

SOUTH AFRICA / JUDGMENT

Krele v S (CAF13/2016) [2017] ZANWHC 73 (7 September 2017)

[2017] ZANWHC 73

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks, N Gutta, O.K Chwaro

CASE / FILE NUMBER

CAF13/2016

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII

Policy

IN

THE NORTH WEST HIGH COURT, MAHIKENG

CASE

NO: CAF 13/2016

Not

reportable

Not

of interest to other judges

Revised.

In

the matter between:

WANDILE
KRELE Appellant
and
THE
STATE Respondent
HENDRICKS
ADJP, GUTTA J & CHWARO AJ
DATE
OF HEARING:04
AUGUST 2017
DATE

OF JUDGMENT:	07 SEPTEMBER 2017 COUNSEL
FOR APPELLANT:	MR. MOREMI COUNSEL
FOR THE RESPONDENT:	ADV. SEBOTHE

JUDGMENT

HENDRICKS J

Introduction

- [1] The Appellant was arraigned in the Regional Court, Ga Rankuwa and charged with two counts of rape. It was alleged that on the 02nd and 03rd November 2002 he unlawfully and intentionally had sexual intercourse with LM (the complainant), a nine (09) year old female, against her will. On 10th March 2005 he was convicted on both counts. The matter was transferred to the High Court for sentencing in terms of the then applicable legislation. He was sentenced to life imprisonment on each count. Leave to appeal was granted against both the conviction and sentence to the Full Bench of this division; hence this appeal.
- [2] The facts can be succinctly summarized as follows. The parents of the complainant owns a one roomed shack which is divided with a curtain to constitute two different areas which are used as a bedroom and a kitchen respectively. They took the appellant in to lodged with them from 10th October 2002. They have two minor children. The sleeping arrangement was that the parents will sleep on the bed in the bedroom area whilst the two children will sleep together on a matrass on the floor. Separate from them and also on the floor slept the appellant in the kitchen area.
- [3] On the 2nd November 2002 the mother of the complainant, Mrs. F M, went to fetch water. Upon her return she noticed that the complainant was not playing with the other children. She then confronted her about it. Upon enquiring what was wrong, the complainant informed her that the appellant had raped her. She went to the police station and thereafter took the complainant to consult a doctor. When she returned home, she did not confront the appellant. This was done, acting on advise of the police woman who assisted her.
- [4] During the early morning hours of the 03rd November 2002, the complainant's mother heard the sounds of the complainant crying. When she reached for the matches in order to make some light, she saw the appellant dismounting the complainant and ran back to his sleeping place. The following morning the complainant made a report to her that the appellant raped her. She contacted the police and took the complainant again to the doctor. The appellant was arrested.

- [5] In the heads of argument filed on behalf of the appellant it is submitted that the Regional Magistrate did not adequately apply

caution when evaluating the evidence of the complainant. The contention is that the complainant testified that she cried when the

appellant raped her and he then closed her mouth, whereas no one else that slept in the house heard the cries. This is incorrect. The complainant's mother not only heard that the complainant cried but she also saw the appellant when he moved back to his own sleeping place.

- [6] The complainant did not testify in detail about the rape incident that occurred during the evening of the 02nd November 2002. She did however state that she was raped on three (3) previous nights. It is understandable that a nine (9) year old child would not relate what happened to her in exact detail. The surrounding circumstances, as corroboration for her testimony, should also be looked at. She did not play with her friends during the day, after her ordeal. This was observed by her mother. She was asked what is wrong and she complained about stomach pains. When her mother gave her medicine and upon further enquiry she then reported the rape to her mother. The mother inspected the private parts of the complainant and observed the redmarks and tears. This prompted her to report the matter to the police and took the complainant to the doctor. The evidence of the mother serves as corroboration of the evidence of the complainant in all material respects.

- [7] Much has been made about the fact that the mother apparently told the complainant that she must tell the court that the appellant raped her and that she must not talk softly. This is expected from a caring mother and there is nothing untoward. A complaint was laid at the police station and it was investigated. All possible evidence was gathered and the matter went on trial. There is nothing wrong with the mother preparing her nine (09) year old daughter to testify in court. Mind you, she did not tell the complainant in detail what to say to the court but only said that she should relate about the rape and not talk softly. This cannot be regarded as undue influence as she did not tell the complainant exactly what to testify.

- [8] There are certain inconsistencies between the evidence of the complainant and her mother. These inconsistencies relate to whether

she informed her mother inside the house or upon her mother's return after the mother went to fetch water; whether she volunteered

the information about the rape or whether the mother had to interrogate her in order to get her to divulge the information about

the rape. The Regional Magistrate dealt with these differences in her judgment. She was mindful that the evidence of a single witness as a complainant who is also a minor, should be approached and evaluated with caution. I am of the view that these inconsistencies are not material. Looking holistically at the evidence tendered on behalf of the State, there is material corroboration of the complainant's evidence. The medical evidence support the evidence of the complainant and her mother.

See: *S v Mkohle* 1990(1) SACR 95 (A).

[9] Mr. Sebothe on behalf of the State (Respondent) submitted that the count (count 1) relating to the events of the 02nd November 2002 was not proven beyond reasonable doubt. He based his submission on the fact that the complainant did not testify in detail how the events unfolded. This concession is indeed proper and well made. The complainant did not testify in detail how the rape occurred. She was also not properly led by the prosecutor when she testified during her evidence-in-chief as to how the rape occurred. It is not sufficient to merely state that she was raped on three (3) previous occasions or nights. More factual details were required.

[10] This is in contrast to the evidence tendered of the rape incident that happened on the 03rd November 2002. The evidence with regard to this count (count 2) is clear and satisfactory in all material respects. The complainant

related in detail how the rape occurred. Her evidence is corroborated in all material respects by her mother who witnessed the incident and also reported same to the police. The medical evidence tendered also corroborates the evidence of the complainant. The doctor concluded that there was sexual assault. In my view, the conviction on count 2 is in order and the appeal on this count should fail.

[11] With regard to sentence, it was submitted by Mr. Sebothe that there was no formal pronouncement about the absence of substantial and compelling circumstances to warrant the impositioning of life imprisonment as a sentence. This is indeed correct. No pronouncement

was made.

See: *S v Malgas* 2001 SACR 469 (SCA)

[12] The following mitigating factors were placed on record:

- The appellant was 31 years of age at the time of the commission of the offence;
- He is a first offender;
- He is married;
- He is the father of three (3) minor children;
- He was unemployed.

The following aggravating factors are evident from the record:

- The complainant was nine (9) years old at the time of this incident;
- She trusted the appellant;
- She was threatened with death if she talk about the rape.

[13] Having considered all the mitigating factors of this case, as well as all the facts and circumstances, I am of the view that it does not constitute substantial and compelling circumstances.

In *S v Matyityi* 2011 (1) SACR 40 (SCA) the following is stated:

“[23] Despite certain limited successes there has been no real let-up in the crime pandemic that engulfs our country. The situation

continues to be alarming. It follows that, to borrow from Malgas, it still is 'no longer business as usual'. And yet one notices all too frequently a willingness on the part of sentencing courts to deviate from the minimum sentences prescribed by the legislature for the flimsiest of reasons - reasons, as here, that do not survive scrutiny. As Malgas makes plain, courts have a duty, despite any personal doubts about the efficacy of the policy or personal aversion to it, to implement those sentences. Our courts derive their power from the Constitution and, like other arms of State, owe their fealty to it. Our constitutional order can hardly survive if courts fail to properly patrol the boundaries of their own power by showing due deference to the legitimate domains of power of the other arms of State. Here Parliament has spoken. It has ordained minimum sentences for certain specified offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as 'relative youthfulness' or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer's personal notion of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, is foundational to the rule of law which lies at the heart of our constitutional order.”

In *DPP, North Cauteng v Thabethe* 2011 (2) SACR 567 (SCA) the following is stated:

“[22] ... Rape of women and young children has become cancerous in our society. It is a crime which threatens the very foundation of our nascent democracy, which is founded on protection and promotion of the values of human dignity, equality and the advancement of human rights and freedoms. It is such a serious crime that it evokes strong feelings of revulsion and outrage amongst all right-thinking and self-respecting members of society. Our courts have an obligation to impose sentences for such a crime — particularly where it involves young, innocent, defenceless and vulnerable girls — of the kind which reflects the natural outrage and revulsion felt by law-abiding members of society. A failure to do so would regrettably have the effect of eroding the public confidence in the criminal justice system...”

[14] In my view, looking holistically at all the facts, factors and circumstances that must be taken into account when considering a suitable sentence, the sentence of life imprisonment ordained by the legislature is an appropriate sentence under the circumstances of this case. This does not mean that the sentence imposed by the trial court is merely regurgitated.

Order

[15] Consequently, the following order is made:

- (i) The appeal against the conviction on count 1 (relating to 02nd November 2002) is upheld.
- (ii) The conviction on count 1 and the resultant sentence of life imprisonment that was imposed on count 1, is set aside.
- (iii) The appeal against the conviction on count 2 (relating to 03rd November 2002) fails.
- (iv) The conviction of rape on count 2 is confirmed.
- (v) The appeal against sentence on count 2 fails.
- (vi) The sentence of life imprisonment on count 2 is confirmed.

R D HENDRICKS

ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG.

I agree

N GUTTA

JUDGE OF THE HIGH COURT,

O.K CHWARO

ACTING JUDGE OF THE HIGH COURT,

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2017/73.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/krele-v-s-unknown-topic-anwhc-2017>

Prepared on 11 October 2026 · Esheria