

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION – MAKHANDA)**

Case No: CC 53/2022

In the matter between:

THE STATE

and

XOLISANI MANTSHONGO

Accused

SENTENCE

MALUSI J:

[1] An appropriate sentence must now be imposed after the accused was convicted on four (4) counts of rape and one count of robbery with aggravating circumstances.

[2] In respect of counts 1, 2 and 3 the *provisions of s51 of the Criminal Law Amendment Act 105 of 1997 (the Act)* are not applicable as the accused was a minor at the time of committing those offences. The *provisions of s51(2)(a)* which prescribes a minimum sentence of fifteen (15) years imprisonment find application in count 4 (*robbery*). *S51(2) of the Act* provides for a minimum sentence of ten (10) years' imprisonment for the rape in count 5.

[3] The legal position when considering a sentence for an offence within the ambit of the minimum sentence legislation was correctly described in *S v Malgas* 2001(2) SA 1222 (SCA) at paragraph 8 as '*no longer business as usual*'. The Court is no longer given a clean slate to impose whatever sentence it deems appropriate.

The Court is required to identify and tabulate substantial and compelling circumstances before it may depart from the ordained sentence.

[4] The facts before court indicated that the complainant in counts 4 and 5 recognised the accused on or about January 2021 as the person who had raped and robbed her approximately three (3) years earlier. A comparative *DNA* analysis linked the accused to the rapes in counts 1, 2 and 3. The picture that emerges from all the facts is that the accused prowled the Golf course area in *Fort Beaufort* preying on women that walked alone. He would rape them after threatening them with a knife. If a complainant resisted, he used violence to overcome such resistance as he did with the complainant in count 2.

[5] Save for the rural setting, the facts in this case are awfully similar to those of *S v Chapman*.¹ The court aptly stated the following oft-quoted dictum:

*“The rights to dignity, to privacy, and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilization. Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives”.*²

[6] It has been stated that rape is an appalling and utterly outrageous crime, gaining nothing of worth for the perpetrator and inflicting terrible and horrific suffering and outrage on the victim and her family.³ On another occasion it was described as a repulsive crime, an invasion of the most private and intimate zone of a woman and striking at the core of a person’s dignity.⁴

[7] Robbery, more especially with aggravating circumstances, is likewise a serious offence. The victim is not only dispossessed of her property but endures a

¹ 1997 (3) SA 341 (SCA).

² *Ibid Chapman* at para 4.

³ *S v Nchenche* 2005 (2) SACR 386 (W) at 395 H.

⁴ *S v Vilakazi* 2009 (1) SACR 552 (SCA) at para 13.

psychological trauma, anxiety and distress from being threatened with or infliction of violence. No civilised society, as ours claims to be, can accept or condone this type of offence.

[8] The outrage in society regarding the crisis of epidemic proportions in respect of rape must be acknowledged by the courts. The strong views in society regarding rape must be taken into account in a just and fair sentence. The interests of society require that the weak among us must be protected.

[9] It is not hard to imagine the horror and suffering endured by all the victims in this case. Our courts have long recognised the devastating and deleterious effects of rape on the victims. The complainant in count 2 is reported by the clinical psychologist, Karen Andrews to have suffered serious consequences. She suffered Rape Trauma Syndrome manifesting as shock and traumatic fear for her life. She suffered acute startle reactions, intense headaches, chronic insomnia and intrusive flashbacks of her assault and rape. She suffers from Post-Traumatic Stress Disorder. Her recovery is complicated by the medication she takes for sickle cell anaemia.

[10] The complainant in counts 4 and 5 also suffered Rape Trauma Syndrome. She is plagued by chronic insomnia, nightmares, intrusive thoughts, chronic forgetfulness, depressed and morbid mood. She suffers from Post-Traumatic Stress Disorder. Her family relationships are negatively affected as she struggles to visit her maternal home due to having been attacked on that route.

[11] All the victims were young women ranging in age from 15 years to 34 years. They were each going about everyday routines when they crossed the area where the accused conducted a reign of terror.

[12] The accused is 26 years old. He was a mere 17 years when he committed counts 1 to 3. He is single with no dependants. He dropped out of school in Grade 10 due to drug use. He has no previous convictions. He was a casual, seasonal employee on various farms in *Fort Beaufort*. Until his arrest he stayed with his mother and sister.

[13] *Mr Sojada*, who appeared on behalf of the accused, submitted that viewed cumulatively the following factors amount to substantial and compelling circumstances in counts 4 and 5:

13.1 the accused personal circumstances especially that he is 21 years old;

13.2 his guilty plea manifests accepting responsibility for his action which makes him a candidate for rehabilitation.

[14] *Mr Soga*, who appeared for the state submitted, correctly in my view, that inherent in the accused conduct is disrespect for physical integrity and dignity of women. He subjected his victims to cruel treatment. He had ample opportunity to reflect in between the various incidents but failed to do so.

[15] It has been held that in cases of serious and violent offences the personal circumstances of the accused must recede into the background. The elements of deterrence and retribution must come to the fore. The accused chronological age belies the fact that he led an independent and mature life. There is no evidence of immaturity on his part before court.

[16] His guilty plea is neutral factor. In my view he faced a closed and shut case in that the complainant recognised him and there was forensic DNA evidence to corroborate her.

[17] I have considered whether the discretionary minimum sentence is disproportionate and unjust. In my view these sentences are just and fair in the circumstances of this case. The accused is a serial rapist who is prone to inflict gratuitous violence on his victims. Women and girls need to be protected from him.

[18] Women in this country should be allowed to enjoy their lives without the spectre of the horror of rape and violent crimes hovering over them. The rights of women and children are enshrined in the Constitution. It is the duty of this Court to protect those rights and will shirk from doing so.

[19] The fair and just sentences are the following:

Count 1: Rape

The accused is sentenced to undergo ten (10) years' imprisonment.

Count 2: Rape

The accused is sentenced to undergo ten (10) years' imprisonment.

Count 3: Rape

The accused is sentenced to undergo ten (10) years' imprisonment.

Count 4: Robbery

The accused is sentenced to undergo fifteen (15) years' imprisonment.

Count 5: Rape

The accused is sentenced to undergo ten (10) years' imprisonment.

Sentences in counts 1, 2 and 3 are ordered to run concurrently so that the accused serves an effective term of thirty-five (35) years' imprisonment.

T MALUSI
Judge of the High Court

Appearances:

For the State: Mr Soga *instructed by*
Director of Public Prosecutions
MAKHANDA

For the Accused: Mr Sojada *instructed by*
Legal Aid Board
MAKHANDA

Heard on: 18 & 19 January 2023

Delivered on: 20 January 2023