

Reportable: Yes / No Circulate to Judges: Yes / No
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Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

Case no: K/S 15/00

Date heard: 15/06/2006

Date delivered:

In the matter of:

SAMUEL T. LUMKWANA

APPELLANT

versus

THE STATE

RESPONDENT

Coram: **MOKGOHLOA AJ**

JUDGMENT

MOKGOHLOA AJ:

1. The two accuseds appeared before this Court sitting at De Aar on five counts of assault and one count of rape. Both accuseds were represented. Before the State closed its case the accuseds changed their plea on a charge of rape from not guilty to

guilty. The accuseds were then acquitted on all five counts of assault and convicted on a charge of rape and sentenced on the 8th June 2000 to 14 (fourteen) years imprisonment each.

2. Only one of the accuseds, Mr Samuel Thembeni Lumkwana, who was Accused 1 at the trial (henceforth "*the appellant*") seeks leave to appeal against both conviction and sentence.
3. The appellant's grounds for leave to appeal fashioned by himself and dated the 6th February 2006 are as follows:

AD CONVICTION

3.1 That the Court failed to take into consideration that he cooperated with the investigating officer and also the State;

3.2 That the State failed to prove its case beyond reasonable doubt;

AD SENTENCE

3.3 That the Honourable Judge erred in having overemphasized the seriousness of the crime over his personal

circumstances;

3.4 That the Honourable Judge misdirected himself by not taking into account the fact that he was a first offender;

3.5 That the sentence is shockingly excessive and therefore inappropriate in the circumstances.

THE APPEAL AGAINST CONVICTION

4. The appellant did not make any mention of his change of plea from not guilty to guilty. He changed his plea just before the State closed its case. His plea then removed all doubt if any that the Honourable Judge may have to the evidence of the state and confirmed or strengthened the State's case.

THE APPEAL ON SENTENCE

5. The Honourable Judge found that there were substantial and compelling circumstances that persuaded him to impose a lesser sentence than the prescribed life imprisonment. The appellant's age, the fact that he was under the influence of liquor at the time of the commission of the crime; he was not armed and that the victim did not suffer serious bodily injuries. He was further a first offender.

6. In an application for leave to appeal the appellant must satisfy the Court that he has reasonable prospects of success on appeal. It is clear to me from the appellant's grounds for leave to appeal that this is a case where absolutely no chance of a successful appeal exist and I am certain beyond reasonable doubt that the appeal will fail.

ORDER:

Leave to appeal on both conviction and sentence is refused.

FE MOKGOHLOA
ACTING JUDGE

For the Appellant:

Adv. Cloete Instructed by the Legal Aid Board

For the Respondent:
Public Prosecution

Adv. Bagananeng, Office of the Director of