

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case No: SS99/2011

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.
DATE: 10 May 2022

In the matter between:

RAMULIFHO, NTANGANEDZENI VULEDZANI

Applicant

and

THE STATE

Respondent

JUDGMENT

WILSON AJ:

1 The applicant, Mr. Ramulifho, seeks leave to appeal against his convictions on 40 counts of rape, kidnapping, robbery and extortion. The substrate of the convictions is that Mr. Ramulifho posed as a minibus taxi driver to abduct, rob and extort twelve women between September and December 2010. He was found to have raped seven of the women he abducted. A further conviction, for escaping from lawful custody, is not appealed against.

2 My brother Pandya AJ convicted Mr. Ramulifho on each count on 10 April 2013. On 12 June 2013, Pandya AJ sentenced Mr. Ramulifho to three terms of life imprisonment plus thirty years' direct imprisonment. Although Pandya AJ did not direct that the life terms and the thirty-year term were to run concurrently, the net effect of the sentence imposed is that Mr. Ramulifho will serve one term of life imprisonment. This is because section 39 (2) (a) (i) of the Correctional Services Act 111 of 1998 states that any determinate sentence of incarceration runs concurrently with a life sentence. In addition, the effect of section 39 (2) (a) (ii) of the Act is that a

person sentenced to two or more life terms serves those terms concurrently (see also *S v Mahlatsi* 2013 (2) SACR 625 (GNP) at paragraph 21).

3 The transcriptions of Pandya AJ's judgments on conviction and sentence are not always accurate or consistent in their references to the counts on the indictment. For the purposes of this judgment, I take as authoritative Pandya AJ's typed summary of his convictions and sentences, which is attached to the inside back cover of the court file. That summary is annexed to this judgment. For obvious reasons, I have redacted the complainants' names.

The convictions

4 The evidence against Mr. Ramulifho consisted, in the main, of the complainants' eyewitness testimony. Each identified Mr. Ramulifho as their assailant. Some picked Mr. Ramulifho out of an identity parade. The State also relied upon striking similarities in the way each of the offences was committed. Although each of the eyewitnesses was a single witness to the events they narrated, Pandya AJ applied the relevant cautionary rules, and was satisfied that their evidence should be accepted.

5 Mr. Ramulifho's sole challenge to the State's case was that he had been wrongly identified as having participated in each woman's kidnapping, robbery, extortion and rape. Much of that defence boiled down to the proposition that he was the only person with an identifying scar on his face to have been put in the various parades, and that, on each occasion, the investigating officer must have told the witnesses to pick out the man with the scar.

6 It was argued in this application that Pandya AJ was wrong to reject Mr. Ramulifho's explanation for his repeated misidentification. It was suggested that Mr. Ramulifho's contention that each of the women who identified him had either been mistaken or coached was reasonably possibly true.

7 I cannot agree. There was never any factual foundation laid for the proposition that the women who identified Mr. Ramulifho could have been coached. It is no more

than speculation, and fanciful speculation at that. It seeks to press the possibility that there was a co-ordinated effort between several police officers and a number of rape victims to incriminate an innocent man. There would have to be at least some positive evidence to support such a far-reaching claim. I see no such evidence. I do not consider that there is any reasonable prospect that an appeal court will discover it.

8 In a lengthy judgment, Pandya AJ, having seen and heard each witness, carefully considered the circumstances under which each complainant identified Mr. Ramulifho. Not having myself seen and heard the relevant witnesses, I can find no basis on which his conclusions could conceivably be interfered with. It cannot seriously be suggested that an appeal court might find such a basis.

9 It follows that the application for leave to appeal against the convictions must fail.

The sentences

10 On its face, the effective sentence imposed was excessive. Three life terms plus thirty years amounts to an effective sentence of 105 years, assuming that that Mr. Ramulifho is paroled at the first opportunity during each of the life sentences. Were that the net effect of the sentence imposed, I would be inclined to grant leave to appeal.

11 However, as I have already pointed out, the effect of the sentences imposed is in fact that Mr. Ramulifho will serve one life sentence. He will be considered for parole after serving 25 years of it. Unless there is a reasonable prospect that all three of Mr. Ramulifho's life sentences will be set aside, the appeal he contemplates will have no practical effect or result (see, in this respect *S v van Wyk* 1997 (1) SACR 345 (T) at page 363G-J).

12 The question is accordingly whether the imposition of the life sentences was disproportionate or otherwise inappropriate. On the facts of this case, there is no reason to think so. Having regard to the conduct found proved, the life sentences

were clearly proportionate. These were vile crimes. There can be few more aggravated examples of kidnapping and rape. Pandya AJ was in any event required, in terms of section 51 (1) of the Criminal Law Amendment Act 105 of 1997, to sentence Mr. Ramulifho to life imprisonment on each of the rape counts for which he imposed that sentence, unless substantial and compelling circumstances justified a lesser term. Pandya AJ found no such circumstances, and none were identified before me. There can, accordingly, be no prospect that a court of appeal will set aside the life sentences on that score.

13 It was finally suggested that Pandya AJ incorrectly imposed a life sentence for the rape of JM, who was raped once on 21 November 2010. It was argued that Mr. Ramulifho was only an accomplice in that rape. Part 1 of Schedule 2 of the Criminal Law Amendment Act required JM to have been raped twice before a life sentence could be imposed on him as an accomplice.

14 However, the account of JM's rape found proved by Pandya AJ makes clear that Mr. Ramulifho was more than an accomplice. He acted in common purpose with the person who raped JM. Although Pandya AJ did not explicitly conclude that Mr. Ramulifho acted in common purpose with JM's assailant, his factual findings yield no other result. Mr. Ramulifho was found to have driven the taxi in which the rape was committed, to have assisted in kidnapping and detaining JM before she was raped, and to have said, in the midst of the rape, that JM should not fight her rapist but help him. These facts lead inexorably to the conclusion that he acted in common purpose with JM's assailant.

15 For all these reasons, I see no basis on which any of the three life sentences imposed could be overturned on appeal. That being so, and, having regard to the provisions of the Correctional Services Act to which I have adverted, an appeal against sentence would have no practical effect or result.

16 The application for leave to appeal against sentence must accordingly fail.

Order

17 In these circumstances, the application for leave to appeal is dismissed.

S D J WILSON

Acting Judge of the High Court

HEARD ON: 12 April 2022

DECIDED ON: 10 May 2022

For the Applicant: S Simpson
Instructed by Legal Aid South Africa

For the Respondent: N E Gcingca
Instructed by the National Prosecuting Authority