

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(ORANGE FREE STATE PROVINCIAL DIVISION)**

Appeal No.: A7/2004

In the appeal between:

**STEPHEN NENZANI MAKOFANE**

Appellant

and

**THE STATE**

Respondent

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**JUDGMENT:**

HANCHE, J *et* MATHEBULA, AJ

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**HEARD ON:**

27 FEBRUARY 2006

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**DELIVERED ON:**

2 MARCH 2006

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[1] The appeal to this court lies against both conviction and sentence. The regional magistrate convicted the appellant of rape and sentenced him to ten (10) years imprisonment.

The facts are briefly as follows:

On the 3<sup>rd</sup> March 2002 the appellant raped Lettia Msea Kopini at Rocklands, Bloemfontein. The complainant went to house number 964 Rocklands to look for her boyfriend Thembinkosi Shlangu. On arriving at house 964, the complainant did not find her boyfriend but found the appellant and his grandmother. It is not clear whether the appellant was asked or volunteered to accompany the complainant to Thembinkosi's

house. However, they both left to look for him at his house situated at Itubeleng Chanani Informal Settlement.

- [2] They had to walk through the veld to Thembinkosi's house. It is here that the appellant raped her. On arriving at Thembinkosi's house she immediately reported the matter to him. The three of them (i.e. Thembinkosi, appellant as well as herself) went back to house number 920 Nazo Street, Rocklands to report the matter to the grandmother. Thereafter they went to the police to lay a charge and later that night the complainant was examined by Dr. van Aswegen.
- [3] Mr. Skibi, on behalf of the appellant, conceded that identity was not an issue because the appellant and complainant were together when she reported the matter to Thembinkosi. He submitted that the complainant had engaged in sexual intercourse three or four days before the said date and it was not clear as to whether the injuries could be traced back to the alleged day. On the issue of a torn blouse, he referred to the complainant's version that the appellant only removed her panty. It was his view that

the inconclusive DNA results further point to the possibility that the appellant did not rape her on that day.

[4] On the issue of sentence, his submission was that the complainant did not suffer any injuries. The rape was not premeditated but happened by chance. Furthermore, that there was no evidence of the complainant suffering any emotional stress or trauma as a result of the offence.

[5] On behalf of the respondent, Mr. Botha argued that the appeal must be dismissed. His submission was that the appellant was asking the court to speculate. The totality of the evidence against the appellant was of such a nature that the conviction was justified. According to the complaint her blouse was torn and this is corroborated by the recording of the medical practitioner in the J88 form. The question is:- How did this happen? This given the testimony in the matter points in the direction of the appellant; having raped the complainant. On arriving at Thembinkosi's house, the complainant immediately reported the matter to him. According to the medical practitioner, there were injuries which were most likely sustained during sexual intercourse. In total given this evidence, the appellant's version is just a bare denial.

[6] He further submitted that the sentence imposed was in accordance with the relevant law. The court of appeal should not lightly interfere with the sentence imposed by a trial court. Among others, it was not the first time that the appellant found himself on the wrong side of the law. The offence committed was of a serious nature which needed to be dealt with firmly.

[7] I agree with Mr. Botha that the totality of evidence in this matter is overwhelming against the appellant. Both the appellant and the complainant did not have any bad blood against each other. The complainant's version is corroborated in material respects even by the appellant's witness. There is evidence of sexual intercourse. In my view the appeal ought to fail in this regard.

[8] It is trite law that the court of appeal should not lightly interfere with sentence. Rape is a heinous crime that murders the soul of the victim. It is the misuse of power against the vulnerable in the society. Perpetrators must be dealt with, with the full might of the law. The sentence must be deterrent particularly as this offence appears to be running amok. Society needs to be protected and it is the duty of the courts to do so. In this matter the appellant

despite denigrating his victim continues to show no remorse. I can find no reason that makes the sentence shockingly inappropriate.

[9] I make the following order:-

(a) The appeal is dismissed.

**M.A. MATHEBULA, AJ**

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I concur.

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**S.P.B. HANCKE, R**

On behalf of the appellant:

Adv. N.L. Skibi  
Instructed by:  
Justice Centre  
BLOEMFONTEIN

On behalf of the respondent:

Adv. J. Botha  
Instructed by:  
Director: Public Prosecutions  
BLOEMFONTEIN

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