

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

Appeal number: A242/2015

In the matter between:

S.P. LETEANE

Appellant

and

THE STATE

Respondent

HEARD ON: 29 FEBRUARY 2016

CORAM: MOCUMIE, J *et* CHESIWE, AJ

HEARD: 29 FEBRUARY 2016

DELIVERED ON: 14 MARCH 2016

MOCUMIE, J

[1] The appellant was twenty seven years of age when he was arrested on 17 November 2012 on allegations that he broke and entered Mrs M's house and raped her. On 12 June 2013, he appeared in the regional court, Thaba Nchu, on a charge of housebreaking with intent to rape and rape as defined in s3 of the Criminal Law Amendment (Sexual Offences and Related Matters) Act 32 of 2007 (the Sexual Offences Act) read with s51 (1) read with Part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997(the Act). He pleaded not guilty to the charge. Despite his plea of not guilty, he was convicted as charged. The trial court found no compelling and substantial circumstances that

warranted a sentence less than life imprisonment. It consequently imposed the prescribed life imprisonment. This appeal against both conviction and sentence is in terms of the appellant's right to automatic appeal in terms of s309 (1) (a) of the Criminal Procedure Act 51 of 1977 (the CPA).

[2] The unrefuted evidence of the State is that Mrs is a 56 years old woman. She is the appellant's neighbour as she resides at 2391 Ratloun and the appellant resides at 2411 Ratloun, Thabanchu. As he put it during cross examination 'I grew up in front of her...'. The night of 16 November 2012 she was home, alone, when the appellant broke a window of her kitchen to gain entry. He found Mrs M sleeping on the floor. He demanded money from her. When she said she did not have any, he tied up her wrists with a barbed wire and proceeded to rape her for the first time. He hit her with an iron rod on the head and raped her for the second time. He hit her again with the iron rod on the head and all over her body, pulled her to her bedroom and raped her for the third time. He pulled her from that bedroom to another bedroom where he raped her for the fourth time. Then to the lounge and raped her for the fifth time. He also throttled her to stop her from screaming for help. The appellant left Mrs M in the early hours of 17 November bleeding all over her body from the injuries she had sustained as a result of the severe assault on her; from her head to her feet. Mrs M was discovered by her employer's daughter later that day around 10am. The appellant was arrested later that same day. The appellant and the complainant were well known to each other as neighbours. Thus the identity of the appellant was never an issue. Over and above, the appellant admitted that he was in Mrs M's house *albeit* for a different reason than she proffered.

[3] The appellant's version which the trial court rejected was that the appellant and Mrs M were having a secret sexual relationship prior to this day. On that day he had gone to Mrs M's house to demand his R500 which Mrs M owed him. Mrs M refused to pay him and instead swore at him. As a result, he assaulted her as

she indicated but did not tie up her hands with a piece of wire found inside her house.

- [4] In his Heads of Argument Mr Makhena for the appellant submitted that the conviction was wrong. But in his oral argument in court; Mr Makhena conceded that the State proved its case beyond reasonable doubt in respect of the charge preferred against the appellant. He also conceded that he could not say with any conviction that the trial court misdirected itself in any manner in respect of the sentence it imposed.
- [5] It is trite that the State bears the onus to prove the accused person's guilt beyond reasonable doubt while the accused person has only to show that his version is reasonably possibly true.¹ The trial court clearly considered the evidence in its totality; weighed up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of the inherent strengths and weaknesses, probabilities and improbabilities on both sides and having done decided that the balance weighed so heavily in favour of the State to exclude any reasonable doubt about the accused's guilt.
- [6] In the absence of any attack on the credibility findings of the trial court, this court is bound by such findings; bearing in mind the advantage which the trial court has of seeing, hearing and apprising the witnesses.²
- [7] Based on the concession correctly made by Mr Makhena and the overwhelming unrefuted evidence the State led against the appellant, there is no reason for this court to interfere with the conviction.

¹ *S v Chabalala* 2003 (1) SACR 134 (SCA) at 139i-j. See also *S v V* 2000 (1) SACR 453 (SCA) at 455A-C; *S v Van Der Meyden* 1999 (1) SACR 447 (W).

² *S v Francis* 1991 (1) SACR 198 (A) at 204D.

- [8] With regards to sentence, in the minority judgment of *S v Nkomo*³ Theron JA stated aptly that against the spate of rapes in this country courts must also be mindful of their duty to send out a clear message to potential rapists and to the community that they are determined to protect the equality, dignity and freedom of all women.⁴ Society's legitimate expectation is 'that an offender will not escape life imprisonment-which has been prescribed for a very specific- reason, simply because [substantial] and compelling circumstances are, unwarrantedly, held to be present.⁵ The same sentiments were recently echoed in *S v Matyityi*⁶ and *S v Kwanape*.⁷
- [9] The appellant was 27 years of age at the time of the commission of these offences and would ordinarily not be regarded as a youthful or immature offender as he has one child aged 7 years. He was unemployed and stayed with his parents. He has six previous convictions including robbery and assault committed since 2009. The appellant showed no remorse. He lied about having a sexual relationship with Mrs M who was his neighbour old enough to be his mother. On the other hand, the most aggravating factors are that the appellant assaulted Mrs M, his neighbour, and a small built woman of 56 years of age brutally in the sanctity of her home. He assaulted her so brutally that she sustained seventeen assault wounds all over her body. The medical report confirms such injuries from her head to the feet. The appellant literally left her for dead. The attack is what the court in *S v Matyityi*⁸ described as breathtakingly and brazenly brutal. The case was marred with brutal horror.⁹
- [10] This type of rape and violence perpetuated against elderly women is becoming normality in society of late. Elderly women who are known to stay alone are

³ *S v Nkomo* 2007 (2) SACR 198 (SCA) at 207.

⁴ *S v Chapman* 1997 (2) SACR 3 (SCA) (1997 (3) SA 341) at 5D-E.

⁵ *Rammoko v Director of Public Prosecutions* 2003 (1) SACR 200 (SCA) ([2002] 4 All SA 731) para13.

⁶ *S v Matyityi* 2011(1) SACR 40 (SCA).

⁷ *S v Kwanape* 2014 (1) SACR 405 (SCA).

⁸ *S v Matyityi* above.

⁹ Compare with the brutality and violence in *S v Nkomo* 2007 (2) SACR 198 (SCA) at 207., *S v Matyityi* 2011 (1) SACR 40 (SCA) and *S v Mosia* 2012 (2) SACR 537 (FB).

attacked and raped more frequently. Rape of elderly women should not be trivialised considering their frailty and vulnerability as well the disgrace, humiliation and trauma they would be expected to experience through this type of ordeal. The Legislature ought to give the same consideration it has given to children to in respect of elderly women; to afford them the same protection as children. Consequently, the trial court's approach on sentence cannot be faulted at all as Mr Makhena correctly conceded.

[11] In the light of the aforesaid, the sentence imposed ought to stand. In the result, the following order is granted in respect of both the conviction and sentence.

ORDER

'The appeal against both the conviction and sentence is dismissed.'

BC MOCUMIE, J

I concur.

S CHESIWE, AJ

On behalf of appellant: Adv. O. Makhena
Instructed by:
The Legal Aid Board
Bloemfontein

On behalf of respondent: Adv. Liebenberg
Instructed by:
The Director of Public Prosecutions,
Bloemfontein