

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

Appeal No.: A175/2014

In the appeal of:

**LEFA CHARLES MOLIBELI**

Appellant

and

**THE STATE**

Respondent

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**CORAM:**           VAN DER MERWE, J *et* MURRAY, AJ

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**JUDGMENT:**       VAN DER MERWE, J

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**HEARD:**           27 OCTOBER 2014

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**DELIVERED:**       11 DECEMBER 2014

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[1] The appellant was convicted in the regional court of rape of a seven year old girl and sentenced to life imprisonment. His appeal is only against the sentence.

[2] The circumstances of the commission of the crime are that whilst the complainant was playing with other children in a street, she was called by the appellant. The appellant was known to her. The appellant gave her money and requested her to go to a shop to

buy bread. When she returned with the bread, the appellant pulled the complainant into his house and undressed her. He also undressed and placed the complainant on a bed. He got on top of her and inserted his penis into her vagina to some extent but according to the complainant ' . . . he did not insert it properly'. She only suffered injury to the skin of the inside of her thighs. The appellant then dressed her, gave her 50 cents and said that she could leave. There is no evidence of serious or lasting mental injury to the complainant.

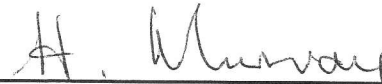
- [3] The appellant was 51 years old at the time of the trial. He has no previous convictions. He was employed by a refuge removal contractor and earned R2 000 per month. He has no dependants.
- [4] As the appellant raped a girl under the age of 16, a sentence of life imprisonment was prescribed by the Criminal Law Amendment Act 105 of 1997 and had to be imposed unless substantial and compelling circumstances justified departure therefrom. The trial court found no substantial and compelling circumstances and the question on appeal is whether we are convinced that this finding is wrong.

- [5] Substantial and compelling circumstances must be considered against the background that the legislature has ordained a particular prescribed sentence. The prescribed sentence may therefore not be departed from on flimsy or unconvincing grounds. Substantial and compelling circumstances are present when in all the circumstances of the particular case, the prescribed sentence is disproportionate to the crime, the offender and the interests of society and therefore unjust.
- [6] That the appellant reached the age of 51 without any previous conviction and was gainfully employed, indicate prospects of rehabilitation. Minimal penetration took place and the complainant suffered slight physical injury. In *S v SMM* 2013 (2) SACR 292 (SCA) para 26 it was confirmed that a literal interpretation of s 51(3)(aA)(ii) of Act 105 of 1997 would render it unconstitutional and that a court sentencing for rape is not precluded from taking into consideration the fact that the rape victim has not suffered serious or permanent physical injuries. Importantly, although the incident was obviously traumatic for the complainant, there is no evidence of any serious or lasting mental injury to the complainant. In my judgment the cumulative effect of these factors are that the sentence of life imprisonment is disproportionate in the

circumstances and unjust. Nevertheless the circumstances call for a heavy sentence. Taking into account that the appellant spent approximately a year in custody before sentence, a sentence of 19 years' imprisonment appears to me to be appropriate in the circumstances.

- [7] The appeal against sentence succeeds. The sentence of life imprisonment is set aside and replaced with a sentence of 19 YEARS' IMPRISONMENT which must be deemed to have been imposed on 19 July 2012.

  
C H G VAN DER MERWE, J

  
H MURRAY, AJ

On behalf of the appellant: Adv S Kruger  
Instructed by:  
The Bloemfontein Justice Centre  
BLOEMFONTEIN

On behalf of the respondent: Adv J H S Hiemstra SC  
Instructed  
The Director of Public Prosecutions  
BLOEMFONTEIN

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