

SOUTH AFRICA / JUDGMENT

J.L.C.L v S (A342/2023) [2024] ZAGPPHC 1152 (5 November 2024)

[2024] ZAGPPHC 1152

COURT

North Gauteng High Court, Pretoria

BEFORE

Khashane Manamela, JJ Strijdom

CASE / FILE NUMBER

A342/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO: A342/2023

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

DATE: 5/11/2024

SIGNATURE

In

the matter between:

L[...],
J[...] L[...] C[...]
Appellant
and
THE
STATE
Respondent
DATE
OF JUDGMENT: 5 November 2024 (uploaded onto caselines)

JUDGMENT

Khashane Manamela, AJ (Strijdom, J concurring)

Introduction

- [1] The appellant, Mr J[...] L[...] C[...] L[...], was convicted on 15 February 2023 by the Regional Court for the Regional Division of Gauteng, Springs (the Trial Court) on three counts in respect of his minor stepdaughter, Miss R.[1] Count 1 was for the sexual assault; Count 2 was for the rape or sexual penetration, and Count 3 was for the sexual grooming of a minor through exposure to pornographic material ‘with the intention to encourage, enable, instruct or persuade the child ... to perform a sexual act’. These crimes were in terms of the provisions of the Criminal Law Amendment Act (Sexual Offences and Related Matters Act) 32 of 2007 and the Criminal Procedure Act 105 of 1977, although the section 51 and schedule 2 of the Criminal Law Amendment Act 105 of 1997 was additionally applicable in respect of Count 2 (i.e. the rape charge). The crimes were committed between 2015 and 2020 and at or around Springs, Gauteng Province. It is common cause that Miss R was between 7 and 12 years old at the time of commission of these crimes by the appellant.
- [2] The Trial Court sentenced the appellant to life imprisonment on Count
2. The Trial Court had found that there were no substantial and compelling circumstances justifying deviation from imposing the minimum sentence of life imprisonment
- prescribed by under the Criminal Law Amendment Act 105 of 1997 – in respect of Count 2. On the other two counts (i.e. Counts 1 and 3) the appellant received a 5 year term on each count, which were ordered to run concurrently with the life term imposed for Count 2. The Court also made further orders consequential to the aforesaid conviction of the appellant.[2] The appellant came before this Court exercising his automatic right to appeal his sentence only.

- [3] The appeal was enrolled for hearing on 13 September 2024. Mr JL Kgokane appeared before us on behalf of the appellant whilst Mr Sekhasa's appearance was on behalf of the State, the respondent herein. This judgment was reserved after listening to oral submissions on behalf of both parties. The judgment, gratefully, also benefitted from written submissions by counsel on behalf of the parties.
- [4] The nub of the appellant's appeal against sentence is that the Trial Court erred in finding that there were no substantial and compelling circumstances to deviate from imposing the prescribed minimum sentence of life imprisonment in respect of Count 2. It is submitted that factors such as the advanced age of the appellant, at 57 years during sentencing, and the absence of injuries to the person of Miss R from the rape cumulatively considered constituted substantial and compelling circumstances justifying deviation from the prescribed minimum sentence. The appeal is opposed by the State or respondent in support of the sentence imposed on the appellant by the Trial Court. As the appeal is only against sentence the circumstances or facts relating to the conviction of the appellant will not feature beyond highlighting what is relevant to the sentence imposed, particularly the life sentence. The appellant does not seem to challenge the sentences imposed in respect of counts 1 and 3 as their effect is subsumed by the order of concurrency with the life term.

Relevant evidence before the Trial Court (selected)

General

- [5] The appellant was born on 08 August 1966. He was married to the mother of the victim or complainant, Miss R. The three of them were staying together at a house in the Springs area of Johannesburg. They've been staying together since Miss R was two years old. As stated above, the appellant was at all material times Miss R's stepfather.
- [6] The appellant had committed the crimes for which he was convicted mostly when Miss R's late mother was absent from the dwelling; in the kitchen preparing food or in her bedroom whilst busy on her phone. The crimes were committed in the garage and other parts of the house including 'ouma's kamer' (probably ouma se kamer) as described by Miss R.
- [7] The pinnacle of the appellant's sexual abuse and assault of the minor Miss R was reached when he wrote a very horrendous detailed letter in the furtherance of his crimes. Miss R gathered enough courage to alert her late mother and, consequently, they escaped from the appellant's house during October 2020. They sought refuge by one of Miss R's elder sisters. Their mother who has been very sick for a while now died on 11 October 2020, a few days after their escape from the house they shared with the appellant. Miss R's sister took the necessary steps to alert the authorities and the appellant was ultimately arrested on 03 May 2021.

