

REPUBLIC OF SOUTH AFRICA

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

CASE NO: A720/2013

DATE: 3 APRIL 2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

JABU GIVEN MANANA

Appellant

and

THE STATE

Respondent

JUDGMENT

KGANYAGO AJ

1] The appellant pleaded guilty on three counts of housebreaking with the intent to rape and rape in the Regional Court, Amersfoort, Mpumalanga.

The appellant was legally represented. The appellant was convicted based on his written plea explanation in terms of section 112(2). For the purpose of sentence, all the three counts were taken together and life imprisonment was imposed.

[2] After his conviction and sentence, the appellant lodged an application for leave to appeal on both conviction and sentence. The trial court granted leave to appeal without specifying whether leave was granted against conviction or sentence or both.

[3] According to the charge sheet, the dates on which and the places where the relevant acts in respect of the three charges were allegedly committed were as follows:-

Count 1 - On the 3rd of October 2010 and at or near Ezamokuhle, Amersfoort, in the district / Regional division of Mpumalanga the appellant did unlawfully and intentionally and with the intent to rape, break open and enter the house of Q[...] BN M[...] where the appellant did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit, Q[...] B[...] N[...] M[...] a 20 year old woman by penetrating her vagina with his penis without her consent.

[4] Count 2 - on the 3rd of October 2010 at or near Amersfoort in the district/regional division of Mpumalanga, the appellant did unlawfully and intentionally and with the intent to rape, break open and enter the house of N[...] M[...] where the appellant did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit, N[...] M[...] a 17 year old girl by penetrating her vagina with his penis without her consent.

[5] Count 3 - On the 14th of April 2011 and at or near Ezamokuhle, Amersfoort in the district/regional division of Mpumalanga, the appellant did unlawfully and intentionally and with intend to rape, break open and enter the house of X[...] H M[...] where the appellant did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit, X[...] H[...] M[...] a 14 year old girl by penetrating her vagina without her consent.

[6] According to the appellant's grounds of appeal, he was not afforded an opportunity to secure a legal representative of his choice. At trial he was told to plead guilty and not waste the court's time as he would be sentenced to life imprisonment. According to the appellant he did not commit the charges that were levelled against him.

[7] Counsel for the appellant conceded during the hearing of the appeal that the appellant in his statement in terms of section 112 (2) has admitted all the elements of the offences, was legally represented and was not forced to plead guilty. Counsel for the appellant further conceded that the appellant has been correctly found guilty and sentenced.

[8] However, counsel for the appellant contends that on count 1 and 2, the appellant should have been found guilty on one count of housebreaking as there was only one entry. Counsel for the respondent conceded that on Count 1 and 2 there was one entry and the appellant should have found guilty of one housebreaking. However, the victim in count 2 was also raped after the appellant had broken into her home and the crime committed in her case was also a housebreaking with the intent to commit rape and rape. The number of actual housebreakings is a purely academic question and of no consequence.

[9] It is common cause that the appellant pleaded guilty to all the three counts of housebreaking with intend to rape and rape. The appellant was legally represented. There is no evidence that his legal representative was

incompetent. The DNA test results linked the appellant to the offences which it is alleged that he had committed. There is no evidence that he was forced to plead guilty

[10] Under the circumstances, in my view the trial court has correctly found him guilty in accordance with his guilty plea.

[11] With regard to sentence, on count 3, the appellant has been convicted of a rape of a girl under the age of 16 years for which the minimum sentence is one of life imprisonment. On counts 1 and 2 the minimum sentence of life imprisonment is not applicable. If the court were to interfere with either of the sentences, it was going to be problematic as the three counts were taken together for purposes of sentence. It would have been preferable to impose a separate sentence on each count.

[12] However, since imprisonment for life was imposed on count 3, any interference with the sentence on the other counts will have no practical effect. There are no substantial and compelling circumstances that warrant the court to deviate from the minimum sentence imposed. The court cannot for flimsy reasons deviate from the prescribed sentence. See *S v Matyityi* [2010] ZASCA 127.

[13] Under the circumstances, the sentence imposed is not shocking or disturbingly inappropriate.

[14] In the result I purpose the following order:-The appeal is dismissed.

M F KGANYAGO

ACTING JUDGE OF THE GAUTENG

HIGH COURT, PRETORIA

I agree

F G PR&LLER

JUDGE OF THE HIGH COURT, PRETORIA