



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED ~

31/5/2016

DATE

SIGNATURE

CASE NO: A687/2015

In the matter between:

DANIËL MANDLA NHLEKO

AND

THE STATE

3/6/2016

Appellant

Respondent

JUDGMENT

L I VORSTER AJ

- [1] The appellant was convicted and sentenced in the Mpumalanga Regional Court held at Secunda on six counts: —

- [1.1] Murder;
- [1.2] Rape;
- [1.3] Rape;
- [1.4] Kidnapping;
- [1.5] Assault; and
- [1.6] Assault.

- [2] The appellant was sentenced as follows: —

- Count 1: 15 year's imprisonment.
- Counts 2 and 3: Life imprisonment.
- Count 4: Three years imprisonment.
- Count 5: Six months imprisonment.
- Count 6: Six months imprisonment.

- [3] The appellant appeals against his convictions and sentences.

- [4] The incidents when the offences took place all happened during the night of 25 December 2004 at a place called Afghanistan in Kinross Location.

- [5] The appellant pleaded not guilty to all the counts. In his plea explanation he made the following admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977: —
- [5.1.] The appellant admitted that he stabbed the deceased in count 1 with a knife twice.
- [5.2] The appellant admitted that he had sexual intercourse with Sussie Shabangu, the complainant in counts 2 and 3.
- [6] The incidents all happened when the appellant and his friend met Sussie Shabangu and her boyfriend Alroy Beukes. Celeste Nathan, the complainant in count 6 was also there and also some other people.
- [7] The State called Sussie Shabangu to testify about the rape charges (counts 2 and 3), Celeste Nathan about the assault (count 6). Sussie Shabangu also testified about the kidnapping (count 4) and assault on her (count 5). Danie Masilela was called as a corroborating witness who saw what took place at the tavern where the confrontation between the appellant and the deceased took place, as well as Warrant Officer Banda who arrested the appellant. The appellant also testified.
- [8] The Magistrate analysed all the evidence and in a detailed and well considered judgment accepted the evidence of the complainants and rejected the evidence of the appellant as false. I agree with the conclusions of the Magistrate on the

evidence. The complainants in the rape counts and assault counts were all corroborated in all material respects by Sabelo Ngema, Sergeant Banda, Alister Nathan and Evelyn Nhleko.

- [9] In argument before us the appellant raised two points which need to be addressed separately. The first relates to the count 1 (murder) and the second relates to count 4 (kidnapping) and counts 2 and 3 (rape).
- [10] As far as count 1 (murder) is concerned, the point raised is that, whilst the appellant admitted that he stabbed the deceased with a knife twice, it does not follow that the deceased died as a result of those two stab wounds. The second point is that the kidnapping charge (count 4) is a duplication of the rape charges (counts 2 and 3). I deal with those points below.
- [11] In the J88 report, which was handed in by agreement, the cause of death was described as multiple wounds and a head injury. The Magistrate concluded that not only two but all the stab wounds were inflicted by the appellant. The conclusion is an inference which is based on the fact that, immediately after appellant left the deceased, he was lying on the ground and the ambulance arrived. There was the no intervening opportunity for another person inflicting wounds on the deceased. I agree with that conclusion. It follows as a matter of logic that the appellant inflicted more than the two stab wounds he was prepared to admit.

- [12] As far as the merits are concerned, the question of splitting of charges in respect of count 3 and 4 remains. This point was not argued or denied by the Magistrate.
- [13] The elements of the rape charge is simply to have intercourse with the victim against her will. The elements of kidnapping is to deprive the victim of freedom of movement. In this case the complainant in counts 3 and 4 was dragged by the appellant from the scene where the murder was committed for a distance to the place where he raped her. When raping her, he also deprived her from freedom of movement, but that deprivation was incidental to his intention to rape her, which is a different offence. Consequently, I find that there was not a duplication of offences.
- [14] As far as sentence is concerned, the Magistrate considered the personal circumstances of the appellant, which were all covered in a pre-sentencing report, the fact that he had previous convictions, the seriousness of the convictions, the prescribed minimum sentences and the question of substantial and compelling circumstances. The court could find no substantial and compelling circumstances and imposed the prescribed minimum sentences. I find no irregularity in the reasoning of the Magistrate or the imposed sentences shockingly harsh. Consequently, there is no merit in the appeal against the sentences.
- [15] In the result, the appeal against convictions and sentence must be dismissed.
- [16] I make the following order: —

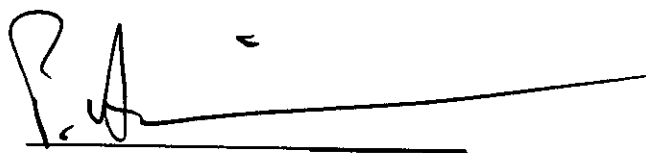
Order

1. The appeal against the convictions and sentences is dismissed.
2. The convictions and sentences of the court *a quo* are confirmed.



**L I VORSTER AJ
JUDGE OF THE HIGH COURT**

I agree and it is so ordered



**P VAN NIEKERK AJ
JUDGE OF THE HIGH COURT**

*For the appellant Advocate H. Steynberg (082 734 6631)
Instructed by Legal Aid South Africa*

*For the Respondent Advocate A Rossouw (084 294 7901)
Instructed by The Director of Public Prosecutions*