

**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

Appeal No. : A284/2010

In the appeal between:-

**MUSI ERIC MAYA**

Appellant

and

**THE STATE**

Respondent

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**CORAM:**

RAMPAL, AJP *et* PHALATSI, AJ

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**HEARD ON:**

6 FEBRUARY 2012

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**JUDGMENT BY:**

PHALATSI, AJ

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**DELIVERED ON:**

16 FEBRUARY 2012

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[1] This is an appeal against sentence imposed by the magistrate in the regional division of the Free State, held at Sasolburg.

[2] The appellant's application for leave to appeal was refused by the trial court.

[3] He petitioned the Judge President of this court and he was

granted leave to appeal against sentence.

- [4] The appellant was convicted of rape on 8 December 2009 and sentenced to twenty years imprisonment on the same date.
- [5] The facts of this case are, briefly, that the complainant was walking alone, in the early hours of the morning from the tavern, going home.
- [6] Along the way, she was accosted by two people and they dragged her, causing her to fall down.
- [7] She was then raped by the appellant in the middle of the street.
- [8] She was screaming and crying and some people came out to help her, and the appellant ran away.
- [9] In examination in chief, the complainant had testified that she was grabbed by two people.
- [10] She, however, conceded in cross examination that the only

person who grabbed her was the appellant and that the other person was standing on the side.

[11] She further testified that only the appellant assaulted and penetrated her.

[12] Unfortunately, the judgment of the magistrate does not give an indication of which sentencing regime did she apply; that is, whether she sentenced the appellant on the basis that the circumstances of the rape are such that it falls under Part 1 of Schedule 2 or Part 111 of Schedule 2.

[13] It can only be inferred, from the sentence that the Magistrate imposed, that she sentenced the appellant in terms of Part 1 of Schedule 2. I find this to be a misdirection on the part of the magistrate.

[14] It is common cause that the complainant was only raped once by the appellant.

[15] I therefore agree with both Mr. Reyneke and Mr. Harrington that it is Part 111 of Schedule 2 which is applicable to this

case.

[16] Section 51(2)(b) of Act 105 of 1997 provides as follows:

“Notwithstanding any other law but subject to subsections (3) and (6), a regional court or High Court shall sentence a person who has been convicted of an offence referred to in-

(a) Part 111 of Schedule 2, in the case of-

i) a first offender, to imprisonment for a period not less than 10 years;

Provided that the maximum term of imprisonment that a regional court may impose in terms of this subsection shall not exceed the minimum term of imprisonment that it must impose in terms of this subsection by more than five years.”

[17] In the light of the above, the magistrate could not have imposed a sentence above 15 years, being 10 years, as the appellant is the first offender, plus a further period of five years and I therefore find that this is an appropriate case where the court of appeal can interfere with the sentence imposed by the trial court.

[18] The seriousness of the crime of rape cannot be overemphasized. I have never come against any decision

where it was not held that rape is a very serious crime which invades both the privacy and dignity of the victim. Suffice it to say that I share these sentiments.

[19] In this case, the complainant was not only raped, she was also assaulted by the appellant.

[20] She was further humiliated by the fact that she was raped in the middle of the street and was found by people, including male people, half naked.

[21] In the premise, I am of the view that an appropriate sentence is one of 12 years imprisonment.

[22] I therefore make the following order:

22.1 The appeal succeeds;

22.2 The conviction stands;

22.3 The sentence of twenty years imprisonment imposed by the court *a quo* on the 8<sup>th</sup> December 2009, is set aside and substituted with the following:

22.4 The accused is sentenced to 12 (Twelve) years imprisonment in terms of section 51(2) of the Criminal

Law Amendment Act 105 of 1997, which is deemed to have been imposed on 8 December 2009.

**N.W. PHALATSI, AJ**

I concur.

**M.H. RAMPAL, AJP**

On behalf of appellant:

Attorney J.D. Reyneke  
Instructed by:  
Bloemfontein Justice Centre  
Legal Aid SA  
BLOEMFONTEIN

On behalf of respondent:

Adv. W.J. Harrington  
Instructed by:  
Director Public Prosecutions  
BLOEMFONTEIN

/sp