

REPUBLIC OF SOUTH AFRICA



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

CASE NO: A62/2022

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: No



SIGNATURE

02 May 2023
DATE

In the matter between:

SHABANGU, PATRICK

APPLICANT

and

THE STATE

RESPONDENT

Neutral Citation: *Patrick v The State* (Case No. A62/2022) [2023] ZAGPJHC 423 (2 May 2023)

JUDGMENT

YACOOB J:

1. The appellant was charged and convicted in the Regional Court, Johannesburg, of having raped the complainant multiple times, in accordance with section 51(1) of Act 105 of 1997. He was also charged with one count of kidnapping, but was acquitted. In respect of the rape charge, the appellant was sentenced to life imprisonment as a result of him having been found to have raped the complainant multiple times on the evening in question. He approaches this court in exercise of his right of automatic appeal. He appeals both conviction and sentence.
2. The grounds on which the appellant bases his appeal against conviction are:
 - 2.1. The complainant failed to check whether the door was locked during what she testified was a long lasting ordeal, this was inconsistent with her version that the appellant raped her.
 - 2.2. The complainant's testimony that she screamed and nobody heard her because there was noise/ music was improbable.
 - 2.3. The complainant exaggerated her injuries, and some of her injuries could have been due to her not having engaged in sexual activity for over twenty years and to her being peri-menopausal.
3. As far as sentence is concerned, the prescribed minimum sentence was imposed. However it was submitted for the appellant that a life sentence was not suitable as the appellant's personal circumstances were not taken into account, to wit, that he was a first offender, that he had been detained awaiting trial for over a year, and that he had a child to support. It was submitted that in certain contexts even ordinary circumstances can when combined, amount to substantial and compelling circumstances which justify a deviation from the prescribed minimum sentence.
4. The complainant testified that she was a lender and debt collector on behalf of a stokvel, and that the appellant was a person from whom she was attempting to recover an amount of R300. He paid her R100 and asked her to meet him later to obtain the remaining R200. They met later that evening and she went with him to his place to collect the money.
5. When they entered his room at about 9pm, the appellant pushed the complainant onto the bed, forcibly removed at least some of her clothing, and had sexual intercourse with her, without her consent, about four or five times over the course of the night. At

some point he inserted his tongue in her mouth, and she bit his tongue, resulting in some of his blood appearing on her clothing.

6. He allowed her to leave at around 6am the next morning, and she went immediately to report the incident to the police. She was examined by a medical doctor, who gave evidence at the trial, and who confirmed that the fresh injuries to her genitalia were consistent with the complainant having been raped. She further had injuries to her face, neck and arms which is consistent with her version. She also reported the rape to her friend who also testified and confirmed that the complainant told her what had happened.
7. The appellant's version, on the other hand, was that he and the complainant had a friendly relationship as opposed to merely a formal relationship. According to him the complainant required him to have sexual intercourse with her, saying that she would forgive his debt if he did so. He refused to do so and also told her that he was not going to repay the remainder of the money, which is why she reported him to the police. He had run away and she came to his home while he was sleeping and forced him to have intercourse with her. She threatened to send thugs to hurt him. He contended that she could not have been screaming because there are other people in the rooms around him and they would have heard her despite the music playing.
8. Much was made in argument of the fact that the complainant did not attempt to open the door, and discover whether it was locked, until the morning. This, it was suggested, gave the lie to her version, together with the fact that it was a closely populated area and people would have heard her scream. It was put to her that the appellant's room did not have a roof, which she denied, and the appellant testified that his room did have a wooden board as well as plastic as a roof.
9. It is not to be required that a complainant behaves in a manner that is considered reasonable after the fact, in order to be believed.
10. Taking each version as a whole, it is clear that the version of the appellant is entirely unbelievable. Not only did the complainant ask him for sex in order to forgive the debt, she went into his home while he was asleep, woke him up, threatened him, forced him to have sex with her, and then went to the police because she was angry that he refused to have sex with her. This simply does not make sense. It is highly improbable

- that she would report the matter immediately to her friend and to the police if she had succeeded in getting what she had allegedly wanted from the appellant, namely sex.
11. On the other hand, there are no inherent improbabilities in the complainant's version.
12. In my view the magistrate was correct to reject the appellant's version, and to find him guilty.
13. As far as sentence is concerned, I am satisfied that the magistrate did not err in his finding that there are no substantial and compelling circumstances which would justify deviating from the prescribed minimum sentence.
14. As a result, the appeal is dismissed.


S YACOOB

**JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

I agree.


WA KARAM

**ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

For the appellant: Ms Britz, instructed by Legal Aid South Africa

For the State: Mr Mthiyani, of the office of the Director of Public Prosecutions, Johannesburg.

Date of Hearing: 06 February 2023

Date of Judgment: 02 May 2023