

SOUTH AFRICA / JUDGMENT

Moehi v S (CA&R 56/2017) [2018] ZANCHC 6 (23 February 2018)

[2018] ZANCHC 6

COURT

Northern Cape High Court, Kimberley

BEFORE

Williams, Lever

CASE / FILE NUMBER

CA&R 56/2017

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IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE HIGH COURT, KIMBERLEY)

Case no: CA&R 56/2017

HEARD ON: 09-10-2017

DELIVERED: 23-02-2018

In the matter between: Itumeleng
Moehi
Applicant
And
The
State
Respondent
CORAM: WILLIAMS J et LEVER AJ

JUDGMENT

WILLIAMS J

1. The appellant, Mr Itumeleng Moehi, pleaded guilty in the Regional Court, Kuruman on a charge of rape read with the provisions of sec 51(1) of Act 105 of 1997 (where the infliction of grievous bodily harm is involved), and was sentenced to life imprisonment.
2. The appeal is preceded by an application for condonation for the late filing of the notice of appeal. The notice of appeal was filed 1 ½ months late and the reasons for the delay are stated as the appellant's incarceration and general difficulty in getting hold of his attorney. Added to the above usual explanation for delay, the trial court at the end of the trial,

mistakenly informed the appellant that the matter would be sent on automatic review. The trial court then reconvened some 3 months later to correct the position and inform the appellant of his automatic right of appeal. In these circumstances the delay cannot be said to be unreasonable. Mr Rosenberg, who appeared for the state in this appeal, readily conceded this fact and we therefore granted condonation for the delay.

3. The appeal lies against the sentence imposed only, on the basis that the court a quo misdirected itself in not finding that the fact that the appellant pleaded guilty, that he was intoxicated at the time of the offence and his personal circumstances, justified the imposition of a lesser sentence than the prescribed life imprisonment.

4. The accepted facts relevant for purposes of sentencing are the following:

4.1 The appellant a 28 year old man, was on his way home from a tavern during the night of 28 March 2015 when he decided to first go to the complainant's home. The complainant, a 64 year old woman, was asleep when the appellant

entered her home. She only woke up while the appellant was busy raping her and started to scream. In order to subdue the complainant

the appellant struggled with her and stabbed her with a knife over her back and the back of her neck. The complainant also sustained

lacerations over four fingers on her right hand and contusions over her face.

4.2 The appellant is single but has two minor children. At the time of his arrest he was employed as a bricklayer and earned R2000,00 every fortnight. He is not a first offender and has previous convictions for riotous behaviour (2008), theft (2009), contravention of a protection order and intimidation (2011), and rape (committed on 24 December 2013 and for which he was convicted on 21 October 2015).

In his plea explanation the appellant stated that on the night in question he had shared a bottle of Jameson whiskey with two friends and had also consumed some beer.

5. The trial court in a detailed judgment on sentence considered all the relevant

factors which come into play when deciding upon an appropriate sentence - the serious nature of the offence, the interests of the

community against violence towards women, children and especially the elderly, the personal circumstances of the appellant. Not one of these factors was overemphasised at the expense of another.

6. The appellant was linked by his DNA to the offence and the State had a very strong case against him. His plea of guilty in such circumstances is not necessarily a sign of remorse - but more likely an acceptance of the inevitable.

7. The appellant furthermore, save to state in his plea explanation that he had consumed alcohol, failed to elaborate on his state of intoxication or give evidence on how his intoxication influenced his actions. See in this regard S vs Klassen 2017(2) SACR 119(SCA) para 8. It would in these circumstances be mere speculation to find that his actions had in any meaningful way been influenced by his intoxication.
8. Lastly and by far the most aggravating factor in casu is the fact that the appellant had committed a similar offence less than 1Yi years prior to this offence. He is a repeat offender and there can be no doubt in my mind that he is a danger to society.
9. In my view there is no basis on which this court can interfere on sentence and as such the appeal must fail.

In the circumstances the following order is made:

The appeal against sentence is dismissed.

CC WILLIAMS

JUDGE

I concur

L LEVER

ACTING JUDGE

For Appellant: Mr

P Fourie

Legal Aid

For Respondent: Adv

J Rosenberg

Office of the OPP

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