- [8] He pleaded guilty to Count 1 and not guilty to Counts 2 and 3 when he appeared before the Trial Court on 05 October 2022. In respect of Count 3 the appellant made some admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977. He was legally represented throughout the proceedings.

Judgment

of the Trial Court

- [9] The appellant was 57 years old at the time of conviction on 15 February 2023 and sentencing on 12 April 2023. He had been in custody for nearly two years since he was arrested on 03 May 2021.
- [10] As already indicated above, the appellant was convicted on all counts and given, among others,[3] the term of life imprisonment he is challenging – as inappropriate - in this appeal. When sentencing him on Count 2 the Trial Court considered the following submissions and factors for mitigation of sentence and for it to deviate from imposition of the minimum prescribed sentence for the rape count, that the appellant was (a) a first offender – as his previous conviction proven by the State was a R100 fine paid for a guilty finding of assault; (b) the appellant's advanced age of 57 years, although the court considered this aggravating as "we cannot expect a 57-year-old to be sleeping with a 7-year-old child".[4] Further aggravating circumstances considered by the Trial Court were the following: (a) the complainant suffered abuse by the appellant from the age of 7; (b) she was sexually violated, groomed and repeatedly raped; (c) the appellant was a stepfather to the complainant and, consequently, expected to protect her against the 'bad in the world', but instead he abused his position of trust and made her think that what he was doing was how fathers love their daughters, and (d) the appellant was not remorseful during the trial for his actions. The Trial Court concluded that the appellant was a danger to society.
- [11] The aforesaid was in addition to the factors in the submissions by the appellant's legal representative and the state prosecutor, as well as the contents of (i.e. evidence from) the victim impact statement and pre-sentencing report. They included that:
- (a) the appellant is the fourth of six children born of his parents;
 - (b) his parents are both deceased; (c) he obtained grade 12 at school; (d) he further studied motor panel-beating course at a Kimberly college in 1988; (e) he was gainfully employed for the better part of his adult life until his arrest on charges pertaining to this matter; (f) he was a widower at the time of sentence;
 - (g) he had two biological children, as well as three stepdaughters, including the complainant, and (h) the appellant, according to his counsel had mentioned that he wished to be given an opportunity to apologise to the victim.

- [12] As already mentioned above, the Trial Court found no substantial and compelling circumstances to deviate from imposing the prescribed minimum sentence of life imprisonment in respect of Count 2.

Appellant's case (including grounds of appeal and submissions)

- [13] The appellant's case is that the Trial Court erred or misdirected itself in sentencing him to life imprisonment as there were substantial and compelling circumstances to deviate from imposing that prescribed minimum sentence. He relies on the mitigating factors including those stated in the pre-sentencing report.
- [14] It is submitted that although it is to be readily accepted that the complainant suffered emotional and psychological trauma as a result of the appellant's sexual assaults on her, it was not proven before the Trial Court whether she received any professional medical assistance to deal with her trauma. This, it is submitted, would have guided the Trial Court on the severity of her trauma and whether she would be capable of recovery from the ordeal suffered due to the crimes perpetrated on her by the appellant. A professional opinion would have indicated if the trauma is short or long term.
- [15] A proper report prepared by a qualified psychologist, it is submitted on behalf of the appellant, would have assisted the Trial Court by delving deeper into the impact of the offences on the complainant. The victim impact statement presented to the Trial Court did very little to assist the Trial Court as all it detailed is how the complainant feels about the incident and nothing more, counsel for the appellant argued.
- [16] The learned Magistrate before the Trial Court was hasty in arriving at the conclusion that no substantial and compelling circumstances existed in the appellant's case. This, it is submitted she did, without diligently caring out her duty in ensuring that all information was presented before the Trial Court before sentencing.[5]
- [17] Further submissions on behalf of the appellant include the following. The complainant, Miss R, did not suffer serious physical injuries from the sexual assault on her by the appellant. Counsel, though, acknowledges that the Form J88 depicted a cleft, but submits that there were no further injuries suffered by the complainant. Counsel also argues that the complainant did not suffer serious physical injuries. This aspect or factor ought to have been considered as a mitigating factor 'of substance'. [6] The appellant is not a hardcore offender with no or minimal prospects of rehabilitation. [7] Also, the period of nearly two years the appellant spent in custody awaiting conclusion of his trial ought to have been considered as an 'important factor for sentencing purposes'. The latter aspect is conspicuous by its absence from the Trial Court's

judgment on sentence.[8] It is also ‘a material consideration’ in gauging an accused’s relative likelihood to re-offend by considering the fact that the appellant had reached the age of 30 without any serious brushes with the law. The aforementioned ought to have swayed the Trial Court to from imposing a sentence of life imprisonment as this type of sentence is reserved for the worst of the cases.[9] Being imprisoned for life is startlingly inappropriate and unjust as the appellant would only qualify to be considered for parole when he turned 82 years.

[18] Counsel for the appellant relied on the durable test set by the Supreme Court of Appeal (‘SCA’) in *S v Malgas*[10] as follows:

‘If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence’.

[19] The same Court had previously in *S v Khumalo*[11] remarked that ‘it is the experience of prison administrators that unduly prolonged imprisonment, far from contributing towards reform, brings about the complete mental and physical deterioration of the offender’. Further, that it constitutes a misdirection

on the part of a trial court to overemphasise the retributive aspect of sentencing as although the ‘sentences ... should give some expression to the indignation aroused by the crimes in Mr and Mrs ... and in the community generally’ the sentences ought to ‘sufficiently severe to serve as a deterrent to others, while taking account of the possibility of reformation’.[12] The sentencing responsibility of the court is not met by sentences merely meted out to satisfy the public.[13]

[20] Against significantly what is reflected above, it is submitted on behalf of the appellant that, the sentence of life imprisonment is disproportionate to the crime, the offender and the interest of society. Consequently, the appeal in respect of sentence ought to be upheld and this Court, sitting at the appellate level, ought to interfere with the sentence imposed by the Trial Court, the submissions conclude.

Respondent’s (i.e. State’s) Case

[21] The Appellant denies that the appellant’s mitigating circumstances were not considered as they were placed on record by his legal representative before the Trial Court. This includes the appellant’s personal circumstances. Also, the following aggravating circumstances were advanced by the State for sentencing by the Trial Court: the victim was a young girl at the time of the offences; she suffered physical, emotional and psychological pain, and the appellant showed no remorse.

[22] It is also submitted on behalf of the State, as the respondent in this appeal, that the Trial Court took the following factors when sentencing the appellant: (a) the foundation principles of sentencing, that punishment ought to befit the offender as well as the offence, be fair to society and be blended with a measure of mercy; (b) the main pivots of sentencing

are retribution, deterrence, prevention and rehabilitation, and (c) the personal circumstances of the appellant, as derived from pre-sentencing report. The Trial Court noted evidence by the probation officer that the appellant was unwilling to take responsibility for his crimes. This, ultimately, established the absence of remorse for his actions on the part of the appellant. But the Trial Court had noted that the submissions by the appellant's legal representative that he had acknowledged the wrongfulness of his actions.

- [23] Counsel for the respondent submitted that the Trial Court considered the victim impact statement and indicated the trauma the victim experienced through the period of abuse by the appellant. This is contrary to the submissions on behalf of the appellant above. For purposes for the statutory provisions applicable to Count 2 the Trial Court observed that it can only deviate if there were substantial and compelling circumstances justifying a lesser sentence to the one prescribed. The mitigation factors, stated above, were considered by the Trial Court including the appellant's acknowledgement in terms of his explanation when pleading to Count 1 that he committed the crimes while he 'was supposed to treat the victim as [his] own child..[but] failed to protect her'.[14] The latter apparent contrition was only in respect of one count of the three counts (i.e. Count 1).[15] The Trial Court, also, took into the aggravation factors referred to above, counsel for the respondent submitted.
- [24] The test for appeal, counsel submitted, was set out in *State v Motau*[16] where it was indicated that the imposition of sentence is pre-eminently in the discretion of the trial court. [17] And, that an appellate court or court of review ought to only interfere in the sentence where there is failure on the part of the

trial court to exercise its discretion judicially or where the sentence is vitiated by an irregularity or is disturbingly inappropriate.[18]

- [25] It is submitted on behalf of the respondent that in this matter this Court has no room to interfere as the Trial Court's approach to its sentencing task cannot be faulted. The life term imposed by the Trial Court accords with the views of the Supreme Court of Appeal expressed in *S v Matyityi*[19] that the prescribed minimum sentences are not to be departed from lightly.[20] A sentence of life imprisonment is the starting point for the appellant's conviction in terms of Count 2 and deviation therefrom is only warranted where there are substantial and compelling circumstances. Acting otherwise would be contrary to the following holding in *S v Malgas*: [21]

'The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative

hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances.'

[26] Regarding the submission on behalf of the appellant that the Ms R did not suffer serious physical injuries and, therefore, this ought to have equated to a mitigation factor worthy of ruling out a life term on Count 2, counsel for the respondent has the following to say. It is submitted that when imposing sentence in respect of the offence of rape the apparent lack of physical injuries on the complainant shall not constitute substantial and compelling circumstances.[22] Such fact or circumstance may- not on its own – but cumulatively with others equate to substantial and compelling circumstances justifying deviation from the prescribed minimum sentence.[23]

[27] It is denied that the appellant is not a hardcore offender without prospects of rehabilitation. It is submitted that an offender needs to take responsibility for the offence he/she committed as a first step towards rehabilitation. The appellant has not shown true remorse, even though he may be regretful. Counsel for the respondent submitted that the rationale behind the concept of remorse was dealt with in *S v Matyityi*[24] as follows:

‘There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct but that does not without

more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can

only come from an appreciation and acknowledgement of the extent of one’s error. Whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught is a factual question. It is to the surrounding actions of the accused rather than what he says in court that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions.’

[Footnotes omitted]

[28] Regarding the time the appellant spent in custody awaiting his trial and sentencing, it is submitted that such factor, as well, does not alone could not in this matter obviate the prescribed minimum sentence as the Supreme Court of Appeal in

S v RADEBE AND ANOTHER 2013 (2) SACR 165 (SCA)

S v Radebe & Another,[25]remarked:

‘A better approach, in my view, is that the period in detention pre-sentencing is but one of the factors that should be taken into account in determining whether the effective period of imprisonment to be imposed is justified: whether it is proportionate to the crime committed. Such an approach would take into account the conditions affecting the accused in detention and

the reason for a prolonged period of detention. And accordingly, in determining, in respect of the charge of robbery with aggravating circumstances, whether substantial and compelling circumstances warrant a lesser sentence than that prescribed by the Criminal Law Amendment Act 105 of 1997 (15 years' imprisonment for robbery), the test is not whether on its own that period of detention constitutes a substantial or compelling circumstance, but whether the effective sentence proposed is proportionate to the crime or crimes committed: whether the sentence in all the circumstances, including the period spent in detention prior to conviction and sentencing, is a just one'.

- [29] It is submitted on behalf of the State that when the facts of this matter are considered the sentence imposed is appropriate. This matter concerns a stepfather who took advantage of his stepdaughter from a very young age, groomed her for sex from the age of 7 when she was very vulnerable due to a very ill mother. The stepfather should have had a responsibility to care and nurture for her as a child, but resorted to sexually abusing and assaulting her - not once - but over a period of about four years. The sexual assaults were also in the form of rape, a serious and horrendous crime as authoritatively stated in *S v Chapman*.^[26]
- [30] Counsel for the respondent concludes that the Trial Court exercised its sentencing discretion judicially and that there is no basis at all for this Court to interfere with the imposed sentences. The appeal ought to be dismissed.

