REPUBLIC OF SOUTH AFRICA

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

CASE NO: A824/13
DATE: 28/2/2014

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

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In the matter between

BAFANA BENNY CHAUKE APPELLANT

AND

THE STATE RESPONDENT

JUDGMENT

THULARE AJ

[1] The appellant, then 37 years of age, was convicted and sentenced in Soshanguve, in the Regional Division of Gauteng, in December 2009, on a charge of rape he had committed a year earlier. It is against his sentence of life

imprisonment that he appeals to this Court, after leave was granted by the trial court.

[2] What is available on the record before us shows that the complainant, then a 79 year old female person was attacked during the night in her own home, where she was raped and assaulted by the appellant, who was her neighbour.

[3] The Medical Doctor who examined her on the morning after the night incident, observed multiple abrasions on both the inner and outer lips of her vagina as well as a small fresh tear at the forked fold of the skin at the lower edge of the vagina as well as minor bleeding at that fork fold. These were injuries relating to the act of insertion of the penis into the vagina.
The Medical Doctor also observed abrasions and bruising on the right upper arm, swollen surroundings of and the red left eye,, abrasions on both cheeks and bruising on the left upper arm and hand, bruised lips and chest. These were injuries were evidence of assault.
The complainant was groaning, moaning and shivering at the time of the medical examination.

[4] The appellant was assaulted to subdue her, and also raped. The circumstances indicated that the appellant was so daring that he caused the elder to light up the house for her to see him, and also proudly told her who he was, calculated to belittle and embarrass her.

[5] Age is but a number. However, the number of years of one's lifetime accumulates life skills that positions one to mitigate youthful inadvertence and inexperience. Age gives one insight into life. Generally it is accepted, in our country, that one qualifies to be titled a youth until the age of 35. At 36, when the offence was committed, the appellant was advanced in life. He had fully developed and had reached the age of maturity. He is deemed to have reached the stage of being complete as a human being. I venture to suggest that appellant had reached a point where he should fully account for his actions.

[6] In *S v WV* 2013(1) SACR 204 GNP at page 210 paragraphs 30-32 Legodi J said the following:
"[30] It is when offences of this nature are committed against an innocent and defenceless society, that the society looks to the courts for protection.

[31] It is the kind of sentence which we impose that will drive ordinary members of our society either to have confidence or to lose confidence in the judicial or justice system. The sentences that our courts impose when offences of this nature are committed, should strive to ensure that people are not driven to take the law into their own hands, but rather to scare away would-be offenders.
[32] However, whilst society expects offenders of the serious offences to be appropriately punished when convicted, it is expected that the personal circumstances of each offender should be accorded an appropriate consideration in assessing a balanced sentence to be imposed."

[7] The appellant has one previous conviction of assault for which he was convicted in October 1989, two of assault with intent to do grievous bodily harm for which he was convicted in August 1990 and June 1992 respectively, as well as one of culpable homicide for which he was convicted in September 1992.

[8] All these happened whilst he was still a child. For the first two offences, he was sentenced to corporal punishment. Thereafter he was sentenced to a fine with alternative of imprisonment and for the last previous conviction he was referred to a reformatory school in terms of the then Child Care Act.

[9] In my view, the personal profile of the appellant imposed a duty on the judicial officer invested with the task of sentencing him to ensure that she receives all relevant information pertaining to the appellant, to enable the judicial officer to structure a sentence that will best suit the individual needs and interests of the appellant. In failing to call for a proper diagnosis of the family set-up of the appellant, and his faculties and/or his community influences, through relevant reports from persons with the training, skill, experience and competence beyond an average judicial officer, around intellectual and/or psycho-social challenges of the appellant, the sentencing officer did not strive for the individualization of the appellant. The decision on sentence was arrived at arbitrarily. It is not surprising, in my view, that it is disproportionately harsh. A sentence should, amongst others, promote the rehabilitation of the offender and prioritise reintegration back into the family and community.

[10] The disposition of the appellant from his youth, is a consistent knock for attention, on the door that seems closed and barred. His aptitude calls for his

subjection to some programmes for correction, that only a proper analysis can discern.

I would make the following order:

1. The appeal against sentence is upheld.
2. The order of the Court *a quo* on sentence is set aside and replaced with the following:

"Accused is sentenced to 20 years imprisonment antedated to 15 December 2009."

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DM THULARE
ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

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TJ RAULINGA
JUDGE OF THE HIGH COURT