

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Appeal No.: A127/2015

In the appeal between:-

SELLO ANDRIES MAKHONANYANE

Appella

and

THE STATE

Respondent

CORAM: MOLEMELA, JP

DELIVERED ON: 28 JANUARY 2016

MOLEMELA, J

- [1] This is an appeal against sentence only. The appellant was convicted of rape by the regional court in Bloemfontein. He was subsequently sentenced to life imprisonment.
- [2] The facts giving rise to this appeal are as follows: The complainant's husband was employed at a tavern. On the night of the incident, the complainant visited the same tavern. The appellant was one of the customers that were present on that night. At some point, the appellant was the only customer left. He refused to leave despite a specific request from the complainant's boyfriend. The complainant's boyfriend decided to report the appellant's attitude to the owner of the tavern. At that point, the complainant went to the toilet situated in the yard of the tavern. While she was in the toilet, the appellant opened the door, pulled her out and stabbed her with a screwdriver on her cheek. When the complainant asked him why he did so, he stated that he wanted to have sexual intercourse with her. At that stage, her boyfriend emerged from the house and demanded an explanation. The appellant kicked him and repeated that he wanted to have sexual intercourse with her. The complainant's boyfriend pulled her into the house and then locked

the door. The appellant kicked the door repeatedly until it flung open. He then threatened to stab her boyfriend with the screwdriver. The boyfriend fled the scene. He then grabbed the complainant and forced her to accompany him to his shack. Along the way he stabbed her twice in the breast. He threatened to kill her should she try to flee. Upon arrival at his shack he raped her twice and thereafter ordered her to share the bed with him for the rest of the night. In the morning, she woke up and quietly walked to the door while the appellant was asleep. He woke up and told her that he would not allow her to go anywhere and again threatened to kill her. She later obtained his permission to go to the toilet outside the shack. She used that opportunity to flee to her uncle's house.

- [3] The basis of the appellant's appeal against his sentence is that the sentence of life imprisonment is shockingly inappropriate and induces a sense of shock, that the court *a quo* erred by not taking proper consideration of the appellant's personal circumstances of the appellant, that it further erred in considering the rape committed by the appellant to be one of the worst kinds of rape and wrongly found that there were no substantial and compelling circumstances warranting deviation from the sentence imposed.
- [4] It was argued on behalf of the appellant that the court *a quo* failed to pay due consideration to the appellant's mitigating factors, over-emphasised the nature of the offence and the interests of the community and consequently erred in finding that there were no substantial and compelling circumstances warranting deviation from the mandatory life imprisonment sentence.
- [5] It is trite that a court of appeal may, on appeal, tamper with the sentence imposed by the trial court only if the court of appeal is of the

view that a material misdirection was committed or that the sentence imposed was shockingly inappropriate¹.

[6] It deserves to be mentioned that the bill of rights enshrined in our constitution *inter alia* affords all persons alike the right to walk the streets at any time of the day or night. Women in this country are, like women in other parts of the world, entitled to visit any place of entertainment of their choice, including taverns, without fear of being attacked or raped. Sadly, this is a right that many women are deprived of in this country due to the high prevalence of rape. That rape is a serious offence is a fact that can never be over-emphasised. In *S v C*², the court aptly described this revolting scourge in the following terms: "Rape is regarded by society as one of the most heinous of crimes, and rightly so. A rapist does not murder his victim – he murders her self-respect and destroys her feeling of physical and mental integrity and security. His monstrous deeds thereafter after haunts his victim and subjects her to mental torment for the rest of her life – a fate often worse than loss of life".

[7] The attack on the complainant was completely unwarranted. It is clear from the facts set out above that the appellant was brazenly determined to have his way with the complainant at all costs. Having stabbed the complainant with a screwdriver, he abducted her from the safety of a locked room and the protection that her boyfriend had offered her. Despite the fact that the complainant had already suffered injuries, he inflicted two more stab-wounds on her chest. He showed the defenceless complainant no sympathy and proceeded to rape her twice despite the blood that was flowing from her wounds. At no stage did he show any remorse for his actions. I have no doubt that these are serious aggravating factors that indeed bring this rape within the category of the most severe kinds of rape. Against this background, the fact that the appellant was 36 years old, that he was in gainful

¹ *S v Pieters* 1987 (3) SA 717 (A) at 728 b-c.

² 1996 (2) SACR 181 at 186 D.

employment at the time of his arrest and that he has two minor children are neutral factors³.

- [8] The appellant's argument that the court *a quo* wrongly considered the fact that the complainant's rape was committed a mere three years after the appellant's conviction on assault with intent to do grievous bodily harm does not hold any water since this was a fact that was borne out by the appellant's record of previous convictions. Assault is an offence that involves violence and is therefore a relevant previous conviction as rape also entails violence. The court *a quo* correctly considered this previous conviction as an aggravating factor. The appellant argued that no evidence was put on record to suggest that the complainant was emotionally traumatised by the incident, as no victim impact report had been submitted. This argument has no merit as the court *a quo* made no reference to the complainant's emotional trauma in its judgment. In any event, a plethora of cases has acknowledged that rape is a traumatic experience for any of its victims. In this case, the complainant was not only raped, she was stabbed with a screwdriver, abducted, was stabbed yet again before being raped. After the rape, she was denied her freedom for some hours, notwithstanding her injuries. Throughout her ordeal, the appellant repeatedly threatened to kill her. This could only have increased her trauma. The complainant's trauma is borne out by her evidence to the effect that she was crying and confused at the time when she was giving her statement to the police.

- [9] In **S v Salzwedel & Others**⁴, the court stated as follows:

"An appeal court is entitled to interfere with a sentence imposed by a trial court in a case where the sentence is "disturbingly inappropriate" or totally out of proportion to the gravity or magnitude of the offence, or sufficiently disparate or vitiated by misdirections of a nature which shows that the trial court did not exercise its discretion reasonably."

³ S v Matyityi.

⁴ 1999(2) SACR 586 (SCA) at 591 F-H

[10] Having considered the conspectus of the record, I am satisfied that the court *a quo* was thorough in its consideration of the triad of sentence and took account of the appellant's personal circumstances in a balanced fashion. It is clear that the aggravating factors far outweigh the mitigating factors. Prescribed sentences may not be departed from for flimsy reasons⁵. The court *a quo* correctly found that there are no substantial and compelling circumstances that justify deviation from the prescribed sentence of life imprisonment. The sentence imposed is not disproportionate to the gravity of the rape committed by the appellant. I am satisfied that the court *a quo* has not committed a misdirection. Consequently, there is no basis for tampering with the sentence it imposed.

[11] Given all the circumstances of the case, the appropriate order is the following:

ORDER:

1. The appeal against sentence is dismissed.
2. The sentence imposed by the court *a quo* on 13 March 2015 is confirmed.

M. B. MOLEMELA, JP

I concur.

S. NAIDOO, J

On behalf of appellant:

Mr P L van der Merwe
Bloemfontein Justice Centre
BLOEMFONTEIN

⁵ S v Malgas.

On behalf of respondent:

Adv FJ Pienaar
Instructed by:
Director Public Prosecutions
BLOEMFONTEIN