



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

CASE NO: A119/2020

(1)	REPORTABLE: YES/NO	(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED ✓		
15 FEBRUARY 2021		SIGNATURE	
DATE			

In the matter between:

ISAAC MASWANGANYI

Appellant

and

THE STATE

Respondent

JUDGMENT

BAM J:

1. The appellant was convicted in the Regional Court, Pretoria, on a charge of Robbery with Aggravating Circumstances, and two charges of Rape, and sentenced to 15 years imprisonment on the robbery charge and life imprisonment on each of the two rape charges. The appellant appeals only against sentence. In view of the nature of the sentence, life imprisonment, the appellant enjoys an automatic right of appeal.
2. The complainant was raped by both the appellant and his co-accused, who, in the meantime, has passed away.
3. In view thereof that the complainant was repeatedly raped and robbery in aggravating circumstances, Section 51(1) of the Act on Minimum Sentences Act 105 of 1997, is applicable. It provides for a minimum sentence of 15 years imprisonment for the robbery charge, and in respect of the repeated rape

charges, life imprisonment, unless there exists substantial and compelling circumstances justifying a lesser sentence.

4. The appellant was convicted of serious crimes. The complainant was a passenger in the appellant's taxi. The appellant was accompanied by the former accused 2. *En route* the complainant was held at gunpoint, accosted and robbed by the appellant's passenger, and raped. Thereafter the appellant drove around with the complainant for several hours. During this time the complainant was repeatedly raped by the appellant and the former accused 2. The complainant was defenceless and overpowered by the two perpetrators. She was actually abducted and also subjected to sexual abuse for several hours. The two perpetrators were merciless and showed a total disrespect to the complainant. The emotional effect the incident had on the complainant was devastating. Even after two years, during the trial, according to the Victim Impact Report, the detrimental effect of the crimes committed by the appellant and his fellow perpetrator on the complainant was still noticeable.
5. The trial magistrate correctly referred to the fact that robbery and rape are rife in our country. The crimes in respect of the abuse of women have escalated and have resulted in country-wide campaigns and parliamentary discussions concerning more dedicated actions against such perpetrators. Although the Act on Minimum Sentences provides for life imprisonment when the victim was raped repeatedly, and that such sentences are imposed on a daily rate, it seems, in the experience of our courts that similar crimes are indeed escalating.
6. The appellant relied on his personal circumstances in respect of the question of whether substantial and compelling circumstances justifying lesser sentences than the prescribed minimum sentences existed. They are the following:
 - 6.1 The appellant was 28 years old at the time of the commission of the offences;
 - 6.2 he is a first offender;
 - 6.3 he was not married but has two minor children to maintain;
 - 6.4 he was a taxi driver and did piecemeal jobs.
7. The trial court found that the circumstances referred to above did not amount to such circumstances. We are in agreement with the trial court. The aggravating circumstances were in any event overwhelming.
8. There is no reason to interfere with the sentences imposed by the trial court. However, the order made by the trial court that the sentences should run concurrently is superfluous and not substantiated. It is provided in Section 39(2)(a)(i) of the Correctional Services Act 111 of 1998 Act that any determinate sentence to be served concurrently with a life sentence.

ORDER:

1. The appeal against sentence is dismissed.
2. The sentences imposed by the trial court are confirmed.
3. The order that the sentences should be served concurrently is deleted.


AJ BAM

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION



MB MABUNDA (AJ)
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION

DATE OF HEARING : 01 FEBRUARY 2021

DATE OF JUDGMENT : 15 FEBRUARY 2021

APPEARANCES:

For the Appellant : Mr HL Alberts

For the Respondent : Advocate SD Ngobeni