

SOUTH AFRICA / JUDGMENT

Letsatsi v S (A21/2020) [2020] ZAFSHC 112 (25 June 2020)

[2020] ZAFSHC 112

COURT

Free State High Court, Bloemfontein

BEFORE

Mhlambi, Van Rhyn

CASE / FILE NUMBER

A21/2020

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Case number: A21/2020

In the matter between:

LEHLOHONOLO JULIUS LETSATSI Appellant

and

THE STATE Respondent

CORAM: MHLAMBI, J et VAN RHYN, J

JUDGMENT BY: MHLAMBI, J

HEARD ON: 11 MAY 2020

DELIVERED ON: 25 JUNE 2020

MHLAMBI, J

[1] The appellant was convicted on a charge of attempted rape on 23 March 2017 and sentenced to eight years' imprisonment. Leave to appeal against both the conviction and sentence was granted by the court a quo on 15 June 2017.

[2] The grounds for the appeal as against the conviction were stated as follows:

2.1 the complainant was unable to explain during her testimony what attempted rape was;

2.2 the court a quo erred in finding that the state had proven its case beyond a reasonable doubt;

2.3 the court a quo erred by rejecting the appellant's version and that it was not reasonably possibly true.

[3] The sentence was assailed on the following grounds, namely that:

3.1 the court a quo erred in finding that the sentence of eight year imprisonment was the only appropriate sentence;

3.2 the sentence was excessive and induced a sense of shock;

3.3 the court a quo over emphasised the seriousness of the offence and failed to take into consideration the accused's personal circumstances;

[4] A summary of the state's case is that the accused pulled the complainant with her dress from her parental home where she was in the company of her younger sister, M. He pulled her to his sister's place, saying that she should make him tea. On reaching the house, he took out a condom from a box, put it on his penis, made the complainant to lie on the bed, undressed her panty and attempted to have sexual intercourse with her. Two state witnesses, P and T, peeped through a hole in the door of the shack. When the accused opened the door, the complainant ran out to her home and informed her mother who then called the police. On being undressed of her panty, the complainant had cried and the accused's penis touched her back and buttocks as she reclined on the bed.

[5] The two state witnesses corroborated the complainant's evidence about the making of the tea, her screaming that the accused should leave her, her crying as she ran out of the shack towards her parental home and the condom used by the accused. Their testimony was that they were sitting in the neighbouring yard when they heard the complainant scream. They jumped over the fence to investigate. They peeped through a hole in the door of the shack, which was used to insert a chain. They were able to observe complainant and the appellant, who were inside the shack.

[6] The accused's version is that K, the complainant, found him sitting in his sister's shack making himself some tea. He was on an errand to collect maize meal from the shack for his sister. He found condoms in the shack. He put one on his penis and played therewith. He was alone when K arrived. On entering the shack, she said to him that she was going to make known what he was busy doing. He denied that he dragged the complainant to the shack nor tried to rape her.

[7] During the accused's cross-examination, it appeared that the door of the shack was closed shut when the complainant came in without knocking and saw the accused's penis. She started to scream. He conceded that the complainant was neither his nor the owner of the shack's friend. He conceded that after the complainant saw his penis, he went to close the door. It is then that she said that he should leave her alone and he obliged. The court remarked that the accused took long to respond to questions whereupon his attorney

remarked that he was a slow person. He testified that he let go of the complainant when she became distressed.

[8] In his own testimony, the accused confirmed that the complainant neither knew the place where the shack was situated nor the owner. There was no reason whatsoever for her to barge into the shack without knocking. During cross-examination, and on being asked to explain the cause of the complainant's distress or screams, he gave evasive and unsatisfactory answers, which did not explain such cause.

[9] I am satisfied that the court correctly found that the state witnesses corroborated the complainant's version which was

consistent with the facts and was without blemish. Any inconsistencies which might have existed in her version, were of an immaterial nature. I am furthermore satisfied that the court a quo correctly found that the state had proved its case beyond reasonable doubt and that the accused failed to present a version which was reasonably possibly true. The appeal against the conviction must therefore fail.

[10] It was argued that the accused's personal circumstances entitled him to the suspension of half of the sentence of imprisonment imposed by the court a quo. The accused failed to lead any evidence in mitigation of sentence. However, the court took into account that the accused was 22 years' old, did not have any children, was neither married nor employed in that he stayed with his brother and sister-in-law. No previous convictions were proved against him. The accused's conduct consisted of a calculated move in that he fetched the child from her home while she was playing with another child, a behaviour that showed total disregard and disrespect for the rights of a child whose mother the accused was related to.

[11] I concur with the submissions by the respondent's counsel that a court of appeal will only interfere with a sentence if it was satisfied that the trial court had not exercised its sentencing discretion reasonably^[1]. I am of the view that the imposed sentence is neither cruel, inhuman nor degrading and does not warrant interference by this court. The appeal against sentence should also be dismissed.

[12] I therefore make the following order:

Order:

The appeal against both the conviction and sentence is dismissed.

I concur

VAN RHYN, AJ

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[1] State v Matlala 2003 (1) SACR 80 (SCA)

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Prepared on 9 October 2026 · Esheria