



**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

Appeal No.: A198/2016

In the appeal between:

TSOEU RAMOKONE

Appellant

and

THE STATE

Respondent

CORAM: MBHELE, J *et* REINDERS, J

JUDGEMENT: REINDERS, J

HEARD ON: 3 SEPTEMBER 2017

DELIVERED ON: 14 SEPTEMBER 2017

[1] The appellant was arraigned in the Bloemfontein Regional Court on a charge of rape, it being alleged that on or about 5 August 2015 he unlawfully and intentionally committed an act of sexual penetration with S. M. (the complainant) by

penetrating her vagina more than once with his penis without her consent.

[2] On 21 January 2016 the appellant pleaded not guilty but was convicted as charged on 23 February 2016 and sentenced to life imprisonment. He feels aggrieved by the sentence imposed upon him and made use of his automatic right to appeal in terms of sec 10 of the Judicial Matters Amendment Act 42 of 2013.

[3] From the heads of argument prepared by Ms Kruger on behalf of appellant as well as in oral submission before us it can be gleaned that the attack on the sentence imposed are as follows:

The court *a quo* erred in not finding compelling and substantial circumstances to warrant deviation from the minimum prescribed sentence as appellant had expressed remorse; by not taking into account the time that appellant had spent in custody awaiting trial; and due to the fact that no evidence regarding lasting emotional trauma suffered by complainant was placed on record.

[4] Ms Moroka on behalf of the State supported the sentence on the papers and in argument before us. She contended that the trial court did not misdirect itself in any way.

- [5] A brief exposition of the facts upon which the appellant was found guilty appears from the record as follows:

On the afternoon of 5 August 2015 at 15h00 complainant was walking past the appellant who was herding cattle. Appellant called out to her and made small talk with her. She refused to present him with her contact details and informed him that she was in a hurry. Appellant offered to carry her luggage and she proceeded to a hiking spot. Upon realising that a vehicle passed her without stopping, appellant approached her again and she told him that she was married. Hereupon appellant removed his waist belt and started assaulting the complainant by hitting her with the belt on her face whilst forcing her to the foot of a nearby mountain hill. The assault to her head caused an open wound which bled and her left eye was swollen closed. In spite of her plea that she was pregnant, she was ordered to go inside a donga where appellant raped her from behind. He then ordered her to lay on her back and raped her again. Hereafter she was tied to a tree and muffled by putting her t-shirt into her mouth and wrapping her clothes around her face, even covering her eyes. She eventually managed to flee late in the evening, and arrived at home at 04h00. She made a report to her brother and his friend, lay a claim with the police and was taken to hospital for an examination. Not only did complainant point out the appellant as her assailant, but DNA results positively linked appellant to the rapes.

- [6] This appeal lies against the sentence imposed by the court a quo. It is trite that the powers of a court of appeal to interfere with the sentence so imposed are limited to the extent that the sentence is disproportionate or harsh, or the sentencing court committed a material misdirection or did not exercise its discretion properly or at all.

See: **S v Pieters** 1987(3) SA 717 (A).

See also: **S v Sadler** [2000] 2 All SA 121 at 334d-335g

- [7] It is evident from the record that the learned magistrate considered the triad consisting of the crime, the criminal, the interest of society as well as that of the victim. The court a quo had regard to the appellant's personal circumstances. The appellant was married and the father to a three year old girl. With his income he maintained himself, his wife and his child. The court a quo carefully considered but rejected appellant's claim to have remorse on the basis of the following reasons:

"You said in your words that you apologise herein. I am not clear up to this stage what is it that you claim to be sorry about. You have not even say you are remorseful for what you did. You were at pains in answering the Prosecutor when he asked you to say it in your own words what it is you say you are sorry about."

- [8] I agree with the trial court. From the record it is clear that the regret displayed by the appellant does not translate to genuine remorse.

See: **S v Matyityi** 2011 (1) SACR 40 at p47 par [13]

- [9] The learned regional magistrate in handing down sentence balanced the personal circumstances of the appellant against the seriousness of the crime. She also considered the prevalence of the crime and the interest of society, especially women, to be protected against rapists. The court a quo dealt extensively with the gravity of the offence. She alluded to the inhuman and degrading way in which the complainant, who was seven months pregnant at the time, was treated. Not only did she sustain physical injuries, but her own life as well as that of her unborn baby was put at risk. Complainant also ran the risk of contracting HIV as the appellant did not wear a condom. The court a quo was of the view that the rape was “..the worst rape I have ever heard of..” .

- [10] In my view the learned magistrate could derive from the abovementioned and further exposition of the horrific facts as alluded to in par [5] above that complainant suffered lasting trauma as a consequence of the rape. Even without introducing evidence in respect of trauma to the complainant as appellant suggests should have been done, I am of the view that even if there had been a victim impact report, it would not have aided the appellant at all when balancing the

gravity of the crime against all other factors considered by the court a quo *in casu*.

- [11] It was submitted that the time appellant had spent in custody was a factor to be considered in mitigation by the court a quo. From the record it appears that appellant had spent six months in custody. In handing down sentencing the court a quo did not specifically mention that she took into account the fact that appellant had been in custody for a few months. This does however not mean that the learned magistrate did not take this factor into account. But even if she did not, the six months incarceration of the appellant weighed against the objective gravity of the offence, its prevalence in our country and the legitimate expectation of the society that such crimes should be punished severely, does not tip the balance in the favour of the appellant in my view. The learned magistrate made reference to **S v Chapman** 1997 (2) SACR 3 (SCA) where it was held that the court has a duty to protect women from the humiliating, degrading and brutal invasion of their privacy.

See also: **S v Kwanape** 2014 (1) SACR at 410 para [17]

- [12] The learned magistrate did not find any substantial and compelling circumstances in respect of the rape charge and invoked the prescribed minimum sentence of life imprisonment as envisaged in Section 51 (1) of the Criminal Law Amendment Act 105 of 1997 read with Part 11 of Schedule 2. I have not been convinced by appellant that the court a quo erred in finding as she did. I therefore come to

the conclusion that the appeal against appellant's sentence should fail.

[13] I accordingly make the following order:

The appeal is dismissed.

C. REINDERS, J

I concur.

N.M. MBHELE J

On behalf of the Appellant:

Ms. S. Kruger
Instructed by:
Justice Centre
BLOEMFONTEIN

On behalf of the Respondent:

Adv. M.M. Moroka
Instructed by:
Director:
Public Prosecutions
BLOEMFONTEIN