

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Appeal No.: A36/2012

In the appeal between:-

KASIMU SEBAGALO

Appellant

and

THE STATE

Respondent

CORAM: VAN DER MERWE, J *et* MOLEMELA, J

HEARD ON: 19 NOVEMBER 2012

DELIVERED ON: 22 NOVEMBER 2012

MOLEMELA, J

[1] This is an appeal against sentence only. The appellant was convicted of rape by the regional court in Bloemfontein. He was subsequently sentenced to twenty four years imprisonment.

[2] The facts giving rise to this appeal are as follows: The complainant was in the appellant's employ. The complainant and her co-employee were supposed to receive their weekly wages from the appellant on the day of the incident. The appellant, however, did not pay them, prompting the complainant and her co-employee to make enquiries about their wages. In response, the appellant informed them that he had sent someone to the bank and was waiting for that person to bring him some money. He then took them to certain premises and instructed them to wait for him there. He later returned, but did not pay them. After waiting for about three hours, the complainant demanded her wages from the appellant. The appellant became aggressive towards her and hit her with an open hand. He then asked her whether she wanted to be raped. He hit her twice with an iron rod on her arms. He then pushed her onto the floor, undressed her and then raped her.

Both the complainant and her colleague cried. An acquaintance of the appellant arrived at the scene and told them that they were making noise. He then sat on the sofa and watched as the appellant raped the complainant for the second occasion. After pausing for a while, the appellant then raped the complainant for a third time. The appellant then chased the complainant and her co-employee away from the premises. As a result of the incident, the complainant sustained injuries to her forehead, her arm and some of her hair was pulled out, leaving her with bald patches on her head. She also sustained injuries to her genitals. The complainant endured the assault and the rape for about four hours.

[4] Although the appellant had, in his heads of argument, contended that the sentence imposed by the court *a quo* was too harsh under the circumstances and that the court *a quo* had misdirected itself by failing to take into account the two year period the appellant spent in custody while awaiting trial, during the hearing of the appeal, counsel for the appellant conceded that given the aggravating circumstances that accompanied the offence, the court *a quo*'s sentence was justified. He thus conceded that the appeal has no merit.

[5] It is clear from the record that in concluding that the rape committed by the appellant to be of a nature warranting imposition of a severe sentence, the court *a quo* took the following aggravating factors into account:

- (i) that the offence was rife in the court's area of jurisdiction;
- (ii) that the appellant, as the complainant's employer, abused the trust relationship that existed between him and the complainant;
- (iii) that the appellant subjected the complainant to further humiliation by raping her in the presence of two other persons;
- (iv) that the appellant subjected the complainant to violence and inflicted injuries on her;
- (v) that the complainant was traumatised by the incident.
- (vi) that the appellant showed no remorse and failed to accept responsibility for his actions;

[6] It is evident from the record that the court *a quo* considered the following mitigating factors: that the appellant was 26 years old at the time of commission of the offence; that he was a first offender; that he passed grade 12; and that he was economically active. It is also clear from the record that these mitigating factors, including the period spent by the appellant in custody while awaiting trial, are far outweighed by the appellant's aggravating factors. While the sentence imposed by the court *a quo* is relatively heavy, it is justified by the circumstances of the case. It is not a sentence that can be considered to be "disturbingly inappropriate" or "totally out of proportion to the gravity or magnitude of the offence". See **S v SALZWEDEL AND OTHERS** 1999 (2) SACR 586 (SCA). The concession made by the appellant's counsel was thus properly made.

[7] Given all the circumstances, the appropriate order would be the following:

ORDER:

1. The appeal against sentence is dismissed.
2. The sentence imposed by the court *a quo* on the 14th May 2009 is confirmed.

M.B. MOLEMELA, J

I concur.

C.H.G. VAN DER MERWE, J

On behalf of appellant:

Mr J D Reyneke
Instructed by:
Legal Aid SA
BLOEMFONTEIN

On behalf of respondent:

Adv S Giorgi
Instructed by:
Director Public Prosecutions
BLOEMFONTEIN

/sp