

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Appeal No. : A69/2010

In the appeal between:-

PULE BEANS SEGALE

Appellant 1

WILLIAM SPENCER TOLO

Appellant 2

and

THE STATE

Respondent

CORAM: KRUGER, J *et* MATHEBULA, AJ

HEARD ON: 22 AUGUST 2011

DELIVERED ON: 25 AUGUST 2011

JUDGEMENT BY: MATHEBULA, AJ

[1] The appellants were convicted and sentenced by the Regional Magistrate, Welkom on the 18th September 2009 on a charge of rape. The complainant was raped more than once and by more than one person, and minimum sentence legislation applied. Life imprisonment was the minimum sentence. Both were sentenced to life imprisonment. They

are now approaching the court on appeal against both conviction and sentence.

[2] On the 3rd June 2007, the complainant left her house in Thabong, Welkom for work. It was around 5H30 in the morning. While walking in the open veld she was accosted by two males and one was armed with a dagger. They commanded her to lie down which she did because she was afraid. At a later stage this group increased in number to at least ten men. All or most of these men took turns in raping her and also took her earrings. In particular both first and second appellants as well as a young man raped her more than once. After being raped repeatedly by the group of about ten men in the veld, the first and the second appellants walked with her towards the kraals and again raped her in a furrow next to the kraals. They were the ones who spent more time with her while in captivity.

[3] She had to listen how the first and the second appellants contemplated among themselves to kill her because they thought she was going to get them arrested.

- [4] After they had raped her they let her leave. She proceeded to work and informed her co-worker. She was in no state to work. They went back to her house and the matter was reported to the police.
- [5] The appellants denied that they were involved. Identity was in dispute. The complainant was invaded by a number of men who took turns in raping her. She could not identify all of them because of the fluidity of the situation and her emotional condition. However, she was resolute that the first appellant was one of her assailants on the day. He came as the ninth person and pulled all others from her so that he could rape her. He was the most talkative of them all and that drew her attention to him. Some of his distinct features were his protruding teeth, hollow and twinkle eyes. He also gave her orders that she must suck his manhood and even attempted anal penetration. He raped her several times, in several manners, at different places and over a period of time. He was active and spoke a lot. He made a clear and lasting impression on her. She had ample opportunity to identify him. He was apprehended a short while after the incident, wearing the same clothes the complainant had seen

on him during the rape.

[6] The second appellant was armed with a firearm and pointed it at her. He also told her that she must say her last prayers because he was going to kill her. The DNA results obtained from the complainant and the second appellant matched each other. The identity of the second appellant was established beyond any doubt.

[7] On behalf of both appellants Mr. Reyneke correctly conceded that the conviction and sentence were in order. He said that this was one of the most horrendous rapes he has come across in his career. The State, represented by Mr. Hoffman, agreed and made no further submissions.

[8] I am of the view that the court *a quo* did not err in finding both appellants guilty as charged. The respondent proved its case beyond reasonable doubt.

[9] The second aspect is the issue of sentence. It is the prerogative of the trial court to impose sentence. A court of appeal will only interfere with any sentence in limited

circumstances see: **S v PILLAY** 1977 (4) SA 531 (A) at 535 E – F and **S v PIETERS** 1987 (3) SA 717 (A) at 728 B – C.

[10] The appellants invaded a defenceless woman in the worst predatory manner. They did not only dishonour her person by raping her but also used very rude words while violating her. They stripped her of all her dignity and reduced her into nothing. They displayed ruthlessness devoid of any humanity. She still bears those scars long after this unfortunate incident. She is unable to work now. She bleeds from her private parts regularly, on a weekly basis. The appellants did not show any remorse.

[11] The first appellant was 18 years 6 months during the commission of the offence. However, his participation in the commission of this offence belied his age. He was the leader and dictated to a large extent what transpired on that day. The second appellant who was 32 years and 3 months at the time participated substantially in the commission of the offence. He did not only rape her more than once but pointed a firearm at her and threatened to kill her. The court *a quo* was correct in not finding substantial and compelling

circumstances to impose a lesser sentence than life imprisonment. The appeal ought to be dismissed.

[12] Accordingly, I make the following order:-

12.1 The appeal is dismissed.

12.2 In respect of both appellants their convictions and sentences are confirmed.

M.A. MATHEBULA, AJ

I agree.

A. KRUGER, J

On behalf of appellants:

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

On behalf of respondent:

Adv. R. Hoffman
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN