Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: A283/2019

In the matter between:

P V Z Appellant

v

THE STATE Respondent

Court: Justice J Cloete *et* Acting Justice D Thulare

Heard: 8 November 2019

Delivered: 8 November 2019

JUDGMENT

CLOETE J:

[1] The appellant, who was 46 years old at the time, was convicted on 16 February 2017 in the regional court at Vredenburg after pleading guilty to 2 counts of rape. On 25 April 2017 the 2 counts were taken as one for purposes of sentence, and life imprisonment was imposed. Given the sentence, he appeals against its imposition pursuant to his automatic right of appeal in terms of s 309 of the Criminal Procedure Act 51 of 1977.

[2] The victim, who is the appellant's biological daughter, had been shunted between her neglectful parents for some years before she was left to reside with him in 2008 at the age of 10 years. From that time and for the seven year period thereafter, the appellant, on his own admission, perpetrated countless acts of rape upon her by compelling her (it would seem after grooming her) to perform oral sex on him. It was for this reason that the counts were split in two, the first relating to the period when she was under the age of 16 years and the second to the period thereafter.

[3] Although expressing remorse in his plea explanation read out by his legal representative, there is no indication in the record of how the truth came out. Neither the victim nor the appellant testified and, while it may be that his plea of guilty was indicative of remorse, it is equally possible that he had no option but to do so. The latter would be no indication of remorse and the appellant, instead of testifying in mitigation to cast some light on the reason for these heinous crimes, left it to his legal representative to address the trial magistrate *ex parte* in mitigation.

[4] On appeal before us it was argued on his behalf that the trial magistrate erred in finding that no substantial and compelling circumstances existed to justify a deviation from the prescribed minimum of life imprisonment on each count in terms of s 51(1) as read with s 51(3) of the Criminal Law Amendment Act 105 of 1997. It was submitted that these circumstances lay in the following. First, the rapes were not accompanied by violence or threats of violence. Second, the oral rape of the victim *'is not the most severe form of rape'*. Third, the appellant's personal circumstances were otherwise favourable (such as employment and a first offender for convictions of rape).

[5] It was also submitted on the appellant's behalf that the sentence is disproportionate to the offences committed because: (a) he is capable of rehabilitation; (b) he is, as previously mentioned, a so-called first offender for rape; (c) he pleaded guilty and showed remorse; (d) the victim appeared to have forgiven him; and (e) the victim does not seem to have lasting and debilitating effects from the rapes.

[6] In my view, none of the grounds relied upon have any merit. First, there is nothing in the record to indicate that the rapes (of themselves acts of violence of the most degrading kind) were not accompanied by violence, or threats of violence, at any stage throughout that seven year period. In any event, violence or threats only constitute types of abuse. Equally insidious and devastating to the victim are intentional grooming and emotional and psychological abuse. Simply because these do not manifest themselves in the form of physical injury does not necessarily mean that they are less severe or reprehensible. Second, the appellant's otherwise apparently favourable circumstances must necessarily be a neutral factor and recede

into the background when weighed against the gravity of the offences: see *S v Vilakazi* 2009 (1) SACR 552 (SCA) at para [58]. The trial magistrate's finding that no substantial and compelling circumstances existed cannot be faulted. Indeed, not even the appellant's legal representative suggested during the trial that any existed.

[7] Ultimately therefore, it is a question of whether or not the sentence imposed is disproportionate to the deserts of the appellant: see *S v Malgas* 2001 (1) SACR 469 (SCA) at paras [22] to [25]; *S v Dodo* 2001 (1) SACR 594 (CC) at para [40]; and *Vilakazi supra* at para [18]. This involves a consideration of all the circumstances of the particular case.

[8] There is nothing to indicate that the appellant is indeed capable of rehabilitation, other than the submission made by his legal representative that since his incarceration he has found religion. This is an individual who had no compunction in repeatedly raping his vulnerable daughter over an extended period of seven years, apparently without detection. Without more, it does not bode well for him that he has a realistic prospect of being fully rehabilitated. In addition, while technically a first offender for rape, the crimes were committed over the period and in the circumstances already mentioned. The appellant most certainly did not commit a single act of rape. I have already dealt with the fact that there is no compelling evidence of true remorse.

[9] The submissions made on his behalf that the victim appears to have forgiven him, and has suffered no lasting effects, are contrary to the evidence of the social worker who compiled the victim impact report as well as the victim's own impact statement.

These established that the victim experienced fear, heartache, confusion and shame throughout most of her formative years. She has embraced religion in an attempt to deal with her feelings of shame and self-blame, which are so severe that they are exacerbated merely by her encountering anything associated with the appellant's former employment.

[10] She blames herself for the fact that he has lost both his job and his home. The psychological scarring of the victim is furthermore evidenced by the facts that she does not seem to blame him for having lost her home as well; has never experienced a healthy father-daughter relationship; was robbed of her innocence and childhood; and fears a repetition of what she endured in any future relationship. All these are strong indications of permanent scarring which this young girl will carry with her for the rest of her life. It is her life sentence. In these circumstances I am entirely unpersuaded that the sentence imposed was disproportionate.

[11] **I thus propose the following order:**

'The appellant's appeal against his sentence of life imprisonment is dismissed.'

J I CLOETE

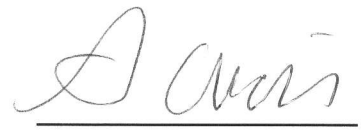
THULARE AJ:

I agree.

D THULARE

CLOETE J:

It is so ordered.



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