

SOUTH AFRICA / JUDGMENT

Mathenjwa v S (A46/2020) [2020] ZAGPPHC 470 (18 August 2020)

[2020] ZAGPPHC 470

COURT

North Gauteng High Court, Pretoria

BEFORE

FMM Snyman, C G Lamont

CASE / FILE NUMBER

A46/2020

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE:

NO

(2)

OF

INTEREST

TO

OTHER

JUDGES:

NO

(3)

REVISED.

CASE

NUMBER: A46/2020

In

the matter between:-

KHULEKANI

INNOCENT

MATHENJWA

Appellant

and

THE

STATE

Respondent

JUDGMENT

FMM SNYMAN (AJ):

[1] On 8 October 2014 the appellant was convicted of rape of a minor^[1] (a 13 year old child) and kidnapping, and was sentenced in the Regional Court, Vereeniging on 26 November 2014 to life imprisonment

for the rape and 5 years imprisonment for the kidnapping. The court ordered that the sentences run concurrently.

[2] The appellant was legally represented during the trial. Since the appellant was convicted of the rape of a minor (more generally known as "statutory rape") the appellant has approached this court in appeal against both the convictions and sentences.

[3] The appellant raises the following grounds of appeal:

[3.1] The State has not proved its case beyond reasonable doubt;

[3.2] The appellant's version is reasonably possibly true; and

[3.3] The sentence is out of proportion to the crime as the court a quo over-emphasised the interest of the complainant and the community.

Background

[4] The complainant was staying with her grandmother in Orange Farm and on 2 July 2013 her grandmother sent her to the church to deliver some money. At the church she did not find anyone, and walked to the salon nearby where her friends were braiding their hair. After visiting with her friends, she walked home at approximately 17h00 in the afternoon.

[5] On her way home she met her cousin, Sibiso, who then walked with her. A white vehicle (a Corsa "bakkie") stopped next to them and the driver of the vehicle (the appellant) sprayed the complainant and her cousin with pepper spray. Her cousin was able to run away, but the complainant fell and was taken by the appellant. They went to an unknown place with many trees. The appellant told the complainant that he was a police officer and that he would arrest her if she screamed. He put her in the back of the bakkie and undressed both the complainant and himself. The appellant proceeded to rape the complainant, first by inserting his finger and

thereafter his penis in her vagina.

[6] A police vehicle patrolling the area noticed the Corsa bakkie in the field and called for back-up. A marked police vehicle with two police officers responded and parked next to the appellant's vehicle. The appellant called out to the driver of the police vehicle who was known to him as they both received training at the Police Academy in Cape Town. The driver of the police vehicle opened the canopy of the bakkie and found the complainant and

appellant naked. The complainant requested help from the female police officer and reported to the female police officer that the appellant is raping her and that she does not know the appellant or where she is. The police officers took the complainant to the police station and arrested the appellant. When she was found in the back of the bakkie the complainant was naked, appeared to be traumatised and she was crying. Pepper spray was found in the appellant's vehicle.

- [7] The complainant's evidence was corroborated by her cousin, her grandmother and the three police officers. The medical doctor confirmed forced penetration of the complainant's vagina and confirmed that the complainant was not sexually active.
- [8] The appellant denied that he raped the complainant and testified that the complainant was his girlfriend who voluntarily accompanied him. He alleged that the complainant wanted to urinate and at the time that he and the complainant was joined by the other police officials, he was taking a tissue to the complainant.

Grounds of appeal

- [9] The appellant appeals on the basis that his version can be reasonably possibly true and that the State has therefore not acquitted the onus beyond reasonable doubt.
- [10] The complainant's evidence was corroborated by every single witness called by the State, namely her grandmother, her cousin, the three police officers and the medical doctor who examined her. The presence of the pepper spray in the Corsa bakkie is furthermore corroboration of her version.
- [11] The magistrate in the court a quo came to a reasonable finding when convicting the appellant of rape. Not only is this finding reasonable, but it is the only conclusion that can be drawn from the evidence when viewed objectively. There is also no basis upon which the court a quo could find that the appellant's version was reasonably possibly true.
- [12] In relation to sentencing the court a quo had to apply the minimum sentence of life imprisonment[2], except if there was reasonable and compelling circumstances present that enabled the court a quo to come to another finding. This court can only interfere with the sentencing of the court a quo in the event that the sentence is shocking and inappropriate.
- [13] The crimes committed resorts under the minimum sentencing on two bases, namely that it was rape of a 13 year old, and it was multiple rapes (by the finger and the penis). The appellant was also sentenced to 5 year imprisonment for kidnapping of the complainant.
- [14] An aggravating circumstance is that the appellant was a police officer. He was supposed to protect the most vulnerable of the society, which most definitely includes the complainant as a 13 year old girl.
- [15] In *Director of Public Prosecutions, North Gauteng v Thabethe* 2011 (2) SACR 567 (SCA) the following was said at 577 F-1:

[22] ... It is trite that, in addition to deterring an accused person from committing the same offence in the future, a sentence must a/so have the effect of deterring like-minded people. 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 ..."

[16] There is absolutely no reason for this court to interfere with the findings and sentences of the court a quo.

[17] The appeal against both the conviction and the sanction is consequently dismissed.

[18] The following order is made:

1. The appeal is dismissed.
2. The appellant is declared unfit to possess a fire-arm in terms of section 103(1) of the Firearms Control Act 60 of 2000.

F M M SNYMAN

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

I agree

C G LAMONT

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

COUNSEL FOR APPELLANT:

HL Alberts

ATTORNEYS FOR APPELLANT:

Pretoria Justice Centre

COUNSEL FOR THE RESPONDENT:

Adv. L.A. More

ATTORNEYS FOR RESPONDENT: Director of Public Prosecutions

DATE OF HEARING: 18 AUGUST 2020

DATE OF JUDGMENT: 18 AUGUST 2020

(Judgment delivered electronically in accordance with Covid 19 Regulations)

- [1] Sections 1, 56(1), 57, 58, 59, 60 and 61 of the Sexual Offences Act 32 of 2007 read with sections 92(2), 94, 256, 257 and 261 of the Criminal Procedure Act 51 of 1977
- [2] In terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997
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