

SOUTH AFRICA / JUDGMENT

Dlamini v S (271/2019) [2020] ZAGPPHC 195 (28 May 2020) [2020] ZAGPPHC 195

COURT

North Gauteng High Court, Pretoria

BEFORE

BAM, MATHUNZI

CASE / FILE NUMBER

271/2019

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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Appeal: 271/2019

In

the matter between: DAVID
DLAMINI
Appellant
and
THE
STATE
Respondent

JUDGMENT

BAM, J

1. On 14 December 2018 the appellant, a man aged 61, was convicted in the Tsakane Regional Court on a charge of rape of a female child of 8 years, committed at Tsakane, during the period August 2016 and May 2017, and sentenced to life imprisonment. The appellant has an ex lege automatic right of appeal and appeals against both the conviction and sentence. The appeal is opposed.
2. At the trial the accused, represented by an attorney, pleaded not guilty.
3. In order to lay the back ground to the outcome of this appeal, I deemed it expedient to refer to the evidence in some detail.
4. The complainant testified. She was 9 years old at the time of the trial. During the period mentioned in the charge sheet, 2016/2017, the complainant stayed with her aunt, her mother's sister, and her husband, the accused. Her mother was working and could not look after her. She and accused's one son, aged 6 or 7, used to sleep on the floor next to the bed where the accused slept. The accused's other son slept in his own room. Her aunt worked night shifts, and in her absence, still during the night, the accused would pick her up, undress her, and have sexual intercourse with her. This happened several times. After each incident the accused threatened to kill her should she tell anybody. The intercourse also occurred once on day after school, when her aunt had already left for work. On that occasion, whilst playing outside, the accused called her into the house. Because she was scared, she asked the accused's son to accompany her inside, but the accused chased his son away. The accused followed the same routine as he did at night times, and had intercourse with her. After the intercourse she saw blood on the bed sheet. The blood came from her private part. The accused took the sheet away. She also told her two elder sisters what happened because she did not want it to continue. Her sisters wanted to take her to the clinic . At school she also told her teacher, Ms M[...]. After she had told the teacher she was taken to the court where they were interviewed by a police officer. Thereafter she was taken to the clinic where she was medically examined.

During cross examination the accused's defence was revealed. He denied the allegations, and in respect to the alleged last occasion he raised an alibi. It was also recorded that the accused had erection problems years before the alleged incidents. The complainant remained adamant that the accused raped her many times.

The complainant's adult sisters, Ms P and Ms S N[...], confirmed that the complainant reported to them. The first sister said the complainant said the accused did naughty things to her whilst the second sister said the complainant said she was raped. They were shocked and scared. However, their versions of what exactly the complainant told them, differed in detail. The complainant did not tell them that she was raped during the day. They informed the complainants Despite the

complainant's complaints, it seemed that she was allowed to return to the accused's home. Both witnesses were rather vague about why this was allowed.

The school teacher, Ms C M[....], also testified and confirmed that the complainant had reported to her that the accused did naughty things to her, and that she took the clinic for medical examination. The complainant then stayed with her for a week until the Department of Social Services took her away. The two sisters said the child had reported to them the day before, that they were scared and that they were waiting for their mother to attend to the complainant.

Nurse Kate Skosana examined the complainant at the clinic. She could not find any injuries to the clitoris or labia minora but found redness to the fossa navicularis. In respect of the hymen there was a swelling and a bump (scar), and a cleft (healed tear) at 9'o clock position indicative of an abnormality. The hymen was no longer intact because it sustained scars that had already healed, likely to have been sustained during non consensual sex. The hymen showed signs of previous hymeneal penetration by an object like a penis.

5. The accused denied that he had intercourse with the complainant. He however admitted that the two children slept with him on his bed whilst his wife went to work. When his wife was present the children slept on the floor. The accused stated that he came to think that the complainant was instigated by her eldest sister to lie to the court about the rape.
6. The trial court, comprehensively, considered the evidence and arrived at the conclusion that the State had proved its case against the accused beyond reasonable doubt.
7. On appeal the legal representative attacked the finding of the trial court on mostly a general and nonspecific, basis which I do not find necessary to repeat.
8. After having considered the evidence, summarised above, and the

submissions

made on behalf of the appellant and the state. There is also no basis upon which it can be said that the trial court erred in any respect. The evidence proved beyond reasonable doubt that the appellant committed the alleged crime.

9. In respect of sentence the minimum sentence regime is applicable. Crimes of this nature committed against children calls for the minimum sentence of life imprisonment unless it is found that substantial and compelling reasons exist justifying a lesser sentence.
10. The trial court, again comprehensively, dealt with all relevant aspects concerning the issue of sentence, and concluded that the minimum sentence of life imprisonment should be imposed.
11. There is no reason to interfere with the sentence.

12. The only aspect to be added is that it is disturbing that crimes of this nature seem to be on the increase despite severe sentences being imposed. The trial courts are overburdened with matters of this nature. This court alone, within a period of two weeks, had to deal with four appeals where children were the victims of sexual abuse. It is further disturbing that even elderly men, above the age of 60, like in this case, are involved.

ORDER

1. The appeal against conviction and sentence is dismissed.
2. The conviction and sentence are confirmed.

A BAM

JUDGE OF THE HIGH COURT

I agree

A MATHUNZI

ACTING JUDGE OF THE HIGH COURT

28 May 2020

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