

SOUTH AFRICA / JUDGMENT

Mlangeni v S (A499/12) [2015] ZAGPPHC 976 (14 October 2015)

[2015] ZAGPPHC 976**COURT**

North Gauteng High Court, Pretoria

BEFORE

Janse van Nieuwenhuizen, Mabuse

CASE / FILE NUMBER

A499/12

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

Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION, PRETORIA)****REPUBLIC****OF SOUTH AFRICA****CASE****NUMBER: A 499/12****DATE:** 14/10/2015

In

the matter between:JOSEPH
MOLIFI MLANGENI
Appellant
and
THE
STATE Respondent**JUDGMENT****JANSE VAN NIEUWENHUIZEN J**

- [1] The appellant was convicted on two charges of rape and one charge of assault. The court a quo imposed a sentence of twenty five years imprisonment in respect of the two rape charges and a period of six months imprisonment in respect of the assault charge. The court a quo ordered that the two terms of twenty five years imprisonment run concurrently culminating in an effective sentence of twenty five years and six months imprisonment.

- [2] The appeal is only against sentence.
- [3] Prior to the appeal being heard, the court informed Mr Matlapeng, counsel for the appellant, that it considered increasing the sentence and stood the matter down in order to afford him an opportunity to file additional heads of argument on this aspect. The question whether this court should increase the sentence will be dealt with infra.

GROUND OF APPEAL

- [4] The appellant's appeal against the sentence is based on the ground that the sentence induces a sense of shock.
- [5] It is trite law that a court of appeal may interfere with a sentence if it is convinced that the trial court exercised its sentencing discretion improperly or unreasonably. [See: *S v Pieters* 1987 (3) SA 717 (A) at 727 F- HJ]
- [6] In circumstances where a court of appeal finds that the sentence imposed by the trial court induces a sense of shock, it follows that the trial court did not exercise its sentencing discretion reasonably and a court of appeal may interfere with the imposed sentence. [See: *S v Anderson* 1964 (3) SA 494 (A) at 495 D - E]

FACTS

- [7] The facts given rise to the appellant's conviction may conveniently be summarised as follows:

On 24 February 2006, the complainant and her male friend visited friends when an argument ensued between them. As a result the complainant

decided to leave the company of her friends. She walked to a nearby house and requested a person by the name of Benjamin Moteti to assist her with transport to her place of residence. The appellant and his co-accused were present at Mr Moteti's house and it was arranged that they would transport her to her house. After several detours and stoppages, the appellant made a final stop along a deserted road and endeavoured to pull the appellant out of the vehicle. She resisted and he assaulted her by hitting her with fists in her face. He succeeded to drag her from the vehicle whereupon he and his co-accused carried the complainant across the road to a veld. The complainant was dumped on the ground and the appellant removed her pants. He thereafter raped her and instructed his co-accused to do the same. After the rape she had to get back into the vehicle with the two perpetrators and she was subsequently dropped by the appellant in a residential area known as Mandela section.

LEGISLATIVE FRAMEWORK

- [8] In terms of section 51(1) of the Criminal Law Amendment Act, 105 of 1997, a person convicted of an offence listed in Part I of Schedule 2 shall be sentenced to imprisonment for life. In circumstances where the victim was raped more than once whether by an accused or any co-perpetrator or accomplice, the offence falls within the ambit of the schedule.
- [9] In the result and save for the provisions of section 51(3)(a), the court a quo had to impose a sentence of life imprisonment on the appellant. Section 51 (3)(a) provides a sentencing court with a discretion to impose a lesser sentence in certain circumstances. The section reads as follows:

"(3)

- (a) If any court referred to in subsection (1) or (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: Provided that if a regional court imposes such a lesser sentence in respect of an offence referred to Part 1 of Schedule 2, it shall have jurisdiction to impose a term of imprisonment for a period not exceeding 30 years. "

SENTENCE

- [10] The court a quo recorded the following substantial and compelling circumstances, in justifying the imposition of the lesser sentence of twenty five years imprisonment on each count of rape:

'Dit is so die Hof aanvaar dit so dat hierdie misdaad was nou nie vooraf so beplan nie. Dit het nou gebeur terwyl die Beskuldigdes nou saam met hierdie vrou verkeer, dat daar toe nou besluit is om haar te verkrag. Die Hof neem dit so in ag. Die verdere aspek is die Beskuldigdes he! nie vorige veroordelings vir hierdie tipe van misdryf nie. Dit is ook so dat die Hof he! gehoor hulle is onder die invloed van drank.'

DOES THE SENTENCE INDUCE A SENSE OF SHOCK?

- [11] Mr Matlapeng mentioned the following reasons in his heads of argument in support of his contention that the sentence induces a sense of shock:

"a) the offence was not pre-planned:

- b) liquor played some role:
- c) although rape is always a heinous crime and attracts a severe sentence it is not irrelevant to bear in mind that the victim was not injured physically, • S v M 2007(2) SARC 60 (W)
- d) there is no evidence to suggest that the Appellant is not amendable to rehabilitation:

- e) there is also no evidence that the complainant suffered any on-going trauma over and above the trauma that she would inevitably have experienced as a result of what happened. Such evidence should have been placed before court by way of a victim impact report."
- [12] The first two reasons were taken into account by the court a quo in its finding that substantial and compelling circumstances exist to impose a lesser sentence than life imprisonment.
- [13] The fact that there is no evidence that the appellant is not amenable to rehabilitation, does, to my mind, not take the matter any further.
- [14] It is not correct that the complainant did not sustain any physical injuries. To the contrary, Dr Mabotja, a district surgeon, listed the various physical injuries the complainant sustained during the rape. It is in view of these injuries the appellant was found guilty on the assault charge.
- [15] Lastly, the submission that no evidence was led in respect of any ongoing trauma the complainant experienced as a result of the rape, does not justify a finding that the sentence is shockingly inappropriate.
- [16] The circumstances under which the rape occurred are especially shocking. The complainant was a defenceless woman who entrusted her safety to the appellant and his co-accused. Instead of honouring her trust, they treated her with absolute disdain and ended up invading her most private sanctity by raping her. It is in view of these circumstances that the court considered increasing the sentence to life imprisonment.
- [17] Having had regard to all the elements that must be taken into account in arriving at an appropriate sentence, I am, however, of the view that the sentence imposed by the court a quo is proportionate to the crime that was committed.

In the result, I propose the following order: The appeal against conviction is dismissed

VAN NIEUWENHUIZEN J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.

MABUSE J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA (ACTING)

GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the appellant: Advocate Matlapeng

Counsel for the respondent: Adv. L Pienaar

Date Heard:

5 October 2015

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/ZAGPPHC/2015/976.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mlangeni-v-s-unknown-topic-agpphc-2015>

Prepared on 11 October 2026 · Esheria