

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : A302/2007

In the appeal between:-

T. M. MONYOTSO

and

THE STATE

CORAM: HANCKE, AJP *et* KAHN, AJ

JUDGMENT: KAHN, AJ

HEARD ON: 26 JULY 2010

DELIVERED ON: 5 AUGUST 2010

[1] The appellant was convicted of housebreaking with the intent to rape and rape by the regional magistrate *a quo*, at Welkom and subsequently sentenced to ten (10) years imprisonment. He appealed, with due leave of the court *a quo*, against both the conviction and the sentence.

[2] The facts in *casu* are relatively simple. On 19 March 2006, at approximately 02H00, the complainant and her friend, one

Maria Rabete, were sleeping in the former's bedroom. Whilst asleep, the bedroom door was opened and the light was switched on. The noise occasioned thereby awoke the complainant, at which stage she observed the appellant in her bedroom. He told them to be silent. Her aforementioned friend bolted out of the room and ran into an adjacent bedroom. The appellant wrestled with the appellant and eventually managed to break away and run off to the said adjacent room. This room was occupied by her grandmother, also referred to as the 'old lady', one Moeketsi and a few children. The appellant followed the complainant into the adjacent room and whilst she was in the process of explaining to the old lady and Moeketsi the events which had just transpired, the appellant attacked her again. Moeketsi attempted to intervene, whereupon the appellant stabbed him in the hand. Maria Rabete ran away as did Moeketsi, pursuant to being stabbed. He locked the kitchen door from the outside in the process of exiting the house. The physical struggle continued between the appellant and complainant and appellant succeed in forcing the complainant back into her bedroom where he threw her onto the bed and forcibly engaged in sexual intercourse with her,

without her consent.

[3] Moeketsi returned to the house with a group of people and as they entered the house, appellant ran off into the adjacent bedroom. He was apprehended and assaulted by the group of people who had just arrived. They forcibly led him into the kitchen and when they switched on the kitchen light the group were shocked by their discovery of his identity and halted the assault, at which stage the appellant ran off and escaped from the house.

[4] Moeketsi Mokhabela testified on behalf of the state that on 19 March 2006, he slept in a bedroom adjacent to that of the complainant. The complainant's screaming awoke him and he observed the appellant departing from the bedroom. Thereafter, the appellant returned and displayed a knife, at the same time calling the complainant. The latter then dragged the complainant out of the bedroom. He attempted to intervene by standing between the two, pursuant to which, the appellant attempted to stab him. He lefted his hand up in self defence and was thus stabbed in his hand in the process. The appellant fell down and he jumped over him and ran off in search of help. He returned with a group of

males. Upon return, he noticed that the lights had been switched off and after entering the house, he noticed that the appellant was in a state of undress. The group of males apprehended and assaulted the appellant but he managed to escape from the house. He admits that the appellant had no intention of stabbing him.

[5] The appellant testified that he was engaged in a romantic relationship with the complainant since 2005. He denied that he was present at the complainant's home on 19 March 2006, asserting that he was in Gauteng on said date.

[6] The learned magistrate correctly evaluated the evidence of the witnesses and concluded that the appellant's evidence must be rejected as false. He cautioned himself against the dangers of uncritically accepting evidence presented by witnesses on identification issues. He found the complainant's testimony, within the context of the issue of identification, credible and reliable. He dismissed the appellant's allegation that the complainant had falsely laid a rape charge against him, prior to the one in *casu*, as a blatant lie. The appellant's legal representative, Mr Van der Merwe, correctly conceded that the evidence against the

appellant is overwhelming and that there is no merit in the appeal against the conviction. The appeal against the conviction ought to be dismissed.

[7] The appellant was 27 years of age, unmarried and the father of one child. He is possessed of five (5) previous convictions, namely two (2) of theft, one (1) of robbery, one (1) of assault and one of possession of dagga.

[8] Rape is a very serious offence. Its very foundation is based on the violent disregard of humankind, human dignity and respect. It violates survivor's right to privacy and bodily integrity. See **S v CHAPMAN** 1997 (3) SA 341 (SCA) at 345 c – d. The rape in *casu* is exacerbated by the fact that the appellant invaded the complainant's home at a time when she was fragile, in that she was asleep in the middle of the night. He brazenly threatened her with a knife and rape her, even though other persons were present in the house. Their presence did not deter him from committing this heinous crime.

[9] The magistrate, *post* a thorough analysis, correctly concluded that no substantive and compelling circumstances exist *in casu* which necessitates a deviation or diversion from the minimum sentence of ten (10) years imprisonment.

[10] I am of the view that the magistrate did not in any way misdirect himself and furthermore that the sentence imposed in the court *a quo* is not shockingly inappropriate. If anything, it is a sentence which the legislature ordained for crimes of this nature. The magistrate exercised his sentencing discretion judiciously and there is no ground for this court to intervene. In fact, Mr Van der Merwe also conceded there is no ground or merit *in casu* wherewith to interfere with the magistrate's sentence. As such, the sentence ought to be confirmed.

[11] In consequence, I make the following order:

The appeal against conviction and sentence is dismissed.

G. KAHN, J

I agree.

S.P.B. HANCKE, AJP

On behalf of the appellant: Mr Van der Merwe
Instructed by:

Bloemfontein

On behalf of the state: Adv M. Lencoe
Instructed by:

BLOEMFONTEIN

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