

SOUTH AFRICA / JUDGMENT

Motsima v S (A108/2020) [2021] ZAFSHC 92 (23 March 2021)

[2021] ZAFSHC 92

COURT

Free State High Court, Bloemfontein

BEFORE

Mathebula, Opperman

CASE / FILE NUMBER

A108/2020

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Appeal

number: A108/2020

In

the matter between:

KHAILE
JOHANNES MOTSIMA
Appellant
and
THE
STATE
Respondent

CORAM:

MATHEBULA, J et
OPPERMAN, J
HEARD

ON:

1 MARCH 2021

JUDGMENT

BY: MATHEBULA, J

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 23 MARCH 2021. The date and time for hand-down is deemed to be 23 MARCH 2021 at 14:00

- [1] This is an appeal against both conviction on a charge of rape of a minor girl aged five (5) and the consequent sentence of life imprisonment imposed by the regional magistrate, Phuthaditjhaba. The appeal serves before us as of right.
- [2] The facts upon which the State secured the conviction are fairly straightforward and should not detain us to any significant extent. The complainant and the appellant are residents of Phamong Village and well known to each other. The complainant was watching television in the bedroom at her residence with other children when the appellant arrived. He chased them (the other children) away. Left in the company of each other, he undressed her and proceeded to penetrate both her genital and anus orifices. The uneasiness displayed by the complainant as a result thereof was detected by her mother who reported the matter to the relevant authorities.
- [3] The penetration that took place was corroborated by medical evidence as recorded by the health practitioner who examined her. She also managed to point out the appellant in a properly constituted identification parade. The court a quo concluded that the evidence of a single witness, to wit the complainant, was material in all respects. The court also made a finding that his alibi was a contrived one in the face of the formidable evidence to the contrary. In short, his version was deemed not to be reasonably possibly true.
- [4] There are no faultlines in the evaluation of the evidence by the court a quo. The submissions made on behalf of the appellant in the court a quo clearly confirms the reliability and credibility of the evidence tendered on behalf of the State.[1] Counsel for the appellant made responsible submissions that he cannot argue with conviction that the appeal should succeed. I agree with the concession that the appeal is without any merit and ought to be dismissed.
- [5] At the outset I find no cogent reason(s) why this court should interfere with the sentence imposed by the court a quo. The appellant attacked a little girl in the comfort of her home and mercilessly penetrated her. He showed no remorse and there is no reason why he acted in the manner that he did. The court a quo was correct in concluding that there were no substantial and compelling circumstances in existence justifying deviation from imposing the prescribed sentence. Therefore, I hold the view that any interference by this court will be unjustified given the fact that there is no misdirection on the part

of the court a quo.

[6] I make the following order:-

6.1. The appeal against conviction and sentence is dismissed.

M.A. MATHEBULA, J

I agree.

M OPPERMAN, J

On behalf of appellant: Mr. J D Reyneke

Instructed by:

Justice Centre

Bloemfontein

On behalf of respondent: Adv. M. Strauss

Instructed by:

Director of Public Prosecutions

/roosthuizen

[1] P L162, L12 to P L165, L4

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Prepared on 23 October 2026 · Esheria