IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

CASE NO: 548/2013

Reportable

In the matter between:

MDT **Appellant**

and

THE STATE **Respondent**

Neutral Citation: *MDT v S* (548/2013) [2014] ZASCA 15 (20 March 2014).

Coram: NAVSA, SHONGWE & LEACH JJA

Heard: 20 March 2014

Delivered: 20 March 2014

Summary: **Rape by father of 14 year old daughter – minimum sentence imposed by high court – heinousness of crime emphasised – no substantial and compelling circumstances – appeal against sentence dismissed.**

ORDER

On appeal from: The Limpopo High Court (Snyman AJ sitting as court of first instance):

1. The appeal against sentence is dismissed.

JUDGMENT

THE COURT

[1] This is an appeal with the leave of the Limpopo High Court directed against sentence only. The appellant, a then 55 year old man, was convicted of raping his 14 year old daughter during the night of 7 September 2007 and sentenced to life imprisonment in terms of the provisions of s 51(1) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997. Put simply, the court imposed the prescribed minimum sentence. The rape occurred whilst her brother was asleep in the next room. The details of how this occurred are set out in the judgment of the court below and need not be repeated.

[2] What should not be lost sight of is that the appellant had pleaded not guilty and had put his two children through the trauma of testifying in a trial. For his daughter, this meant reliving a nightmarish experience.

[3] The appellant was entirely without remorse and maintained his innocence throughout the trial, stating that he was elsewhere at the time of the alleged offence. He accused his former wife of manipulating his daughter into lodging a false complaint.

[4] The appellant chose not to testify in mitigation of sentence. The bases of the appellant's appeal against his sentence as set out in the notice of appeal are as follows:

(a) The sentence of life imprisonment for the offence of rape is shockingly inappropriate and induces a sense of shock;

(b) The court a quo erred by not taking into account that the personal circumstances of the appellant cumulatively constitutes substantial and compelling circumstances;

(c) The court a quo erred by imposing life imprisonment when the rape in question was not the worst kind of rape;

(d) The court a quo erred by imposing the sentence of life imprisonment in light of the appellant being a first offender;

(e) The court a quo erred by not taking into account that the appellant was 55-years of age when he was sentenced to life imprisonment;

(f) The sentence of life imprisonment is disproportionate to the offence; and

(g) The court a quo erred by over emphasising the interests of the community.

[5] It is recorded by the court below that counsel for the appellant relied on two aspects, apart from the personal circumstances of the appellant, as constituting substantial and compelling circumstances, namely that the accused was a first offender and that the victim did not sustain any physical injuries. It is necessary to record that although the appellant admitted a previous conviction for assault, that was not held against him by the court below.

[6] In a carefully reasoned and detailed judgment the court below had regard to the fact that the appellant had shown no remorse and that he had elected not to testify. The court had regard to his personal circumstances, the brief particulars of which were tendered from the Bar. The appellant was 55 years old, unemployed and separated from his wife. He has four minor children in respect of which their mother was in receipt of child support grants. Their mother was caring for them. In respect of injuries, the doctor had regard to the fact that the medical evidence indicated that there was a tear in the victim's vagina and to the complainant's testimony that she experienced pain during the rape. The court below correctly regarded the offence as a serious. One can rightly ask what could be considered more heinous than the rape of a child by a father. See the remarks of Cameron JA in *S v Abrahams* 2002 (1) SACR 116 (SCA) paras 17-23.

[7] In remarkably similar circumstances, this court in *S v PB* 2013 (2) SACR 533 (SCA), after stressing that a prescribed minimum sentence cannot be departed from lightly or for flimsy reasons, refused to interfere with a prescribed sentence of life imprisonment imposed on a father who had raped his 12 year old daughter. While this can only serve as a guideline, it emphasises the necessity to impose heavy sentences in cases such as the present, to prevent young girls from being abused. Before us counsel for the appellant was constrained to concede that child rape is becoming prevalent in Limpopo.[1] Indeed, child rape is a national scourge that shames us as a nation.

[8] In imposing punishment for rape relative to the circumstances one is evaluating degrees of heinousness. Furthermore, counsel accepted that the record shows that the court below had carefully considered the appellant's personal circumstances. In short, counsel for the appellant was unable to point to substantial and compelling

[1] For recent cases see *S v MM* 2012 (2) SACR 18 (SCA), *S v SMM* 2013 (2) SACR 292 (SCA), *S v M* 2013 JDR 2747 (SCA).

circumstances justifying a departure from the prescribed minimum sentence. In our view the court below cannot be faulted for imposing life imprisonment. Consequently the appeal against sentence is dismissed.

_____

M S NAVSA

JUDGE OF APPEAL

_____

J B Z SHONGWE

JUDGE OF APPEAL

_____

L E LEACH

JUDGE OF APPEAL

APPEARANCES:

FOR APPELLANTS:	Mr A L Thomu.
	Instructed by
	Thohoyandou Justice Centre, Thohoyandou
	Bloemfontein Justice Centre, Bloemfontein
FOR RESPONDENT:	Mr N R Nekhambele
	Instructed by
	The Director of Public Prosecutions, Thohoyandou
	Director of Public Prosecutions, Bloemfontein