

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

CASE NO: A441/13

DATE: 12 MARCH 2014

In the matter between:

A[...] R[...] R[...]

APPLICANT

And

THE STATE

RESPONDENT

JUDGMENT

MUSHASHA AJ

This is an appeal against the sentence only.

The Appellant was convicted upon a plea of guilty by the Regional Court (Ermelo) on numerous counts of rape, perpetrated against an 11 year old child namely J[...] V[...] namely 2 counts of sexual assault (counts 1 and 6).

- 7 counts of rape (counts 2, 3, 4, 5, 7, 8 & 9);
- 1 count of kidnapping (count 10);
- 1 count of failing to comply with a court order (count 6).

On counts 1 & 6 (sexual assault) the Appellant was sentenced to 12 months imprisonment, both counts

taken as one for purpose of sentence.

On counts 2, 3, 4 & 5 (rape), the Appellant was sentenced to life imprisonment, all counts taken as one for purpose of sentence.

On counts 7, 8 & 9 (rape) the Appellant was also sentenced to life imprisonment, all counts taken as one for purpose of sentence.

On count 10 (kidnapping), the Appellant was sentenced to 5 years imprisonment.

On count 11 (failing to comply with a court order), the Appellant was sentenced to 6 months imprisonment.

The Appellant was convicted on the strength of a written statement handed into court in terms of section 112 (2) of the Criminal Procedure Act 51 of 1977.

From the available evidence, the factual basis upon which the sexual offences were committed may be summarised as follows:

“The Appellant was a step father to the complainant. The relationship between the complainant and her mother, M[...], broke down. The Appellant took advantage of the strained relationship and started to build up a good relationship with the complainant. During the course of the relationship between the Appellant and the complainant the Appellant started perpetrating the sexual acts in counts 1 to 10.

Before dealing with the appropriateness of the sentences it bears mention that Ms Mohammed on behalf of the Respondent submitted in her heads of argument that this appeal is not properly before court in that the trial court advised that the Appellant had an automatic right of appeal. Counsel referred to section 309 (1) (a) of the Criminal Procedure Act 51 of 1977 which brought about an amendment to the procedure. I regard the point as too technical and propose that the appeal be heard.

Another aspect which I believe is worth mentioning is the nature of Section 112 (2) statement tendered on behalf of the Appellant.

There is a considerable weight of authorities that Section 112 (2) statement must be comprehensive to the extent of placing before court how the respective offences were committed. Particularly with respect to the charges wherein a minimum sentencing legislation is applicable.

See: SvB 1991 SACR 405 NPD 405 S v Moya 2004 (2) SACR 257 (W)

S v Kondo 2012 (2) SACR 257 (W)

I am not convinced that the section 112 (2) statement complies with the requirements set out in the authorities quoted above. I will however accept that the total evidence placed before the trial court support the conviction on all the counts. I accordingly find no reason to interfere with the conviction.

It is trite that in an appeal against sentence the appeal court may only interfere where the trial court misdirected itself such that the sentence imposed is disproportionate to the circumstances of the case.

In the present case the following factors may be counted in favour of the Appellant:

- a) The Appellant is a first offender;
- b) The Appellant pleaded guilty on all the counts;
- c) The complainant did not suffer any serious injuries. Neither was there any evidence led pertaining to the complainant's psychological trauma;
- d) The breakdown of good relationship between the complainant and her mother contributed to some extent to the commission of the sexual offences.

I am however not persuaded to conclude that the factors mentioned above individually or collectively considered constitute substantial and compelling circumstances.

See: S v Muller, Ivan Andries case no 25H98/2006 ZAGPTC 51 at page 29.

S v Malgas 2001 (1) SACR 469 (SCA)

On the other hand I find the following aggravating circumstances:

- a) The tender age of the complainant i.e. only 12 years of age;
- b) The Appellant was in relation to the complainant in a position of trust, being her step father;
- c) The Appellant pre-meditated most of the offences and carefully calculated the commission of same over a period of time;
- d) The offences are becoming prevalent in our society.

I cannot agree more with the submission of Ms S Mohammed, counsel for the Respondent that:

“Children are extremely vulnerable and the court have a duty to protect them against abusive

practices and to impose sentences that are retributive and different in effect in order to curb the scourge of sexual violence against children”

Rape in any form remains a serious crime which calls for severe punishment. Regard being heard to all the circumstances of this case. I could not find any compelling substantial circumstances warranting departure from the prescribed minimum sentence in respect of counts 2, 3, 4, 5, 7 & 9.1 accordingly find no reason to interfere with the sentences imposed in respect of all the counts.

In the circumstances, I propose that the appeal against sentence should be dismissed.

In the result I make the following order:

The appeal against sentences imposed on all the counts is dismissed.

M J MUSHASHA

ACTING JUDGE OF THE HIGH COURT

I agree

N V KHUMALO

JUDGE OF THE HIGH COURT