



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

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

Case No.: A22/2018

In the appeal between:

LEPONESA MMOTA MOFOKENG

Appellant

and

THE STATE

Respondent

CORAM: MATHEBULA, J et VAN RHYN, AJ

JUDGMENT BY: MATHEBULA, J

HEARD ON: 23 APRIL 2018

DELIVERED ON: 3 MAY 2018

- [1] The appeal, which came before us as of right, is against the conviction and sentence imposed by the regional magistrate sitting

in Bethlehem. The appellant was charged with rape for contravening the provisions of section 3 read with section 1 of Act 32 of 2007, read with section 256 and 261 of the Criminal Procedure Act 51 of 1997, and also read with the provisions of section 51 (1) and Schedule 2 of the Criminal Law Amendment Act 105 of 1977. He pleaded not guilty and on 24 April 2016 he was found guilty and sentenced to life imprisonment.

- [2] The facts of the case are briefly as follows. The complainant, who was 10 years old at the time, was sent to the shop at Atbara farm near Paul Roux. On her way back she met the appellant who was well known to her and on the way to the shop. The accused requested her to wait for him which she did. They then walked together to their respective homes.
- [3] As they passed a tree situated next to the long grass, the accused pushed her and she fell down. He throttled and instructed her to undress. He also pulled out a knife and threatened to stab her. After she was naked from the waist down, he also undressed and proceeded to sexually penetrate her.
- [4] While he was lying on top of her, she saw B. M. M. passing by. She screamed for help. The accused jumped off and made a dash for it. She too stood up, left her clothes there and ran home half naked to report the incident. The matter was later reported to the police who took her to the hospital.
- [5] B. M. M. corroborated the version of the complainant that when the complainant saw her she screamed for help. Further she emerged

from the long grass naked with no pants on. The accused denied raping the complainant and told her that he will defend himself in court. The complainant's father confirmed the condition that she was in when she arrived at home and that she reported that the accused had raped her.

- [6] The appellant testified that on the day in question he met the complainant and walked with her from the shop. The complainant was walking in front and he was following her. On the way they come across B. M. M.. The complainant spoke with her. It is at this unfortunate moment that she alleged to Betty that he had raped her. The latter repudiated her that she was wanted at home. They all parted with each other on that note.
- [7] On behalf of the appellant, Me Kruger correctly conceded that the conviction was in order. She submitted that the sentence imposed by the regional magistrate was shockingly inappropriate. She pertinently referred us to the factors tabulated in paragraph 3 of her heads of argument and that the regional magistrate failed to take them into account. In essence she argued that had the regional magistrate take them into account, he could have found the existence of substantial and compelling circumstance justifying deviation from the prescribed minimum sentence.
- [8] The State, represented by Advocate Giorgi, agreed with the concession on conviction and made no further submissions on that aspect. On the question of sentence, she submitted that the sentence was not shockingly inappropriate and that we should not interfere with it. She also referred us to her heads of argument

clearly stating her support for the sentence. We are indebted to both counsel for the detailed heads of argument filed in this matter.

- [9] The regional magistrate rejected the version of the appellant and accepted that of the state witnesses. I am of the view that the regional magistrate did not err in finding that the appellant was guilty. The state had succeeded in proving its case beyond reasonable doubt.
- [10] In mitigation of sentence, the personal circumstances of the appellant were submitted and rewarded as follows. That he is fifty one (51) years old, his highest scholastic achievement is grade 8, married in terms of the customary law with one child of seventeen (17) years, he is the only person gainfully employed in his family as a farm labourer earning R2 600.00 per month. Further that he had been incarcerated as an awaiting trialist for a period of nine (9) months and his last conviction came about more than twenty years ago. Therefore he must be viewed as a first offender. Lastly that there was no Victim Impact Report demonstrating lasting psychological and emotional damages.
- [11] In aggravation the State referred to the seriousness of the offence particularly because a ten (10) year old child is the victim. The appellant who was in a position of trust as a friend of the family pounced on the vulnerable and defenceless child. Accordingly the Victim Impact Report stated that the complainant was adversely affected by the incident. Apart from attending counselling, she was still attending treatment at the hospital. In total, her life changed and is no longer the same. The incident had also resulted in a toxic

relationship between the family of both the appellant and complainant.

- [12] It is trite that sentencing is the prerogative of the trial court.¹ The court must exercise the discretion judicially and on reasonable grounds. The Court of Appeal will not lightly interfere with the sentence imposed by the lower court unless it is vitiated by some irregularity.
- [13] Rape is a heinous crime and an invasion of privacy of the individual. Its prevalence is one of the reasons why the Legislature deemed it appropriate to ordain minimum sentences to curb the runaway scourge. It targets in a ruthless manner the vulnerable in the society namely the aged, women and children.
- [14] In this matter, I take cognisance of the degree of violence exerted on the complainant by the appellant. He started by throttling her. Thereafter, he pulled out a knife subduing her so that he can continue with his pitiless deeds. Such a small child was grossly humiliated in that she had to run home semi-naked after the appellant had violated her. Thereafter in an act of cynical bravado, he went to her home and nonchalantly proceeded to consume alcoholic beverages. It is patently clear that he had no regard whatsoever for the complainant and/or her family. The appellant did not show any remorse. Neither did he do so himself or instruct his defence attorney on his behalf during mitigation. This demonstrate his overall attitude of refusing to take responsibility for his actions.

¹ S v Khumalo 1973 (3) SA 697 (A) at 698 B-C.

[15] The regional magistrate was correct that he should not deviate from imposing the minimum sentence for flimsy or unconvincing reasons as stated in **Malgas** case.² The seriousness of the offence and the interests of society far outweighed the personal circumstances of the appellant. The community is alarmed at the prevalence of this pestilence and the Legislature has responded positively by enacting the provisions imposing minimum sentences. It is for the courts to interpret and apply the law in a manner that the provisions achieve its objectives and meet the aspirations of the community at large. The appeal ought to be dismissed.

[16] Accordingly I make the following order:-

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

16.2. The conviction and sentence of life imprisonment imposed on 24 June 2016 is confirmed.

M. A. MATHEBULA, J

I concur

² 2001 (2) SA 1222 (SCA)

I. VAN RHYN, AJ

On behalf of the appellant:
Instructed by:

Ms. S Kruger
Bloemfontein Justice Centre

On behalf of the respondent:
Instructed by:

Adv. S. Giorgi
Director: Public Prosecutions
BLOEMFONTEIN