

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

4/4/2016

CASE NO: A 383/15

Not reportable

Not of interest to other judges

Revised

In the matter between:

ROBERT MATHEBULA

Appellant

and

THE STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] The appellant was convicted on four counts of rape and sentenced to life imprisonment.

[2] The appellant appeals against both the conviction and sentence.

[3] The appellant admitted that he had sexual intercourse with the complainant on four occasions during the evening of 12 April 2008. The appellant alleges that the complainant was his girlfriend and that the sexual intercourse was by consent between the parties.

[4] The complainant denies the appellant's version of events. She testified that she was walking with two of her friends when the appellant grabbed her and forced her to go with him to his room where he raped her four times. He assaulted her during the night and she could only escape the next morning when her father and family members arrived at the appellant's room.

[5] The complainant's version is supported by the evidence of:

- i. N, her friend, who confirmed that the complainant was forcefully taken by the appellant. She further explained that she accompanied the complainant's father the next morning to search for the complainant. They were informed by a certain lady that the complainant was seen in the company of Robert (the appellant) and was directed to Robert's house where they found the complainant. The complainant was crying and her face was swollen;
- ii. Mrs M, who joined the search party the next morning. She testified that upon arriving at the appellant's homestead, the complainant's father called the appellant's name. The appellant emerged dressed in his boxer shorts. The complainant followed him, she was badly beaten and had her clothes in her hands;
- iii. Ms M, who was also a member of the search party, in essence confirmed the version of Mrs M;
- iv. Mr K, the father of the complainant; and
- v. The medical report, which report stated that the complainant was traumatised and crying when she was seen by the doctor. The report indicates various bruises on the complainant's chest, thighs and on her face.

[6] The appellant confirmed his version under oath and called his friend, Makosonki, in support of his version. Although the appellant testified that the complainant had been his girlfriend for approximately seven months at the time of the incident, Makosonki told the court that it was the first time, on the day of the incident, that he saw the complainant.

GROUND OF APPEAL: CONVICTION

[7] The appellant firstly, states that the court *a quo* erred by not treating the evidence of the complainant with the necessary caution. Secondly, the appellant alleges that the evidence of the State was full of contradictions, which contradictions were not properly taken into account by the court *a quo*. Thirdly and according to the

appellant, the injuries indicated on the medical report do not accord with the complainant's version of the assault.

[8] The court *a quo* did apply the cautionary rule to the complainant's evidence.

The following portion of the judgment clearly reflects the aforesaid:

"In assessing the evidence of the complainant the court is mindful that her evidence stands alone in certain respects and that the court will treat her evidence with caution."

[9] The court *a quo* was mindful of the contradictions between the evidence of the complainant and that of the other State witnesses. The court *a quo* after addressing these contradictions came to the following finding:

"These contradictions are however not of a material nature and do not disturb the high quality of her evidence."

[10] In considering the version of the appellant, the court *a quo* had regard to various improbabilities in his version.

[11] Having had regard to the reasons underlying the conviction of the accused, I am of the view that the court *a quo* did not err in any of the instances relied upon by the appellant. The conviction was in line with the evidence in its totality and should stand.

GROUND OF APPEAL: SENTENCE

[12] In the heads of argument filed on behalf of the appellant, the following ground of appeal in respect of sentence is advanced:

"It is submitted that the trial court erred in over-emphasising the seriousness of the offence which the appellant has committed and the interest of society whilst the personal circumstances of the appellant were under-emphasised."

[13] One should bear in mind that the offences the appellant was convicted of falls within the purview of the provisions of Act 105 of 1997, colloquially referred to as the Minimum Sentences Act. The court *a quo* was mindful of the provisions of the Act and after giving careful consideration to all the facts and circumstances of the matter, found that there are no substantial and compelling circumstances justifying the imposition of a lesser sentence than the prescribed sentence of life imprisonment.

[14] I agree.

ORDER

In the premises, I suggest the following order:

The appeal against conviction and sentence is dismissed.

N JANSE VAN NIEWUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree.

D T SKOSANA AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

It is so ordered.

Appearances:

Counsel for the Appellant : Advocate MMP Masete
Instructed by : Legal Aid

Counsel for the state : Advocate Mnisi
Instructed by : The State