



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO ☒
(2)	OF INTEREST TO OTHER JUDGES: YES/NO ☒
(3)	REVISED.
<i>28 June 2019</i> DATE	
<i>[Signature]</i> SIGNATURE	

Case No: A22/17

In the matter between:

JAN MELOSI MANTJANE

Appellant

and

THE STATE

Respondent

JUDGMENT

HF JACOBS, AJ:

[1] The appellant was convicted in the Regional Court for contravening section 3 of the Sexual Offences and Related Matters Act, 32 of 2007 read with sections 256, 257 and 281 of the Criminal Procedure Act, 51 of 1977 and the provisions of sections 51 and 52 of Schedule 2 of the Criminal Law Amendment Act, 105 of 1997 read with section 53A of Act 105 of 1997. The appellant received a sentence of life imprisonment for the conviction. This is an appeal in terms of section 10 of the Judicial Matters Amendment Act 42 of 2013 against

the conviction and imposed sentence of life imprisonment. The charge relates to an incident on or about 6 June 2009 near Mamelodi where the appellant unlawfully and intentionally committed an act of sexual penetration with a female person, 11 years old at the time, by penetrating her genitals with his penis without her consent.

[2] The appellant pleaded guilty to the charge. He had legal representation during the trial and sentencing proceedings. Neither the State nor the appellant produced any *viva voce* evidence during the sentencing proceedings. The Regional Magistrate called for the evidence of the doctor who examined the 11 year old child after the incident who also completed the Form J88 on which the observations of the doctor were minuted during the examination. Both the State and the appellant's legal representatives cross-examined the doctor and addressed the Court *a quo* for purposes of sentence. The appellant noted his appeal late and applies for condonation. The lateness of his notice of appeal is the delay in obtaining legal assistance to do so. In my view condonation should be granted.

[3] In his plea explanation in terms of section 112 of the Criminal Procedure Act, the appellant stated that he knew Ms Z and her mother Mrs P. The appellant had an intimate relationship with Mrs P for approximately two months. Mrs P phoned the appellant and invited him to visit her at her home. This happened on 6 June 2009. The appellant went over to Mrs P's home. When he wanted to leave later in the evening Mrs P said he should sleep over and prepared a bed for the three of them, Mrs P, Ms Z and the appellant.

[4] The appellant consumed alcohol during the evening and later during the night he left the bed Mrs P prepared for the three of them to sleep on the floor but later returned to the bed again. The appellant then started fondling Ms Z, got on top of her, forced her legs open, removed her underwear, penetrated her vagina with his penis, ejaculated and slept beside her. Mrs P was asleep next to them at the time. Ms Z later woke Mrs P who went outside to call the neighbours who came over and assaulted the appellant. The appellant managed to run away. Later, while at work, the appellant heard that the police were looking for him. He handed himself over to the police and was arrested.

[5] The Regional Magistrate correctly accepted the plea of guilty and I am convinced that the appellant was rightly convicted.

[6] In his report of the incident the appellant said that he was intoxicated when the incident occurred and so was Mrs P. Both Mrs P and the appellant consumed alcohol earlier in the evening and, according to the report of Ms Z to the author of the victim impact report that served before the sentencing Magistrate, both Mrs P and the appellant returned home that evening quite intoxicated. That explains why Mrs P was not aware at the time what was happening for she was fast asleep. To the probation officer who prepared the pre-sentencing report, which also served before the sentencing Magistrate, the appellant said that Ms Z started touching his private parts during the night, that he reprimanded Ms Z but she did not heed his reprimand after which they had sexual intercourse. The appellant told the probation officer that Ms Z cried rape because he had not given her money and a phone he had promised her earlier.

[7] The sentencing Magistrate had all the personal information of the appellant, Ms Z and the circumstances under which the incident took place before him at the time of sentencing. The reports of the probation officer and the report of the social worker who interviewed Ms Z were before Court at the time of sentence. I am satisfied that no material misdirection is evident from the record. The sentencing Magistrate found, correctly in my view, that the appellant's intoxication on the night in question does not constitute a mitigating circumstance. The sentencing Magistrate also found, after considering the evidence of the doctor who examined Ms Z after the incident and who completed the Form J88, that Ms Z was at the time not sexually active and still a child.

[8] I find no compelling reason to interfere with the sentence of life imprisonment imposed by the trial Court. A Court of Appeal is only allowed to interfere with sentence if it can find that substantial and compelling reasons or circumstances exist, justifying interference.¹ In my view no such substantial and compelling circumstances exist. In view of the fact that the minimum sentence was imposed by the trial Court it was submitted on behalf of the appellant that the minimum sentence could not have been imposed as the appellant was not formally warned at the commencement of the proceedings *a quo* that he faced the imposition of a statutory prescribed minimum sentence. The submission does not tally with the content of paragraph 2 of the appellant's statement in terms of section 112(2) of the Criminal Procedure Act which was handed in as Exhibit "A" before the Court *a quo* where it is stated under his signature and of the attorney who represented him at the time as follows:

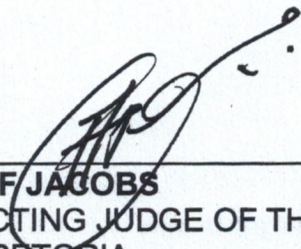
¹ S v Malgas 2001 (1) SACR 469 (SCA).

"I confirm that my Attorney has explained to me the effect of this charge of rape against me and also that it was explained to by my lawyer (sic) that in this case the Court is likely to impose a life sentence. Further details on this charge are as furnished by the State in the charge sheet under this case number."

[9] The appellant had legal representation throughout the proceedings in the Court *a quo* and imposition of the minimum prescribed sentence does not, in my view, constitute an irregularity that justifies interference.

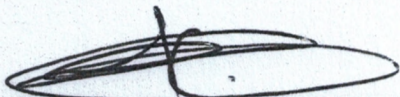
ORDER:

Under the circumstances I would propose that the appeal against the conviction and sentence be dismissed and that the conviction and sentence of life imprisonment be confirmed.



H F JACOBS
ACTING JUDGE OF THE HIGH COURT
PRETORIA

I agree and it is so ordered,



T A N MAKHUBELE J
JUDGE OF THE HIGH COURT
PRETORIA