

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

Appeal No. : A25/2013

In the matter between:

LEROTHODI MOHALA

Appellant

and

THE STATE

Respondent

CORAM: VAN ZYL, J *et* VAN ROOYEN, AJ

HEARD ON: 22 APRIL 2013

JUDGMENT BY: VAN ZYL, J

DELIVERED ON: 21 NOVEMBER 2013

[1] The appellant has been convicted and sentenced by the Court *a quo* as follows:

- 1.1 Count 1 - Rape, read with the provisions of section 51(1) of Act 105 of 1997 – life imprisonment.

1.2 Count 2 - Attempted robbery – seven (7) years imprisonment.

It was ordered that the sentences are to run concurrently.

[2] The appellant was legally represented in the Court *a quo*. The aforesaid convictions followed from his plea of guilty on both counts. The appellant applied for leave to appeal from the Court *a quo* only against the sentence of life imprisonment imposed on count 1, which leave was granted on 28 September 2012.

[3] The finding by the Court *a quo* that the appellant inflicted grievous bodily harm to the complainant during the rape and that count 1 therefore falls within the ambit of Part 1 of Schedule II to Act 105 of 1997 which makes life imprisonment compulsory in the absence of substantial and compelling circumstances which justify the imposition of a lesser sentence, is not challenged on appeal, in my view rightly so. The grounds of appeal which the appellant relies on can be summarised as set out in the heads of argument of Me Kruger, on behalf of the appellant:

“1.4.1 that the court *a quo* erred by finding that no substantial and compelling circumstances exists;

1.4.2 that the court *a quo* should have imposed a shorter term of imprisonment due to the personal circumstances of the appellant together with the time spent in custody awaiting trial and the fact that appellant pleaded guilty.”

- [4] From the Section 112(2) statement of the appellant it was apparent that the complainant offered the appellant garden work for the day. The appellant described the subsequent events as follows in his aforesaid statement:

“I took the offer and worked in the garden. The lady then gave me food to eat, I ate, we talked and then I grabbed her, assaulted her by hitting her in the face and strangled her. I threw her on the ground, undressed her pants and underwear and inserted my penis into her vagina and had sexual intercourse with her, without her consent. When I was finished I left.”

- [5] A victim report was obtained by the prosecutor in the Court *a quo* and it was submitted as evidence by agreement between

the prosecution and the defence and accepted by the court as exhibit “C”. Photographs reflecting some of the injuries sustained by the complainant and the J88-report pertaining to the injuries of the complainant were similarly submitted in evidence by agreement between the parties and received by the court as exhibits “E” and “F” respectively.

- [6] The following mitigating factors and personal circumstances of the appellant are evident from the judgment on sentence by the court *a quo*, which factors and circumstances were clearly taken into proper consideration by the court *a quo*:

- 6.1 Appellant was 26 years of age at the time of sentencing.
- 6.2 Appellant was staying with his brother and both his parents have passed away.
- 6.3 Appellant was self-employed and earned an income of R150.00 per week.
- 6.4 Appellant is married with one child, who was one year old at the time of sentencing. The child was staying with the appellant’s brother.
- 6.5 Appellant attended school up to Grade 8.

6.6 Appellant spent ten months in custody awaiting trial.

6.7 Appellant has one previous conviction relating to the possession of dagga.

6.8 Appellant pleaded guilty, although he could not advance any reason why he committed the offences.

[7] The aggravating circumstances are very evident from the record, especially from the contents of the victim report. The complainant was a senior citizen of [...] years of age. The complainant sustained serious non-genital as well as genital injuries. The incident clearly left serious long term physical and emotional scars on her and was very traumatising. The appellant knew the complainant and he was in a position of trust *vis-à-vis* the complainant when he attacked her in her house.

[8] The Court *a quo* in my view wrote a very detailed and well-reasoned judgment which cannot be faulted in any respect. In the said judgment the Court *a quo*, *inter alia*, came to the following findings and conclusions, with which I respectfully concur:

“And in weighing his personal circumstances against the seriousness of this offence and its devastating consequences, the prevalence of this offence, the interests of society, the court finds that his personal circumstances do not appear to constitute substantial and compelling circumstances. This is indeed a serious rape and in my view, falling within the worst category of rape. One can hardly imagine a rape worse than this. And in consideration of Mrs M. age, her physical ailments and the fact that she was simply been kind to the accused, who then entered her premises deviously and preyed on her like a villain. Leaving her to bare the pain and the scars, both physical and emotional, the photo album speaks for itself. To my mind this is precisely the type of matter that the legislature had in mind when it enacted the minimum sentence legislation... In consideration of the legislator’s view for such an offence, as well as the consideration of the circumstances of this particular case, I am satisfied that they render the prescribed sentence of life imprisonment to be a just sentence. And that it is proportionate to the crime, the criminal and the needs of society in its protection and deterrence of such an offence.”

- [9] In the premises there is no basis upon which we can interfere with the Court *a quo*’s finding that no substantial and compelling circumstances exist in this instance.

[10] Consequently the appellant's appeal against his sentence is dismissed.

C. VAN ZYL, J

I concur:

P.C.F. VAN ROOYEN, AJ

On behalf of the appellant:

Me S. Kruger
Instructed by:
Bloemfontein Justice Centre
BLOEMFONTEIN

On behalf of the respondent:

Me M.M.M. Moroka
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN

/sp