

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Appeal No. : A21/2009

In the appeal between:-

MESHACK M SEITSHILI (SEITSHIRO)

Appellant

and

THE STATE

Respondent

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

HEARD ON: 15 AUGUST 2011

DELIVERED ON: 1 SEPTEMBER 2011

JUDGEMENT BY: MATHEBULA, AJ

[1] The appellant was tried in the Bloemfontein Regional Court in connection with a rape of a minor child. He was convicted and sentenced to life imprisonment. He is now approaching the court on appeal against both conviction and sentence.

[2] On his behalf, Mr Reyneke conceded that the conviction was in order and made no submission in that regard. I agree with his concession. His submission was that the sentence is shockingly inappropriate and that the court must interfere

with it. He referred to the diminished criminal capacity of the appellant at the time of the commission of the offence. He also referred to the time that the appellant spend in prison as an awaiting trialist. The period was three (3) years and four (4) months.

[3] He also referred to the doubt regarding the impact or effect that the incident had on the complainant. It appears that the complainant was also sexually abused by her stepfather and was now accommodated at a place of safety. His submission was that the court *a quo* did not strike a balance between the interests of society, the offence and personal circumstances of the appellant.

[4] The state counsel, Mr Strauss conceded that the court *a quo* erred in not finding substantial and compelling circumstances. It was his submission that the sentence was shocking and inappropriate. In particular the court erred in not taking into account the lengthy period that the appellant had been incarcerated while awaiting trial.

[5] It is within the discretion of the trial court to impose sentence.

The court of appeal will not lightly interfere with the sentence imposed. However it will undoubtedly interfere if there is a striking disparity between the sentence imposed and that it will have imposed seeing as a court of first instance. In essence it will interfere if the sentence is shockingly inappropriate. See **S v PIETERS** 1987 (3) SA 717 (A) at 727 F-H and **S v WHITEHEAD** 1970 (4) SA 424 (A) at 435 D.

- [6] The appellant did spend a lengthy period in custody. In **S v STEPHEN and ANOTHER** 1994(2) SACR (W) on 168E - G, Schultz J and the following:-

“Imprisonment whilst awaiting trial is the equivalent of a sentence of twice that length....”

The court in **RAMMOKO v DIRECTOR OF PUBLIC PROSECUTIONS** 2003 (1) SACR 200 SCA at 205C - D per Mpati JA (as he then was) said the following:-

“This court observed in **S v ABRAHAMS** 2002(1) SACR 716 SCA some rapes are more than others and the life sentence ordained by the legislature should be reserved for cases devoid of substantial factors compelling the conclusion that such a

sentence is inappropriate and unjust”

[7] In this matter the court *a quo* did not give sufficient consideration to these aspects. The issue of his lengthy incarceration is not mentioned at all. At the same level the objective gravity of the crime is not given appropriate attention. The court *a quo* considered the heinous nature of the offence and it was on that basis that she imposed the life imprisonment. The failure to strike a proper balance of all the factors renders the sentence inappropriate and shocking. I am at liberty to interfere. The appellant deserves to be sentenced to a lengthy period of imprisonment. The society expects nothing less because of the seriousness of the crime he committed. It has been repeatedly been affirmed by our courts that vulnerable members of our society must be protected against the appellant and his ilk. In the final analysis that must be done within the dictates of the law.

[8] I make the following order:-

8.1 The conviction is confirmed.

8.2 The sentence is set aside

8.3 The sentence of life imprisonment is substituted with twenty (20) years imprisonment.

8.4 The foregoing sentence shall be deemed to have
been imposed on the 4th June 2008

M.A. MATHEBULA, AJ

I agree.

C. VAN ZYL, J

On behalf of appellant:

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

On behalf of respondent:

Adv. Strauss
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN