

SOUTH AFRICA / JUDGMENT

Jantjies v S (A273/19) [2020] ZAWCHC 32 (9 March 2020) [2020] ZAWCHC 32

COURT

Western Cape High Court, Cape Town

BEFORE

Mabindla-Boqwana, Mayosi

CASE / FILE NUMBER

A273/19

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IN

THE HIGH COURT OF SOUTH AFRICA

(WESTERN

CAPE DIVISION, CAPE TOWN)

Case

No: A273/19

In

the matter between:

MICHAEL
JANTJIES
Appellant
and
THE
STATE
Respondent

Coram:

Mabindla-Boqwana J et
Mayosi AJ

Delivered:

9 March 2020

JUDGMENT

MAYOSI AJ

Introduction

1 On 5 June 2019 the appellant was convicted of three counts of rape in the Vredenburg Regional Court. On 19 June 2019 he was sentenced to 8 years imprisonment in respect of count 1; 8 years in prison for count 2 of which 4 years was to run concurrently with the sentence imposed for count 1; and 8 years imprisonment for count 3 of which 4 years was to run concurrently with the sentence imposed for count 1. Effectively he was sentenced to 16 years imprisonment.

2 On 17 July 2019 the Magistrate granted the appellant leave to appeal against his conviction on the three counts of rape.

Evidence

3 The complainant testified that she was a school teacher who met the appellant on Facebook in August or September 2014. The appellant introduced himself to the complainant as a private investigator and a police officer, and after communicating with each other on Facebook the appellant asked the complainant for her cell number after which they continued “chatting” via WhatsApp.

4 The appellant and the complainant met in person for the first time either on 24 December 2014 when the appellant went to visit the complainant at her house. The appellant, however, testified that they met on 24 December 2014. Nothing turns on this difference in the date on which they met. When they did meet in person they got along immediately and the appellant left the complainant’s house the following morning. Thereafter they saw each other almost daily, and would sometimes take drives to the beach or to Vredenburg where the complainant had friends.

5 According to the complainant, from the time she met the appellant she loved him as a friend, and their relationship never developed into a romantic or sexual one. The appellant on the other hand often professed that he was in love with her. Whether their relationship was sexual or not, it is clear from the record that from the time they met until the incident occurred on 7 March 2015, they were affectionate to each other and spent much time together. Their affection for each other was evident from various email communications exchanged between them, including an email sent by the complainant to the appellant on 13 February 2015 that was meant to be a Valentine’s Day message, in which she expressed what appeared on the face of it to be deep feelings for him.

6 When they went to Vredenburg they stayed at the St Helena Bay Hotel. They went to Vredenburg about six times from the time they met until the incident occurred on 7 March

2015. According to the complainant, whilst they would share a room on these trips, they never slept on the same bed. The complainant felt safe in the company of the appellant as he had told her he was a police officer.

7 On Friday 6 March 2015 they drove to Vredenburg to spend the weekend. The appellant had some business to attend to there. They booked a room with two single beds that were separated by a small bedside cabinet placed between them. She fell asleep in her bed on the evening of 6 March 2015.

8 On 7 March 2015, in the morning, the complainant was awoken by the appellant getting into bed next to her. She asked him what he was doing and he told her to lie still. He put his arm under her neck and held her wrist with his hand. She felt his erect penis against her and she wanted to get up. He kept telling her to lie still. The complainant tried to get up but the appellant pinned her down. He got hold of her other arm and managed to turn her onto her stomach, then proceeded to lie flat on top of the complainant. He removed her panties until they were halfway down her legs. She felt an excruciating pain as the appellant penetrated her anus with his penis. She did not consent to this, or to any of the other sexual acts that followed. He asked her if she had never had anal sex, even with her ex-husband to which she answered no. The appellant told the complainant that in that case, he was taking her virginity.

9 The complainant pleaded with the appellant to stop. The appellant continued thrusting with his penis in and out of her anus, telling her that he needed to get his holy sperm inside her anus. The complainant was having difficulty breathing, and she felt pain down her legs and up her back. The appellant allowed her to take her arms out from under her chest so that she could breathe. She could not push him off her as he was big and strong and lying flat on top of her. She asked him if he did not want to use Vaseline or lotion to ease the pain, or if she could be allowed to bend her knees so that it would not be as painful. The appellant said

no and that the experience was about the pain. The complainant felt that she was going to pass out and had to consciously prevent herself from doing so. After about fifteen to thirty minutes of this anal thrusting, the appellant got up, went to the bathroom and took a shower. As he was in the bathroom the complainant was unable to get up and attempt to leave as her legs could not move. She was in pain.

10 When he came back into the bedroom, he was masturbating. He said he needed his holy sperm inside the complainant's vagina. He turned her around onto her back, got on top of her, inserted his penis into her vagina and began thrusting movements for five to ten minutes. He then said he needed her to swallow his holy sperm. He shifted his body and sat across the complainant's waist, with his knees on either side of her. He pulled the complainant up by her hair and inserted his penis in her mouth. He proceeded to thrust it in and out of her mouth until she felt a warm liquid inside her mouth. He told her to swallow it. He returned to the position of sitting across the complainant's waist, and as he did so he shook his ejaculating penis across her chest, rubbing his semen on her after which he told the complainant that his holy sperm would now soak into her.

11 Thereafter the appellant took a handkerchief out of his shirt pocket, first wiped the complainant's vagina with it and then his penis before he folded it up and put it back in his pocket. He told the complainant that every time he thought of her, he would smell the handkerchief.

12 The appellant then told the complainant to shower. She could not move. He opened the water in the shower and walked the complainant to the shower. She stood under the running water and cried. Whilst she was there he started packing their bags, told her to hurry as they were leaving. When she came out of the shower she was still crying. The appellant licked her tears off. They got into the car and drove back to Cape Town. The appellant testified that she was in shock and disbelief.

13 Upon arrival at her house, she got out of the car and retrieved her bags. When she walked past the appellant's driver's door he grabbed her left arm, took a blade that he had taken from the cubby hole and made a cut with it on complainant's wrist. He then proceeded to lick the complainant's blood and uttered words to the effect that 'now I am yours and you are mine.'

14 After the incident the complainant testified that she experienced a total mental shutdown which was later explained to her by her psychiatrist as some dissociative disorder where the brain shuts off to protect the body. She did not immediately tell anyone about the incident. She thought it was her fault and that she had brought this upon herself.

15 After the incident the complainant was off sick for a few day; she had abdominal pain and anal bleeding but her mind did not link these symptoms to the rape. She would not leave the house after the rape and had no desire to shower or eat. Her daughter had to force her to eat. The complainant testified that she craved the comfort of her mother and to be held by her.

16 On the Monday or Tuesday after the incident, the complainant went to see a doctor about the abdominal pain and anal bleeding. She did not tell this doctor about the rape as to her mind no such thing had happened. The doctor noted that the complainant's blood pressure was elevated and observed symptoms of stress. The doctor prescribed the complainant medication for spastic colon and furnished her with the details of a psychologist to deal with her stress.

17 Also on that Monday or Tuesday after the incident the appellant came to the complainant's house, to tell her that a relative of his who worked for the housing department had told him that there were cancellations, presumably on the Council housing list, and he was ready to proceed with the houses for the complainant's children. The complainant and the appellant had discussed the prospect of him assisting her to secure houses for her children sometime before the incident of 7 March. What he came to tell her then was that in light of the cancellations, she could secure the houses if she gave him money for the deposit and transfer

costs. This had to be done by Thursday. The complainant then put pressure on her children to raise the money. They took out loans and managed to raise R50 000.

18 On Friday 13 March the appellant asked the complainant to drive him to town so that he could pay over the housing money where it was required, at a place located on the Third Floor in Golden Acre Building. The appellant got out of the car with the R50 000, with the complainant waiting for him in the car. He never returned, and after waiting for him the entire day, she gave up and went back home.

19 Later that same day, after the realisation that she had been swindled by the appellant, the complainant addressed an email to him expressing, amongst other sentiments, her deep disappointment at what he had done to her, and pleading with him to return her children's money. On 15 March 2015 she addressed two further emails to the appellant – the first expressing her shock at what he had done and pleading with him to pay back the money; the second sounding resigned to her fate, and wishing him well. In his response the appellant said he would repay her the money, and asked for the complainant's bank account details.

This repayment never happened.

20 In the continuing emails she decided to adopt the approach of pretending that she was still on good terms with him in the hope that this would appeal to his good nature and cause him to return her children's money. To this end, she started writing loving emails to him, to which he would respond. These loving emails between them continued from 19 March, and they interacted with each other on these terms until 9 April 2015, with her doing so in an effort to get her money back.

21 During March 2015, following a housebreaking at her home, the complainant opened a case of housebreaking and theft at the Lansdowne Police Station. She did not name the appellant as the person she suspected for this crime at that stage, but afterwards, on 24 August 2015, the complainant reopened this case after she discovered that the appellant was in possession of her cell phone.

22 The complainant's mind had suppressed the rape incident, until her birthday on 16 March 2015. At school on that day the school principal came to the complainant, hugged her and wished her a happy birthday. When the school principal put his arms around her, the complainant experienced flashbacks from the rape and ran to the teacher's bathrooms where she found her colleague Ms Chantal Coetzee, and told her about the incident. This is the first person that she told about the rape. The complainant was upset and crying. Ms Coetzee urged her to see a psychologist. The complainant secured an appointment with the psychologist whose details she had obtained from her doctor, the following day on 17 March 2015.

23 Ms Coetzee has since left South Africa and lives overseas. Her affidavit was handed up as evidence at the trial by agreement between the parties. Ms Coetzee confirmed that the complainant reported the incident to her.

24 On 15 April 2015 the complainant was admitted to Kenilworth Clinic, a mental health facility. She remained there until 14 May 2014 and whilst there she had no contact with the appellant. The trove of email correspondence submitted as evidence confirmed this during this period. It was also whilst she was at the Clinic that the complainant began to speak about the rape, with the psychologists and psychiatrists who were treating her there.

25 At Kenilworth Clinic the complainant met a fellow patient, Mr Johan Grobbelaar, a warrant officer in the South African Police Service (SAPS). He was admitted to the Clinic in April 2015 for 21 days. After the complainant found out during a group therapy session that he was a police officer, she confided in Mr Grobbelaar about the rape. In his evidence, Mr Grobbelaar corroborated the complainant's description of the incident, as well as the fact that it occurred at St Helena Bay Hotel as told to him by the complainant. He testified that she was visibly upset and was crying when she recounted the incident to him. He convinced her to report the matter to SAPS. After he left the Clinic he made contact with her and gave her the contact details of the branch in Saldanha that dealt with rape cases.

26 At first the complainant feared bringing a rape case against the appellant because he was a police officer (or so she thought), and she feared that she would not be treated with respect and dignity if she reported the case to the Lansdowne Police Station. Also she did not trust the criminal justice system and for all these reasons she initially had no intention of reporting the rape at all. Her stay at the Kenilworth Clinic, where she participated in various programmes and therapy sessions, empowered her to make the decision that she would not allow herself to be the appellant's victim.

27 After her discharge from Kenilworth Clinic she reported the appellant's disappearance with her R50 000 to the SAPS's Directorate for Priority Crime Investigation, colloquially known as the Hawks. She made the Hawks aware of the email correspondence she had exchanged with the appellant. They encouraged her to continue corresponding with him on the same friendly terms, but cautioned her against physical contact with the appellant until their investigations were ripe. After the Hawks completed their inquiry they told her that they did not have a mandate in the matter because they discovered that the appellant was never a police officer. The Hawks prepared the statements and handed the matter over to the Lansdowne Police Station. A docket of fraud was opened in July 2015. On 20 August 2015 the appellant was arrested for fraud.

28 On 1 September 2015 the complainant attended at Victoria Hospital in Wynberg to be examined for injuries connected to the rape. The J88 was then completed. When asked by the defence why she submitted herself for medical examination only in September, the complainant explained that after the Hawks handed the dockets over to Lansdowne they were going to arrange for her to be examined for the purposes of the J88, and for her statement to be taken. However, she refused to submit to what she described as so personal an examination at a time when she had no faith in the police at Lansdowne Police Station. It was only when an officer from SAPS's Family Violence, Child Protection and Sexual Offences Unit (FCS) came to take her statement that she agreed that this officer could accompany her to the doctor for the examination.

29 On 3 September 2015 she reported the rape at the Pinelands Police Station. She laid a charge of rape against the appellant at the St Helena Police Station on 19 September 2015.

30 In his evidence the appellant denied that he had raped the complainant. He denied that he was with her at all on the weekend of 6 to 8 March 2015. According to him, they last went away together on 18 January 2015 because 19 January was his birthday and he booked a bungalow in Laneville. He testified that he did not go away with her again after 19 January 2015 because he felt guilty as he was in fact in a permanent relationship, and was living with another woman.

31 His version was that he and the complainant had a sexual relationship that began when they met on 24 December 2014 and continued until March 2015. He testified that by the time he was charged with the rape of the complainant he was already in custody for the fraud charge relating to the complainant's R50 000. His evidence was that he had gotten the money from her under false pretences, by convincing her that he could arrange housing for her; and after he took the money he ended the relationship with the complainant and cut all ties with her.

32 The appellant testified that the complainant's rape complaint was false and was motivated by hurt and anger on her part arising from the fact that he had stolen her money and ended their relationship. He testified that he never loved the complainant and was merely pursuing an affair with her for the sole purpose of misleading her and stealing from her. He conceded that these actions were akin to the conduct of a con artist.

Grounds of appeal

33 The appellant's main grounds of appeal are that:

33.1 The complainant was a single witness, and the court a quo erred in concluding that her testimony was clear and satisfactory in every aspect;

33.2 The State failed to call the doctor who examined the complainant in circumstances where the appellant denied the rape; and

33.3 The State had failed to present real evidence to prove that the complainant and the appellant were at St Helena Bay Hotel.

34 The criticisms laid against the complainant's evidence are that:

34.1 Both hers and the appellant's names do not appear in the hotel register for the relevant period (6 and 7 March 2015).

34.2 Her opening of the rape charge against the appellant was motivated by the fact that he had stolen money from her and had broken off their relationship.

34.3 Her version that she did not have a romantic sexual relationship with the appellant ought to have been rejected by the magistrate for the following reasons: the complainant testified that the appellant had given her a ring and professed that he would want her to be his wife one day. When they went away together she slept in the same room alone with him; they had kissed on two occasions before the incident; the appellant had joked about making babies with her and she

wrote numerous emails to him professing her love for him, notably the Valentine's Day email dated 13 February 2015; and she had continued to communicate and conduct business with the appellant even after he had raped her.

34.4 She failed to tell the doctor that she visited some two days after the rape that she had been raped, and did not disclose to the nurse who conducted the medical examination in September 2015 that she was raped vaginally. Moreover no anal injuries were in any event noted during that medical examination.

34.5 Her testimony that she was not in a romantic sexual relationship with the appellant was contradicted by Mr Grobbelaar who testified that the complainant told her she was raped by her 'ex-boyfriend'.

Evaluation

35 In terms of section 208 of the Criminal Procedure Act 51 of 1977 "an accused may be convicted of any offence on the single evidence of any competent witness". A court is therefore entitled to convict on the evidence of a single witness if it is satisfied, beyond reasonable doubt, that such evidence is true notwithstanding that the witness is in some respects an unsatisfactory witness. See *R v Addurhum* 1954 (3) SA 163 (NPD) at 165E. In other words, the evidence of a single witness has to be satisfactory but not necessarily perfect.

36 The evidence of a single witness is subject to the cautionary rule. This means that the trial court must warn itself against the dangers inherent in convicting on the uncorroborated evidence of a single witness. (*R v Mokoena* 1932 OPD 79). The utmost care which a judicial officer should adopt was stated in *S v Sauls and Another* 1981 (3) SA 172 (A) at 180E as follows:

"There is no rule of thumb test or formula to apply when it comes to a consideration of credibility of a single witness. The trial judge will weigh his evidence, will consider its merits and demerits and having done so will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in his testimony, he is satisfied that the truth has been told."

37 The court held further that in evaluating evidence of a single witness the exercise of caution must not be allowed to displace the exercise of common sense. (at 180F-G)

38 The magistrate was alive to these principles and he assessed the complainant's evidence against this background. The complainant in this case was found to be a credible and reliable witness.

39 The complainant's account of the events of 7 March 2015 was consistent throughout and she did not veer from this version even under thorough cross examination by two different representatives of the appellant. Ms Coetzee confirmed in her statement that the complainant reported the rape to her, and that she was in what could only be described as a distressed state whilst doing so. It is notable that this report to Ms Coetzee occurred a mere nine days after the incident. There is further no material discrepancy between the complainant's version and what is contained in Ms Coetzee's statement.

40 The complainant's account of what occurred is further consistent when viewed against the manner in which she described it to Mr Grobbelaar in April 2015. The only discrepancy between the complainant and Mr Grobbelaar is his reference to an 'ex-boy-friend' having committed the rape, in circumstances where the complainant was adamant that the appellant was never her boyfriend. In my view, this is a 'discrepancy' that is more apparent than real. Mr Grobbelaar explained it, and he attributed his use of the term 'boyfriend' as opposed to the word 'man' to a difference of understanding of the terms or their use depending on whether one spoke Afrikaans (his mother tongue) or English. His use of the term 'ex-boyfriend' was not based on the complainant having told him that she had been in a relationship with the appellant, and this was clear from his evidence.

41 The continued email communications from the complainant to the appellant after the incident and the content of the said emails obviously raises questions. At first blush it makes no sense that a person who was raped and stolen from would continue to make deep expressions of love via email and WhatsApp to the perpetrator. There had to be a reason for her to do so.

42 Upon scrutiny the complainant's explanation as to why she remained in contact with the appellant during the various periods after 7 March 2015 appears to be sound and indeed probable.

43 Her evidence was that immediately after the rape she suffered some kind of breakdown and could not bring herself to even speak of the rape. This, combined with the fact that the appellant had managed to convince her that he could secure housing for her and her children, made her focus, in her continuing communications with him, on the desire to finalise this process and secure a house. After he disappeared with her money she remained in contact with him, using various ploys vacillating from anger, expressions of love and acceptance, in an effort to get her money back.

44 After her discharge from the Clinic she resumed contact with the appellant on the advice of the Hawks with whom she was cooperating in order to secure his arrest. The idea was that she not have physical contact with him, but that she continue communicating with him until such time as the Hawks' investigation, which involved other women who had been similarly duped by the appellant, was at a stage where the appellant's arrest could be secured. That operation was successful as it culminated in his arrest and conviction for a crime that he admits he committed.

45 The hotel register could unfortunately not take the matter further as, inexplicably, some entries, according to the complainant, were redacted by Tippex, something she learnt when she subsequently visited St Helena Bay Hotel with a police officer. The Court has, however, not been placed with the original register. While there may or may not have been tampering with the register, general details contained in the copies are so scant that it is difficult to make out whether the register provided was indeed a document used to record bookings of guests who visited the establishment. While it may have helped for the State to call the hotel staff to explain the alleged redaction, and most importantly, confirm whether the complainant and the appellant were at the St Helena Bay Hotel from 6 to 7 March, the evidence of the complainant must still be

assessed with other evidence, including that of the appellant.

