

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

REPUBLIC OF SOUTH AFRICA

CASE NO: A 718/2015



28/10/2016

DELETE WHICHEVER IS NOT APPLICABLE

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

28.10.2016

DATE

SIGNATURE

In the matter between:

THOMAS RALETLAKA

Appellant

and

THE STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] The appellant was convicted on seven counts of rape, one count of theft, one count of assault with intent to cause grievous bodily harm and a count of kidnapping.
- [2] He was sentenced to life imprisonment in respect of the seven counts of rape, to 12 months imprisonment on the theft charge, to 3 months imprisonment on the assault charge and to 5 years imprisonment on the kidnapping charge.
- [3] This appeal is in terms of section 10 of the Judicial Matters Act, 42 of 2013, which section affords the appellant an automatic right of appeal.

AD CONVICTION

Grounds of Appeal

- [4] The complainant, a 47 year old lady, testified that she was abducted by the appellant on 5 August 2013. From 5 August 2013 until 8 August 2013, the date of her escape, the appellant raped and assaulted her on several occasions. She also testified that the appellant stole some of her personal and business items.
- [5] The appellant denied these allegations and testified that he only had sexual intercourse with the complainant on the 7th and 8th of August 2013, which intercourse was consensual.
- [6] Although various grounds of appeal were raised in the heads of argument filed on behalf of the appellant, Ms Moloi, to her credit, only persisted with two grounds during argument, to wit:
 - i. the complainant's evidence did not prove rape, and if so,
 - ii. the state only proved six counts of rape.

- [7] The second ground has no merit and may be disposed of first. The evidence of the complainant, in actual fact, proved eight counts of rape. Three on Monday, 5 August 2013, two on Tuesday, 6 August 2013, two on Wednesday, 7 August 2013 and one on the day of her escape being Thursday, 8 August 2013.
- [8] The first ground of appeal is premised on the fact that the complainant merely testified that the appellant raped her and that her evidence did not comply with the definition of rape, to wit the insertion of his penis into her vagina. This ground apparently does not relate to the two counts of rape in which the appellant admitted to have had sexual intercourse with the complainant.
- [9] The question therefore arises whether the court *a quo* misdirected itself in finding the appellant guilty on the remaining five counts of rape.
- [10] The court *a quo* dealt with the question in its judgment as follows:

"Both the parties has addressed me with regard to the provisions of the 5th and 6th August as to whether this Court can convict the accused with regard to the definition in relation to the definition of rape and what the evidence is on record. Now the following factors must be taken into account when making such a decision, one must look at the age of the complainant, she is 46 years old, she is an adult woman. She is married and she has two children.

On the day in question when she testifies in Court she testifies that she was dragged by the accused and then she was ordered to take off her clothes. She does not say that the accused took off his clothes she says that the accused took off his trousers. And she testifies that she was naked, her evidence is to the effect that he took her clothes and he put it in a bag and he walked around with it. On the incidents of the 5th of August after he had taken off his trousers he had her lie down.

She then testifies that he raped her and she talks about him raping her more than once on that night.....One must also take into account the doctor's evidence he said that she reported to him that she was raped by an unknown man several times.

The understanding between herself and the doctor when she said she was raped, the doctor did a vaginal examination.

Now one cannot take away the fact that the complainant is a lay person she does not know the legal definition of rape.

As an adult woman, married, with children experienced with life and life principles as she testified she testified that the accused started on the 5th of August he took off, he made her take off her clothes, he made her lie down, he took off his trousers and then he raped her. The accused himself admits that he had sexual intercourse with the complainant by sexually penetrating her on two counts but he says it was with consent.....These are two adults, again who are experienced and are not children. It is expected from children to testify possibly with anatomically correct dolls if they do not understand the vaginal and anal parts of the mouth and they would actually as I said earlier they would say something to the effect that the accused removed his pants, took out his penis and the children would call it different things, and they would say they placed it in her vaginal area and made up and down movements.

It is not expected of an adult woman to testify like that. When one looks at all these factors and to take into account whether the counts on the 5th and the 6th day of August is problematic or not, I find that the only reasonable inference when looking at the evidence in its totality it cannot be otherwise. It can only be said that the accused sexually penetrated the complainant without her consent with his penis."

[11] The above conclusion reached by the court *a quo* is well reasoned, logical and complies with the dictates of common sense. I could not find any misdirection in this regard.

[12] In the premises, the appeal against conviction stands to be dismissed.

AD SENTENCE

[13] The appeal is directed at the sentence of life imprisonment imposed by the court *a quo* in respect of the seven counts of rape.

[14] Life imprisonment is prescribed in terms of The General Law Amendment Act, 105 of 1997, in circumstances where a victim was raped more than once.

[15] A court may only deviate from the prescribed minimum sentence, in terms of section 51(3), if the court finds substantial and compelling circumstances justifying the imposition of a lesser sentence.

[16] In her heads of arguments, Ms Moloi submitted that the appellant's personal circumstances coupled with the fact that he was incarcerated prior to sentence for 14 months, constituted substantial and compelling circumstances, justifying the imposition of a lesser sentence.

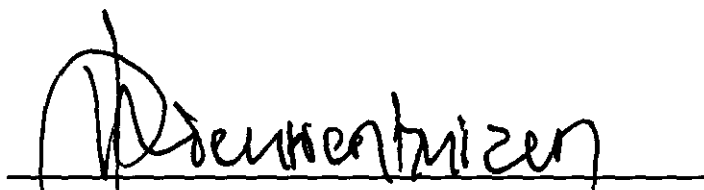
[17] The accused was forty years of age at the time of sentencing. The court *a quo* obtained a pre-sentencing report and properly considered the accused's personal circumstances as evidenced in the report. These circumstances in itself do not, in my view, constitute substantial and compelling circumstances as envisaged in the Act. These circumstances must, in any event, be considered in conjunction with the seriousness of the crime and the interests of the community.

- [18] The court *a quo* also had regard to a victim impact report evidencing the devastating effect the crime had on the complainant, her husband and children. The circumstances under which the crime was committed is, even in a country where the abuse of woman and children are rife, horrific. The complainant was kept naked and tied up for three days and four nights. She was assaulted and raped no less than 8 times during this ordeal.
- [19] It is difficult to comprehend the state of mind of a person who subjects another human being to this kind of treatment.
- [20] Ultimately, the test for an appropriate sentence remains that the sentence imposed must be proportionate to the nature of the offence and the circumstances under which it was committed.
- [21] I am satisfied that no grounds exist to justify an interference with the sentence imposed by the court *a quo* and the appeal against sentence should also fail.

ORDER


In the premises, I propose the following order:

The appeal against conviction and sentence is dismissed.



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

I agree.



P A VAN NIEKERK AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
It is so ordered.

APPEARANCE ON BEHALF OF THE APPELLANT:

Advocate M B Moloi

APPEARANCE ON BEHALF OF THE STATE:

Advocate More

Date of hearing: 24 October 2016

Date of judgment: 28 October 2016