Judgment

(i.e. the sentence) of the Trial Court and submissions on behalf of the parties (an analysis)

- [31] It is trite that central to the issues to be determined in this appeal is the application of section 51 of the Criminal Law Amendment Act 105 of 1997 ("the Minimum Sentences Act"). The appellant was sentenced by the Trial Court to a period of life-time incarceration as prescribed by the Minimum Sentences Act for his conviction on Count 2 for the rape of the minor Miss R. The Trial Court also found that there were no substantial and compelling circumstances warranting deviation from the prescribed minimum sentence as envisaged by the Minimum Sentences Act.^[27]
- [32] The determination of whether or not there are substantial and compelling circumstances in a matter would depend on the peculiar facts or circumstances of a matter. The determination, no doubt includes the offender's personal attributes, peculiar circumstances of the crime and interests of society, in terms of the authorities pointed by counsel above. The judgment of the Trial Court, as far as it is relevant for current purposes, is reflected above.^[28] Counsel for the parties have made their submissions, urging this Court to go either this way or the other in this appeal. I don't

consider it necessary to traverse what the Trial Court considered for its conclusions and the submissions made on behalf of the parties, before pronouncing on the outcome of this appeal.

Conclusion

- [33] The finding by the Trial Court that there were no substantial and compelling circumstances to deviate from the imposition of the prescribed minimum sentence of life imprisonment of the appellant appears to have been justified by the facts of this matter. The so-called mitigating circumstances even when taken cumulatively did not justify deviation from the minimum sentence. Also, I need to point out that the fact that the Trial Court explicitly mention a factor or aspect which may constitute mitigating factor, such as the nearly two year incarceration of the appellant whilst waiting for his trial, does not mean that the Court was not aware of such factor. It formed part of the record before the Court and there is nothing warranting the conclusion that the Trial Court was not alive to this factor during sentencing. The SCA in *S v Vilakazi* did not condemn 'brevity' but held that it 'is naturally not a vice but what was said in those lines was mostly formalistic and a repetition of the appellant's personal circumstances'. [29] This was not the case in this matter. The Trial Court discharged its task properly and sufficiently under the circumstances. I also agree with the submission by the respondent's counsel that such factor alone would also alone not justify any deviation.
- [34] I also need to deal with another factor which appeared to loom large before the Trial Court and in the submissions before us: the advanced age of the appellant at 57 years when he was sentenced. I agree with the Trial Court's remarks that although ordinarily this aspect would constitute a mitigating factor in the circumstances it is aggravating as it concerns an elderly stepfather who repeatedly abused and sexually assaulted her minor stepdaughter over a period of years. The submissions about the lack of injuries and other forms of harm from the rape, they ought to be rejected just for the making. Rape is vicious, inhuman and degrading. [30] There is no doubt that even where there are no physical injuries the psychological harm and/or injuries would linger. There is no need to discuss anything further. The sentence is not disproportionate to the crimes the appellant is convicted of. And regarding Count 2 for rape of Miss R, I agree with the Trial Court that there are no substantial and compelling circumstances justifying deviation from the imposition of the prescribed minimum sentence. The appeal against sentence would not be upheld as reflected in the order below.

Order

- [35] In the result, I propose that the following order be made:
- a) the appeal against sentence is dismissed.
 - b) the sentences of the Regional Court for the Regional Division of Gauteng, Springs are confirmed.

Khashane La M. Manamela

Acting Judge of the High Court

JJ Strijdom

Judge of the High Court

I agree and it is so ordered

Date of Hearing

: 13 September 2024

Date of Judgment

: 5 November 2024

Appearances:

For the Appellant : Mr JL Kgokane Legal Aid SA, Pretoria For the Respondent : Mr Sekhasa (heads of argument by Ms Talita Louw) Director of Public Prosecutions Gauteng Division, Pretoria

