



ORIGINAL

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case no.: A82/2023

In the matter between:

SHARLTON RAADT

Appellant

and

THE STATE

Respondent

CORAM: OPPERMAN J *et* LEKHOABA AJ

JUDGMENT BY: LEKHOABA AJ

HEARD ON: 16 OCTOBER 2023

DELIVERED ON: 24 JANUARY 2024

JUDGMENT

Introduction

- [1] The appellant was convicted and sentenced by the Regional Court on two counts of rape on 12 and 17 May 2016 respectively. The rape charges were brought in terms of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Act 32 of 2007, read with the provisions of section 51(1) of the Criminal Law Amendment Act, Act 105 of 1997 ("the Minimum Sentences Act") against the appellant.

- [2] He was sentenced to life imprisonment on each count and in terms of section 51(1) of the Minimum Sentences Act.
- [3] The appellant brings the appeal against the convictions and sentences based on his automatic right of appeal in terms of section 309(1)(a) of the Criminal Procedure Act, Act 51 of 1977.

The grounds of appeal

- [4] Appellant's grounds of appeal against his convictions are that the court *a quo* erred in finding that:
 - a. Despite the absence of DNA, appellant is guilty of the offence;
 - b. Despite that no medical expert testified, the court found him guilty of rape;
 - c. Despite the complainants saying that they did not know appellant, he was still convicted; and
 - d. The court disregarded the evidence of his co-accused, who testified that appellant was not present at the incident of rape.
- [5] Appellant's grounds of appeal against the sentences are that the court *a quo* erred as follows:
 - a. Sentencing the appellant to a harsh and inappropriate sentence;
 - b. Disregarding the evidence in mitigation, in that the appellant is the father to a minor child and the sole breadwinner of the said child;
 - c. Disregarding the period of detention awaiting trial; being almost 3 years.

The convictions

- [6] Counsel for the appellant gave a detailed depiction of the law on the evaluation of the evidence in cases of this nature. He proceeded to depict and assess the evidence and concluded in his heads of argument dated 26 September 2023 at paragraphs 3.1.6 and 3.2.8 that despite his instructions to submit that the convictions should be set aside, he cannot make such submission. Counsel for the State agreed that the convictions are in order and should be confirmed on appeal.

- [7] After careful consideration of the evidence, I cannot fault the concessions. The evidence against the appellant on both counts is strong and the manner in which the presiding officer adjudicated the conspectus of evidence is legally sound. The appeal against the convictions must fail.

The sentences

- [8] Life imprisonment is the ultimate penalty that courts can impose and should not be imposed lightly. In saying this, I am fully aware of and acquainted with the judgments in **S v PB**¹ and **S v Matyityi**² wherein the Supreme Court of Appeal in both judgments warned courts not to depart from prescribed minimum sentences for flimsy reasons.

- [9] In respect of the absence of serious physical injuries, the Supreme Court of Appeal in **S v SMM**³ put its stamp of approval on the interpretation of section 51(3) of the Minimum Sentences Act by the trial judge in **S v Nakawu**:⁴

He [Plasket J] correctly in my view concluded that the proper interpretation of the provision does not preclude a court sentencing for rape to take into consideration the fact that a rape victim has not suffered serious or permanent physical injuries, along with other relevant factors, to arrive at a just and proportionate sentence.

- [10] In **S v Tshabalala and Another**⁵ Mathopo AJ, writing for a unanimous Constitutional Court Bench, remarked as follows:

This scourge has reached alarming proportions in our country. Joint efforts by the courts, society and law-enforcement agencies are required to curb this pandemic. This court would be failing in its duty if it does not send out a clear and unequivocal pronouncement that the South African judiciary is committed to developing and implementing sound and robust legal principles that advance the fight against gender-based violence in order to safeguard the constitutional values of equality, human dignity and safety and security. One such way in which we can do this is to dispose of the misguided and misinformed view that rape is a crime purely about sex. Continuing on this misguided trajectory would implicate this court and courts around this country in the perpetuation of patriarchy and rape culture.

¹ 2013 (2) SACR 533 (SCA) para 20.

² 2011 (1) SACR 40 (SCA) para 23.

³ 2013 (2) SACR 292 (SCA) at para 26.

⁴ 2009 (2) SACR 402 (ECG) at para 15.

⁵ 2020 (2) SACR 38 (CC) para 63.

- [11] No doubt, due to the seriousness of the offences in *casu*, it is required that the elements of retribution and deterrence should come to the fore and that the rehabilitation of the appellant should be accorded a smaller part as emphasised by the Supreme Court of Appeal in **S v Kekana**.⁶ The appellant's personal circumstances have to bow to the interest of society.
- [12] In **S v De Beer**⁷ the Supreme Court of Appeal held as follows:
This court has pointed out on many occasions that injustices may occur if the prescribed minimum sentences are imposed without a proper consideration of the existence of substantial and compelling circumstances, including the question whether the prescribed sentence will be disproportionate to the offence, in the wide sense, in other words, including all the circumstances of not only the offence itself, but also the circumstances of the parties involved.
- [13] The sentence of life imprisonment must be imposed unless, as subsections (3) and (6) provide that there are substantial and compelling circumstances which justify the imposition of a lesser sentence.⁸ The test of what constitutes substantial and compelling circumstances was articulated in **S v Malgas**.⁹ The trite triad of factors as set out in **S v Zinn**¹⁰ also prevails.
- [14] The trial court took into consideration the appellant's personal circumstances that he was 31 years old, passed grade 10 at school, was unmarried with two children (5 and 7 years old), working and earning R600.00 per week as well as his extensive previous convictions.
- [15] The courts have in several cases stated that rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim.

⁶ 2019 (1) SACR 1 (SCA) at paras 39 & 40.

⁷ 2018 (1) SACR 229 (SCA) at para 17.

⁸ Section 51 (3) of Act 105 of 1997 provides that in the absence of any physical injuries that shall not constitute substantial and compelling circumstances.

⁹ 2001 (1) SACR 469 (SCA) at 482 c.

¹⁰ 1969 (2) SA 537 (A).

- [16] The court when sentencing correctly ruled that no compelling and substantial circumstances exist. The argument in mitigation that the appellant was incarcerated awaiting trial for a substantial period of time; 2 years and 5 months does not hold water as compelling and substantial. Due to his previous convictions, it was inevitable, and he was the architect of his own fate here. It is also a reality that the appellant is the father of two minor children. There is however not any evidence that he was the primary caregiver nor the primary breadwinner of these children at the time of the sentencing. This factor may also not be elevated to compelling and substantial on the evidence before court.

Conclusion

- [17] From the evidence adduced in the court below and the factors pointed out in the appeal, there is nothing that indicates that the presiding magistrate did not apply his mind judiciously and with due care. He did not misdirect himself. The convictions and sentences are in accordance with the prevailing legislation and law. There is not any issue that dictates for the interference of this court.

- [18] In result the following is ordered:

ORDER

The appeal is dismissed, and the convictions and sentences imposed by the court *a quo* are confirmed.

I concur.



PP. C LEKHOABA AJ



OPPERMAN J

Counsel for the appellant: Mr. JD Reyneke
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BLOEMFONTEIN

Counsel for the respondent: Mr D. Pretorius
Office of the Director of Public Prosecutions: Free
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