


**IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT)**

Case Number: A723/2013

15/4/2014

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / <b>(NO)</b>	
(2) OF INTEREST TO OTHER JUDGES: YES / <b>(NO)</b>	
(3) REVISED.	
4/4/14 DATE	 SIGNATURE

In the matter between:

**SBUSISO MASEKO**

**APPELLANT**

VS

**THE STATE**

**RESPONDENT**

*Coram:* **RAULINGA J AND BOFILATOS AJ**

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**JUDGMENT**

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BOFILATOS AJ

**INTRODUCTION:**

- [1] The Appellant applied for leave to appeal from the trial court in respect of a conviction on a charge of rape as well as the sentence of 18 years imprisonment. Both the conviction and sentencing occurred on 29<sup>th</sup> November 2011. Leave was granted only in respect of his sentence.

**FACTUAL BACKGROUND:**

- [2] The Appellant was **charged** with a **single** count of rape and, although the trial court found that the Appellant had intercourse with the complainant twice on the evening in question, was convicted "**AS CHARGED**". This much appears from page 73 of the record. The Appellant was sentenced to 18 years imprisonment. The State proved no previous convictions against the Appellant.

**DISCRETIONARY MINIMUM SENTENCE:**

- [3] Rape is an offence under Part III of Schedule 2 of the Criminal Law Amendment Act 105 of 1997. In terms of section 51(2)(b)(i) of the said Act:

*"Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in-*

*(a) .....*

*(b) Part III of Schedule 2, in the case of-*

*(i) a first offender, to imprisonment for a period not less than 10 years;"*

Section 51(2) of Act 105 of 1997 also provides as follows.

*"Provided that the maximum term of imprisonment that a regional court may impose in terms of this subsection shall not exceed the minimum term of imprisonment that it must impose in terms of this subsection by more than 5 years."*

[4] It would appear as though the trial court, by imposing an 18 year imprisonment sentence, was incorrectly applying the sentencing provisions provided for in S 51 (1) read with the offences provided for in Part 1 of Schedule 2 of the Act. The sentence which ought to have been imposed, was one of not more the 15 years imprisonment. This much was, correctly, conceded by the State.


**The following order is made:**

- 1. The Appeal on sentence succeeds;**
- 2. The sentence of the Court a quo is set aside and replaced  
by the following:**

**Count 1: 15 years imprisonment.**

- 3. The sentence is ante-dated to 29<sup>th</sup> November 2011.**


SIGNED AT PRETORIA ON THIS DAY OF APRIL 2014.

  
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BOFILATOS AJ

Acting Judge of the High Court

I agree

  
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RAULINGA J

Judge of the High Court

Appearances:

For Appellant: Adv.: L A Van Wyk

Instructed by: Legal Aid SA

For Respondent: Adv.: Mosethla

Instructed by: The Director of Public Prosecutions