

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

Appeal No.:A167/2014

In the appeal of:

JEFFREY BONGANI SEITSHIRO

Appellant

and

THE STATE

Respondent

CORAM:

MOLEMELA, JP *et* MURRAY, AJ

HEARD ON:

3 NOVEMBER 2014

DELIVERED ON:

12 FEBRUARY 2015

MOLEMELA, JP

- [1] The appellant was charged with rape and assault with intent to do grievous bodily harm in the Regional Court in Bloemfontein. The rape he was charged with was one as contemplated in section 51 of the Criminal Law Amendment Act 105 of 1997, for which life imprisonment was the prescribed minimum sentence. He pleaded not guilty to both charges. He was subsequently convicted of rape in which the complainant was raped more than once and which rape involved the infliction of grievous bodily harm, and acquitted on the second charge. The trial court found that there were substantial and compelling circumstances that warranted a

deviation from the applicable minimum sentence and imposed a sentence of 25 years' imprisonment on the appellant. Aggrieved by the sentence imposed, the appellant applied for leave to appeal against his sentence. The trial court dismissed that application. His appeal against sentence is with leave of this court.

- [2] The facts that led to the appellant's prosecution are the following. The appellant and the complainant used to be lovers. The complainant subsequently terminated the affair. A few days after the termination of the affair, the appellant met the complainant and her daughter in the street. He joined them and the three of them proceeded to the complainant's home. The complainant prepared her sickly daughter for bed and gave her medication. She then requested the appellant to leave. The appellant refused to leave. The complainant reminded the appellant that their relationship was over. The appellant told the complainant that she would have to have sex with him just as she did with other men. He then started assaulting the complainant. The complainant screamed for help but her daughter could not come to her assistance due to her illness, which had affected her mobility. As a result of the assault, the complainant sustained a laceration to her forehead, bruised, black eyes, a bruised cheek, and a bruised inner lip. The appellant then proceeded to have sexual intercourse with her without her consent. The appellant spent the night at the complainant's place. He raped her again in the morning and then left. The complainant laid charges against the appellant, which led to his arrest, prosecution and subsequent conviction.

- [3] On appeal, it was submitted by counsel for the appellant that the sentence imposed was shockingly inappropriate, induced a sense of shock and was disproportionate to the offence. It was further submitted that the trial court had over-emphasised the interests of the community at the expense of the appellant's personal circumstances. It was also contended that the trial court erred by not taking proper consideration of the fact that the appellant committed the offence while he was under the influence of liquor.
- [4] I have already alluded to the fact that although the rape committed by the appellant fell in the category of those in respect of which the applicable minimum sentence is life imprisonment, the trial court found that there were compelling circumstances that justified a departure from imposing that sentence. The trial court was thus at large to impose any appropriate sentence.
- [5] Rape is a serious offence that has an element of violence. In **S v C**¹ the court 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”.
- [6] In this particular instance, a serious aggravating factor is the fact that the complainant was raped in the sanctity of her home and in the presence of her daughter. The complainant obviously trusted

¹ 1996(2) SACR 181C at 186D.

the appellant, which is why she did not resist when he accompanied her and her daughter to her home. The appellant took full advantage of the vulnerability of the appellant's daughter on account of her illness and assaulted the complainant in the knowledge that her daughter was helpless. The daughter's effort of dragging herself out of the house so as to seek help from the neighbours did not bear any fruit, nor did this effort in any way discourage the appellant from assaulting or raping the complainant. As stated before, the complainant sustained injuries in the assault and was bleeding. Notwithstanding these injuries, the appellant proceeded to rape her. He raped her again in the morning, renewing the shock and humiliation that she had experienced during the night. This rape was committed with the appellant's daughter in the next room, and was clearly a traumatic experience for both mother and daughter.

- [7] The appellant testified in mitigation of sentence and placed his personal circumstances on record. He was 45 years at the time of commission of the offence. He left school after passing grade 7. He was employed at the time of the incident. He was married and had two children that depended on him for support. His elderly parents were also depending on him for their support. He testified that the incident happened while he was in a fit of rage. He had also consumed liquor. He testified that he was remorseful but went on to state that it was the complainant who had caused him to do all that he did. The trial court correctly observed that he did not want to accept responsibility for his actions. Obviously this refusal to be accountable has a bearing on his chances for rehabilitation.

- [8] As stated before, the first rape occurred at night and the second one in the morning. The appellant clearly had sufficient time to sober up and to compose himself during the course of the night. Notwithstanding the fact that the complainant's right eye was so swollen that it was closed in the morning, the appellant showed her no mercy and raped her a second time.
- [9] Having considered all the circumstances of the case, I am satisfied that even after finding that the mitigating factors cumulatively viewed constituted substantial and compelling circumstances warranting a departure from the mandatory life imprisonment sentence, it was clear that the aggravating factors were of such a nature as to warrant the imposition of a lengthy imprisonment sentence.
- [10] In **S v MALGAS**² the court found that even where substantial and compelling circumstances were found to exist, the sentence to be imposed in lieu of life imprisonment should be assessed paying due regard to the bench mark which the legislature has provided. In that case, the appeal court having considered all the circumstances of the case, set aside the sentence of life imprisonment and replaced it with 25 years' imprisonment. In this matter the applicable sentence is life imprisonment. *In casu*, I am satisfied that in the light of all the circumstances, including numerous aggravating factors, a sentence of 25 years' imprisonment is not disproportionate to the gravity of the rape that the appellant committed. These circumstances have already been canvassed earlier in the judgment and need not be repeated. I am

² 2001(1) SACR 469 (SCA) at par 34

satisfied that the trial court paid due consideration to the appellant's personal circumstances and properly balanced them against the offence committed and the interests of society.

[11] In **S v Salzwedel & Others**³, 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,”

The trial court committed no misdirection. The sentence imposed is also not disproportionate to the gravity of the rape committed by the appellant. There is thus no reason to tamper with the sentence it imposed.

[12] Wherefore the following order is made:

- (i) The appeal against sentence is dismissed.
- (ii) The sentence of 25 years' imprisonment imposed by the trial court is confirmed.

M. B. MOLEMELA, JP

I concur.

H. MURRAY, AJ

³ 1999(2) SACR 586 (SCA) at 591 F-H

On behalf of the appellant: Mr S Kruger
Instructed by:
Legal Aid
BLOEMFONTEIN

On behalf of the respondent: Adv. S. Chalale
Instructed by:
The Director: Public Prosecutions
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