- [1] The identity of Miss R appears on the records and is known to both parties. It is withheld to protect her identity due to the nature of the offences and the fact that she was a minor at all material times.
- [2] The Trial Court also found the appellant unfit to possess a firearm; directed that his particulars be included or entered into the National Register for Sex Offenders; found the appellant unsuitable to work with children and that his details be included in the National Child Protection Register.
- [3] Par 2 above for full details on the sentences of the appellant by the Trial Court.
- [4] Record, lines 10-11 on p 146.
- [5] Rammoko v Director of Public Prosecutions 2003 (1) SACR 200 (SCA) [14].
- [6] S v Gqamana 2001 (2) SACR 28 (C) at 34, 36-37.
- [7] S v Nkomo 2007
(2) SACR 198 (SCA) [13], [21].
- [8] S v Vilakazi 2009 (1) SACR 552 (SCA) [24]; DPP, Pretoria v Gwala 2014 JDR 0642 (SCA).
- [9] S v Mahomotsa 2002 (2) SACR 435 (SCA) [18] it was held as follows: ‘Even in cases falling within the categories delineated in the Act there are bound to be differences in the degree of their seriousness.

There should be no misunderstanding about this: they will all be serious but some will be more serious than others and, subject to the caveat that follows, it is only right that the differences in seriousness should receive recognition when it comes to the meting out of punishment.’

- [10] S v Malgas 2001 (1) SACR 469 (SCA) [25.I].

[11] S v Khumalo and others 1984

(3) SA 327 (A).

[12] S v Khumalo 1984 (3) SA 327 (A) 332.

[13] S v Mhlakaza and another 1997 (1) SACR 515 (SCA).

[14] Record, lines 23-24 on p 16 (for 05 October 2022).

[15] Record, lines 10 on p 17 (for 05 October 2022).

[16] Motau v S (A53/2023)

[2023] ZAGPPHC 1927 (17 November 2023).

[17] Although reliance was placed on Motau v S [2023] ZAGPPHC 1927, I could not find the cited dicta, which are oft-cited including in Nhlapo v The State (933/2020)

[2022] ZASCA 72 (25 May 2022) [6].

[18] Ibid.

[19] S v Matyityi 2011

(1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA) (30 September 2010).

[20] S v Matyityi [2010] ZASCA 127 [18], relying on S v Malgas 2001 (1) SACR 469 (SCA) [8].

[21] S v Malgas 2001

(1) SACR 469 (SCA) [9].

[22] S v Nkawu 2009 (2) SACR 402 (ECG).

[23] S v Nkawu 2009 (2) SACR 402 (ECG) [17]. See also S v Mahomotsa 2002 (2) SACR 435 (SCA) [18] et seq.

[24] S v Matyityi 2011

(1) SACR 40 (SCA).

[25] S v Radebe and another 2013

(2) SACR 165 (SCA) [14].

[26] S v Chapman [1997] ZASCA 45; 1997

(3) SA 341 (SCA) at 344-345: ‘...Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim. The rights to dignity, to privacy and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilisation. Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and

to enjoy the peace and tranquillity of B their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives. The appellant showed no respect for their rights. He prowled the streets and shopping malls and in a short period of one week he raped three young women, who were unknown to him. He deceptively pretended to care for them by giving them lifts and then proceeded to rape them callously and brutally, after threatening them with a knife. At no stage, did he show the slightest remorse. The Courts are under a duty to send a clear message to the accused, to other potential rapists and to the community: We are determined to protect the equality, dignity and freedom of all women, and we shall show no mercy to those who seek to invade those rights’.

[26] S v Chapman [1997] ZASCA 45; 1997

- (3) SA 341 (SCA) at 344-345: ‘...Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim. The rights to dignity, to privacy and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilisation.

Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of B their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives.

The appellant showed no respect for their rights. He prowled the streets and shopping malls and in a short period of one week he raped three young women, who were unknown to him. He deceptively pretended to care for them by giving them lifts and then proceeded to rape them callously and brutally, after threatening them with a knife. At no stage, did he show the slightest remorse.

The Courts are under a duty to send a clear message to the accused, to other potential rapists and to the community: We are determined to protect the equality, dignity and freedom of all women, and we shall show no mercy to those who seek to invade those rights’.

- [27] Section 51(3)(a) of the Minimum Sentences Act reads in the material part: “If any court referred to in subsection ... (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence ...”

[28] Pars [9]-12] above.

[29] S v Vilakazi 2009

- (1) SACR 552 (SCA) [24].

[30] S v Chapman [1997] ZASCA 45; 1997

(3) SA 341 (SCA) at 344-345, quoted at footnote 26 above.

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