SACR 3 (SCA) at 5B.

⁶ 2011 (1) SACR 238 (SCA) at para [17].

⁷ 2004 (2) SACR 370 (SCA).

⁸ 2009 (1) SACR 552 (SCA).

themselves largely immaterial to what that period should be ..."⁹ This, in my view, is precisely the type of case where the retributive and deterrent purposes of punishment come to the fore, with the accused's personal circumstances fading into the background.

[11] The probation officer, in her report, is of the view that any other sentence is unsuitable but imprisonment in terms of section 276(1)(b) of the CPA. Lieutenant Colonel Myburgh opined that the sophisticated *modus operandi* the accused exhibited indicates that he is high functioning and is capable of being deceptive and manipulative for extended periods of time. She is of the opinion that the accused poses a high-risk of committing acts of violence and sexual violence in the future. She also listed by way of example, numerous cases in this country where persons who had raped before, went back to their nefarious habits of raping and, in some cases, followed by murder upon their release from prison. Significantly, she pointed out that there are currently no rehabilitation programs for serial rapists. She points out that the accused has a very poor prognosis for rehabilitation and would most likely remain a danger to society as long as he lives.

[12] As I indicated, the crimes committed by the accused are extremely serious and were aggravated by his use or threat of violence. The victims were terrorised over a lengthy period of time in each instance. These crimes were not only deliberate but were premeditated. Evidently, he has a propensity for violence, inferred from his repeated conduct in this case. It signals that he is a serious danger to people generally, and women in particular. The accused has shown no remorse for his actions in respect of all the offences he has committed and maintains his innocence in the face of overwhelming evidence against him which includes the recovery, for instance, of the cell phone taken from one of his victims upon arrest.

[13] I accordingly conclude that his chances of rehabilitation are minimal. In my view, the cumulative effect of the personal circumstances of the accused, as weighed

⁹ Vilakazi *supra* at paragraph [58].

against the aggravating factors, do not constitute substantial and compelling circumstances justifying a departure from the prescribed minimum sentence. I am accordingly of the view that there are no substantial and compelling circumstances to deviate from the prescribed sentence. He is a perfect candidate to be removed from society for life.

[14] The accused is sentenced as follows:

Count 4 (kidnapping): five (5) years' imprisonment to run concurrently with the sentence in respect of counts 5 and 6.

Counts 5 and 6: life imprisonment

Count 8: 20 years' imprisonment

Counts 10 and 11: life imprisonment

Counts 14 and 15: life imprisonment

Counts 17 and 18: life imprisonment

Count 20 (rape): 20 years' imprisonment

Count 21 (fraud): one-year imprisonment to run concurrently with the sentence in respect of Count 20.

Counts 24 and 25: life imprisonment

Counts 29 and 30: life imprisonment

Count 31: one (1) year imprisonment to run concurrently with the sentence imposed in respect of Counts 29 and 30

Count 33: 20 years' imprisonment

Count 34 (fraud): one-year imprisonment to run concurrently with the sentence imposed in respect of counts 33.

Count 35 (kidnapping): five (5) years' imprisonment to run concurrently with the sentence imposed in respect of Counts 37 and 38.

Counts 37 and 38: life imprisonment

Counts 3, 7, 9, 12, 16, 19, 23, 28, 32, and 36 (robbery): 15 years' imprisonment for each of the mentioned Counts.

The 15 years' imprisonment in respect of Count 3 is to run concurrently with the life imprisonment sentence in respect of Counts 5 and 6.

The 15 years' imprisonment in respect of Count 7 is to run concurrently with the sentence of 20 years' imprisonment in respect of Count 8.

The 15 years' imprisonment in respect of Count 9 is to run concurrently with the life imprisonment sentence in respect of Counts 10 and 11.

The 15 years' imprisonment in respect of Count 12 is to run concurrently with the life imprisonment sentence in respect of Counts 14 and 15.

The 15 years' imprisonment in respect of Count 16 is to run concurrently with the life imprisonment sentence in respect of Counts 17 and 18.

The 15 years' imprisonment in respect of Count 19 is to run concurrently with the sentence of 20 years' imprisonment in respect of Count 20.

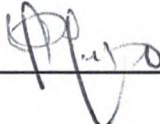
The 15 years' imprisonment in respect of Count 23 is to run concurrently with the life imprisonment sentence in respect of Counts 24 and 25.

The 15 years' imprisonment in respect of Count 28 is to run concurrently with the life imprisonment sentence in respect of Counts 29 and 30.

The 15 years' imprisonment in respect of Count 32 is to run concurrently with the sentence of 20 years' imprisonment in respect of Count 33.

The 15 years' imprisonment in respect of Count 36 is to run concurrently with the life imprisonment sentence in respect of Counts 37 and 38.

In terms of section 103 (1) (g) of the Firearms Control Act, 60 of 2000 the accused is unfit to possess an arm.



T P MUDAU
Judge of the High Court

Date of Hearing: 22 July 2021

Date of Judgment: 6 August 2021

APPEARANCES

For the State: Adv R Barnard

Instructed by: DPP, JHB

For the accused: Adv L Musekwa

Instructed by: Legal Aid South Africa