

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

Appeal No.: SH57/2004

In the case between:

THE STATE

and

MACHINI MICHAEL RAMOTSO

CORAM: CILLIé *et* EBRAHIM J

JUDGMENT: EBRAHIM J

DELIVERED ON: 25 AUGUST 2005

[1] This matter has been referred in terms of the provisions of section 304 of the Criminal Procedure Act Nr. 51/97, relating to special review.

[2] The accused was convicted in the regional court of rape and sentenced to 15 years imprisonment. It appears from the evidence that the accused and another male person in his company undressed the complainant by force and then

raped her in turn.

[3] In consequence, although rightly convicted, the regional magistrate erred in proceeding to sentence the accused as he lacked punitive jurisdiction in view of the provisions of section 51(1) and section 52(1) of the Criminal Law Amendment Act 105/1997, the rape being a rape by more than one person, and committed in furtherance of a common purpose. The common purpose of the accused and his companion in the present case was obviously to commit rape. The offence then qualifies as one falling within the purview of Part 1 of Schedule 11, of the aforesaid Act, and accordingly commission of the offence attracts a sentence of life imprisonment.

[4] Accordingly the sentence is to be set aside. The following order is made:

4.1 The sentence of 15 years imprisonment is set aside.

4.2 The matter is to be enrolled once again in the regional court for the proper order to be made

referring the accused to the High Court for the imposition of sentence in terms of the provisions of section 52(1) of the Criminal Law Amendment Act 105/1997.

S. EBRAHIM, J

I concur.

C.B. CILLIÉ, J

/em