

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : A176/15

In the matter between:-

VUYANE MACHOBA

First Appellant

and

THE STATE

Respondent

CORAM:

MOLOI, J et MOHALE, AJ

HEARD ON:

09 NOVEMBER 2015

DELIVERED ON:

05 MAY 2016

MOLOI, J

- [1] The appellant was convicted in the regional court on one count of assault with intent to do grievous bodily harm and one count of rape in contravention of section 3 of the Criminal Law Amendment Act 32 of 2007. He was sentenced to five (5) years imprisonment and twenty (20) years imprisonment on the two counts, respectively. The sentences were ordered to run concurrently. Leave to appeal was not granted but on petition to this court, leave

to appeal was granted. The appeal is against the sentence only.

[2] On 1 January 2013 at approximately 20h30 the complainant was walking in a street from a friend's place to her home. It was dark. The complainant met the appellant whom she knew by sight only but he lived in the neighbourhood. The street was abandoned. The appellant told the complainant her boyfriend was looking for her and that he would accompany her to the boyfriend's place. The complainant was not willing to do so. The appellant assaulted her by hitting her with clenched fists and when she fell to the ground, kicked her all over and in her face with his booted feet. The appellant then pulled her up and forcefully led her to an open veld and raped her. The appellant thereafter forcefully took her to a shack wherein he raped her again. He released her to go the following morning.

[3] On her arrival at home the complainant immediately reported the incident to her sister, Irene, who noticed the complainant face was heavily swollen and her clothes were blood stained.

The complainant described her assailant to Irene and she immediately mentioned the appellant's name. The incident was reported to the police. According to the appellant, the complainant was assaulted by her boyfriend, Tony, who denied having done so as he was in hospital when this incident happened. The appellant denied having assaulted and raped the complainant but could not explain why he offered the complainant his medical aid card to use when she went to the doctor.

- [4] On appeal it was contended the sentences imposed were disturbingly inappropriate in the light of the fact that the appellant had passed grade 10 at school and was making a living by doing piece jobs from which he earned R750-00 per week; that he was 31 years of age when he was sentenced and that he had spent nine (9) months in custody pending trial. The appellant had three relevant previous convictions of rape or attempted rape and assault with intent to do grievous bodily harm. The trial court found that there were no substantial and compelling circumstances and instead that it was entitled to impose a sentence above the prescribed minimum sentence of fifteen (15) years in the circumstances.

I agree with this view. An appeal court is not at liberty to interfere with the sentencing discretion of the trial court except where the trial court had committed a misdirection of a serious nature in exercising its discretion- S v Kibido 1998(2) SACR 213 (SCA) or the sentence imposed induces a sense of shock – S v De Jager and Another 1965 (2) SA 616 (A)

- [5] In the passing of sentence the trial court had made an order that the appellant was not suitable to work with children, presumably in terms of section 120(4) of Act No 38 of 2005 though the court referred to a 2008 Act. The relevant section 4 provides

“in criminal proceedings, a person must be found unsuitable to work with children –

- (a) on conviction of murder, attempted murder, rape, indecent assault or assault with intent to do grievous bodily harm with regard to a child; (my emphasis)”.*

In this matter the complainant was a 34 year old woman and can consequently not be called a child. The order that the

appellant is not suitable to work with children is consequently misplaced and should be set aside.

[6] In the premises the following order issues:

6.1 The appeal against the sentence is dismissed.

6.2 The order that the appellant is not suitable to work with children is set aside.

K.J. MOLOI, ADJP

I concur

I.B MOHALE, A.J

On behalf of the appellant:

Adv. O. Makhene
Instructed by:
Bloemfontein Justice Centre
BLOEMFONTEIN

On behalf of the respondent:

Adv. A. Bester
Instructed by:
The DPP
BLOEMFONTEIN