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NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG NORTH AND SOUTH PROVINCIAL DIVISION)

CASE NO: A 286/2012

DATE: 8 NOVEMBER 2012

In the matter between

KELETSOALETSE MALATJIE

APPELLANT

And

THE STATE

RESPONDENT

JUDGMENT

LI VORSTER (AJ)

[1] The appellant was charged with three counts of rape, Sexual assault, in the Benoni Regional Court. He pleaded not guilty on all counts and was eventually convicted on all counts on 30 September 2011. On 10th November 2011 the appellant was sentenced to life

imprisonment on each count of Rape and five (5) years imprisonment on the count of sexual assault.

[2] The appellant now appeals against his conviction and sentence with leave of the court a quo.

[3] It is common cause that the appellant and the three complainants were inhabitants of a place of safety called Mary Moodley at the time of the alleged offences took place. Mary Moodley is a place of safety where juvenile boys who had been sexually abused by members of their families are kept and treated. It is also clear from the medical evidence contained in the J88 forms which were admitted by agreement between the State and the defendant that all three the complainants had been raped. The sole issue on the merits was the question whether it was appellant who raped the complainants and sexually molested a fourth complainant named L M.

[4] The appellant denied having committed any of the offences he was charged with. He was identified by all the complainants as the perpetrator of the offences. The appellant did not give evidence. His answer to the evidence of the complainants identifying him as the perpetrator of the crimes was that they conspired against him to falsely implicate him. It appears from the evidence of a witness called by the defence, a certain Mr P E Pulomo, that an incident took place when a locker of the appellant was broken into. A complaint was laid by him which resulted in a certain S M, being apprehended and interviewed. M was stated to be a complainant in the case. Presumably, L M, the complainant in respect of count number four (4) was intended. The complainants in respect of counts 1, 2 and 3 are not implicated. It is completely illogical that the complainants in 1, 2 and 3 counts of rape, who were not

alleged to have been involved in the breaking into the locker of the appellant, who had been falsely implicated the appellant in the charges against the appellant as a means to take revenge on the appellant for his implicating them in the locker incident, as all but one of the complainants were not alleged to have been involved in that incident.

[5] In the result in the foregoing I can not disagree with the finding of the court a quo, that the State proved its case against the appellant in all the charges against the appellant, beyond a reasonable doubt. In my view the appeal against conviction cannot succeed.

[6] What remains to be considered is the appeal against sentence. Both the appellant and the Respondent in their respective heads of argument are agreed that the three sentences of life imprisonment on the three counts of rape are excessive given the youthful age of the appellant. It is contended by the appellant, and not disputed by the respondent that the aforesaid sentences in the instant case are shockingly disproportionate and warrants interference by this court. I agree. In my view, a suitable sentence in the instant case would be, in respect of all the sentences on all four counts, eighteen years imprisonment of which six years is conditionally suspended.

[7] Consequently, I make the following order: [7.1] The appeal is dismissed

[7,2] The appeal against sentences is upheld. The sentence of the court a quo is set aside and replaced with the following:

"The appellant is sentenced in respect of counts 1,2,3 and 4 collectively to 18 years of imprisonment of which six years imprisonment is suspended for five years, on condition that the appellant is not found guilty of rape or sexual assault within the period of suspension."

LI VORSTER

ACTING JUDGE IN THE HIGH COURT

I agree;

C PRETORIUS

JUDGE OF THE HIGH COURT