46 The evidence is that the complainant and the appellant spent every weekend together, and saw each other almost daily, from 24 December 2014 until their relationship cooled off in March. The State's failure to call the hotel staff to give evidence does not, in the circumstances, mean that the complainant's version is not reliable or must be rejected for lack of corroboration. The totality of the evidence presented must be assessed holistically. The probabilities highly support her version that indeed the two went to the St Helena Bay Hotel that weekend. The appellant himself agreed that they went away together almost every weekend. The complainant's version that they went to the St Helena Bay Hotel on that weekend, at a time when they were still on good terms with each other, is therefore more probable. Accordingly, the appellant's evidence that he never went away with her again after 19 January 2015 was correctly rejected because, on his own version, the sole purpose of his pursuing an affair with the complainant was in order to obtain money from her, not for love. This goal was achieved not in January

but on 13 March 2015, which is consistent with the probabilities that there was another weekend getaway to St Helena Bay Hotel on 6 and 7 March. The appellant's evidence that he ended their relationship only after he had stolen her money supports these

probabilities.

47 The State's failure to call the doctor who examined the complainant is a neutral factor in this case. The complainant testified that she went to a doctor some two days after the rape. That was at a time when mentally she was in a dissociative state regarding the rape. She did not link the symptoms that she had with the rape, and accordingly she said nothing of the rape to the doctor. This doctor therefore would not have been of any assistance to the magistrate in the determination of this matter.

48 Which then brings us to the J88, which was produced as a result of a medical examination that occurred almost six months later on 1 September 2015. That examination, conducted by a nurse at Victoria Hospital in Wynberg and occurring as it did so many months after the incident, did not detect injuries from the rape. It is trite that the absence of physical injuries is no indication that no rape occurred. This latter proposition was conceded to on behalf of the appellant. It is apparent from the contents of the J88 that the complainant did indeed tell the nurse who examined her that she was there because she had been raped (she was after all, taken to the hospital for examination by a SAPS FCS member for a very specific examination). What that examination

did detect, however, was a scratch on the complainant's left wrist, which is consistent with her version that the appellant cut her left wrist when he left her at her house after the rape on 7 March 2015.

49 The motive alleged by the appellant for the laying of rape charges by the complainant against him, is not supported by the evidence. It is not apparent to me what would motivate the complainant to fabricate a rape charge, and one so gruesome at that. Had she been motivated

purely by vindictiveness in laying the rape charge - as the appellant asserts - it beggars belief why she would go out of her way to invent an elaborate (not simple) rape of the kind that she says occurred on 7 March 2015, fabricating facts that were degrading, humiliating and embarrassing to her directly, and to her family indirectly. All of this, in circumstances where the complainant had already secured the arrest and conviction of the appellant on the fraud charge. It was argued for the appellant that she did all of this because after the fraud conviction she still did not get her R50 000 back. This assertion cannot hold water, because the fact of the matter is that the rape charge would not get the complainant her R50 000 back either.

50 The appellant's assertion that the complainant has a tendency to fabricate charges against him is also not supported by the evidence. The fraud / theft charges were not a fabrication. On his own version he stole R50 000 from her. She rightfully reported the matter to the SAPS as she was entitled to and the appellant was convicted for the crime. Having been vindicated by his prosecution and conviction in the fraud / theft matter, it seems to me, there could sensibly be no incentive for her to create a rape that never occurred in order to secure his conviction when he was already convicted and punished. The housebreaking / theft charge also appears to have been rationally motivated. At first after the housebreaking, the complainant did not name the appellant as a suspect in that matter. It was only later, after she learnt that he was in possession of her cell phone, that she named him as a suspect in connection with that matter.

51 In light of the above, I am satisfied with the findings of the Magistrate. There was no misdirection on his part, he weighed the merits and demerits of both versions of the appellant and the State and analysed the strength and weaknesses of both versions. Taking a holistic view of the evidence on record, he was, in my view, justified in finding the appellant guilty of the three counts of rape. The appeal against the conviction is accordingly without merit and stands to be dismissed.

Conclusion

52 In the result, I would make the following order:

1. The appeal against conviction is dismissed and the conviction and sentence imposed by the Magistrate are confirmed.

N MAYOSI

Acting Judge of the High Court

I agree, and it is so ordered.

N P MABINDLA-BOQWANA

Judge of the High Court

APPEARANCES

For the appellant: Adv A Botman, Legal Aid South Africa

For the respondent: Adv P Thaiteng, National Prosecuting Authority

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