

**IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]**

A432/15

Not reportable

Not of interest to other judges

Revised.

29/03/2016

PHINEAS MADALA MKHWANAZI

Appellant

and

THE STATE

Respondent

JUDGMENT

SKOSANA AJ

[1] This is an appeal against the judgment of the learned Magistrate, Mr Wilken wherein he convicted the appellant of rape and sentenced him to life imprisonment and ordered that his name be entered into the Register of sexual offenders in terms of section 50(2)(a) of Act 32 of 2007. The appeal is against both conviction and the sentence.

(2) The accused was convicted of rape of one S. M., an 11 year old girl during April 2010. The appellant was 43 years of age at that time.

(3) The testimony of the principal of T. Primary School was adduced to the effect that

the complainant had on 13 April 2010 reported to him that her step father, the appellant, had sexually abused her more than once. The principal met the mother of the complainant who appeared to him to be not in a good mental condition and did not take the matter serious enough.

(4) The principal assisted the complainant to open a case at the police station after she had been taken to the clinic.

(5) The testimony of the complainant was to the effect that the appellant was her step father by virtue of him being in a love relationship with her mother. Her mother was not in a good mental condition as she could not even recognize the difference between monetary notes and coins.

(6) During the April school holidays, she was visiting her mother as she was staying with her aunt. Her mother was staying in a one room house in the village of Daantjie in Mpumalanga. When she got into that house, she found the appellant bathing and as she was turning around to leave the room the accused pulled her, threw her on the bed, took off her clothes and penetrated her. Her mother was outside the room sweeping the yard and the appellant kept on peeping through the window during the rape.

(7) The appellant inserted a toilet paper into her mouth in order to avoid her screaming. The appellant was already naked when the complainant entered that room.

(8) After the rape she left the place without telling her mother and did not tell her aunt, the reasons being that her mother was mentally unstable and her aunty was a cheeky person.

(9) The second occasion happened when her mother sent her over to the homestead of the appellant to fetch mangoes and soup. She found the appellant at his house who asked her to help him clean the house. Later the accused pushed her into his bedroom and, after inserting R10 into her trouser's pocket, threw her onto the bed, undressed her and penetrated her. She testified that the first person she told of the incident of rape was her principal after realizing that her teacher, Ms Twala had noticed her changed

behaviour. She was also suffering from a painful bladder.

(10) The short testimony of the complainant's aunt, Ms Thandi Khambule merely confirmed that the appellant had a love relationship with the complainant's mother which had started about 6 months before the incident. The relationship was not an official one. She also confirmed that the complainant's mom later moved on to live in a room. The complainant only told her of the incidents of rape at the police station and apparently only of the second incident which took place at the appellant's home stead.

(11) The accused testified that he knew the complainant only by sight as he saw her only when she was passing by their homestead. He also denied that he had a love relationship with the complainant's mother, but merely tried to assist them by providing them with soup and potatoes. In cross examination, the appellant could not explain why he had stated that he had never met the complainant when it was clear that he knew her. He also could not explain why the complainant decided to implicate him with such a serious offence if all he had done was to try and alleviate her family's poverty. It was even not pertinently put to the complainant's aunt that the appellant never had a love relationship with the complainant's mother.

(12) When one takes into account the above summary of facts, it is clear that the appellant knew the complainant's mother and had a relationship with her. The mention of the soup and potatoes that the accused gave to the complainant also coincide with the evidence of the complainant that she had gone to fetch some soup and mangoes from the appellant's homestead when the second incident of rape occurred. The only thing that the appellant denies is the aspect of the rape and not the meeting with the complainant on that day at his homestead.

(13) The complainant gave details of the two incidents of rape including the circumstances at the two different places where they occurred. As the magistrate commented, it was beyond her age to be able to plan such details. Moreover, very little was done to challenge the detailed version of the complainant.

(14) In the circumstances, it is my view that the appellant was correctly found guilty. There are also no substantial and compelling reasons for having imposed a lesser

sentence than the compulsory one, being life imprisonment. The learned magistrate was also obliged to order that the appellant's name be entered into the Register of sexual offenders as he did.

(15) In the premises, I suggest that the appeal be dismissed.

DT SKOSANA

Acting Judge of the High Court

I concur and it is so ordered

N JANSE VAN NIEWENHUIZEN

Judge of the High Court