

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

CASE NO.: A113/2020

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

NOT REVISED

In the matter between:

S, S.S

Appellant

and

THE STATE

Respondent

NEUTRAL CITATION: *S.S.S vs The State* (Case Number: A113/2020) [2023]

ZAGPJHC 543. 22 May 2023

Delivery: The judgment was delivered electronically through the email to the legal representatives and was uploaded on the caselines on 22 May 2023.

MABESELE J ET KUMALO J

JUDGMENT

KUMALO J

INTRODUCTION

[1] The appellant in this matter was arraigned in the Regional Court for the Division of Gauteng, held at Alexandra, with one count of rape (contravention of

Section 3 read with Section 1, 56, 57, 58, 59, 60 and 61 of the Criminal Law Amendment Act [sexual offences and related matters] 32 of 2007 as amended.

[2] He was convicted as charged and sentenced to life imprisonment. The appellant had an automatic right of appeal due to the fact that he was sentenced to life imprisonment. The appeal is against both conviction and sentence.

[3] The complainant in the matter was the daughter of the appellant. She testified that on or about 1 January 2016 whilst visiting her father and grandmother in Alexandra, the appellant raped her. The appellant is her biological father.

[4] The complainant reported the rape incident at the first opportunity to her paternal grandmother the following morning and the grandmother reprimanded her not to tell anyone about the incident. Complainant was 13 years of age when the incident happened.

[5] After the incident she requested her father to take her back to her foster mother at Bramfisher in SOWETO.

[6] It is common cause that the rape was only reported to the police some 16 months after its occurrence. This was after the complainant had written a letter to her mother informing her about the incident.

[7] Counsel for the appellant in his heads of argument, sought to draw criticism on this aspect of the evidence but conceded at the hearing of the matter, correctly so in my view, that nothing much turns on this aspect.

[8] The complainant had in fact reported the matter at the earliest possible moment the following morning of the occurrence of the incident to her grandmother, the mother of the appellant but was suppressed.

[9] Her foster mother testified that after her return from that particular visit, complainant's behaviour changed. She could not understand what had happened and had even enlisted the help of social workers. It was only after she wrote her the letter informing her of what had happened to her that she came to know about the incident.

[10] The appellant denied the allegations and testified that the complainant did not visit him. The complainant had however testified that on the day in question, her grandmother had a fight about where the complainant would sleep.

[11] She testified that the grandmother wanted her to sleep with her. On the other hand the appellant wanted the complainant to sleep in his room. She was sent to sleep in her father's room where the incident of rape occurred.

[12] Appellant testified that indeed there was an argument between the grandmother and himself but it was not about where the complainant would sleep.

He stated that it was about the clothes that the appellant was supposed to buy for the complainant.

[13] If indeed the complainant did not visit the appellant on the day in question, how would she have known about the argument between her father and grandmother.

[14] The conclusions of the doctor who subsequently examined her were in line with forceful penetration which would suggest rape,

[15] Thus the issue whether the appellant was rightly convicted as charged need not detain this court any further. Counsel for appellant conceded in not so many words at the commencement of his address and sought to argue the sentence only on the basis that there were substantial and compelling circumstances for the court to deviate from the prescribed minimum sentence of life imprisonment.

[16] It is trite that sentence is pre-eminently at the discretion of the trial court. The court of appeal may only interfere with the sentencing discretion of the trial court if it is of the view that it was not judicially exercised. This could be so if the sentence imposed by the trial court is shockingly inappropriate or vitiated by misdirection and irregularities.

[17] In this instance and for the crime that was committed by the Appellant, the legislature ordained a minimum sentence of life imprisonment. The court can only deviate if there are substantial and compelling circumstances to do so.

[18] The court must consider the personal circumstances of the accused, the nature of the offence that has been committed and the interests of society. It must however consider the recognized objectives of sentencing which are prevention, rehabilitation, deterrence and retribution.

[19] The seriousness of the offence, the circumstances under which it was committed and the victim are all relevant factors that must also be considered. The personal circumstances of the accused including his age, education, dependents etc, his previous convictions if any, his employment and other relevant conduct or activities also call for consideration.

[20] An appropriate sentence should also have regard to and serve the interests of society and the protection of its needs and the deterrence of the would-be criminals.

[21] The accused in this matter is convicted of a heinous crime of rape of a 13 - year old girl. More aggravating was the fact that this was not just a stranger to him but his own daughter.

[22] Shortly after the incident, the child developed behavioral issues that did not exist before. The foster mother had to seek help from social workers as she did not comprehend what had happened to her. It was only after the complainant had guts to write her a letter confessing what had happened to her.

[23] Clearly her experience will have a negative lifetime effect on her.

[24] In the circumstances, it is this court's view that the aggravating circumstances far outweigh the mitigating circumstances.

[25] In the result, the following order is made:

1. The appeal against both conviction and sentence is dismissed.

I agree

KUMALO MP J

Judge of the High Court of South Africa
Gauteng Local Division, JHB

MABESELE MM J

Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

Appearances:

Counsel for the Appellant: Adv. Greyling

From the Legal-Aid South Africa

Counsel for the Respondent: Adv Deoraj A

From The National Director of Public Prosecution

Hearing date: 08 May 2023

Delivered: 22 May 2023