

SOUTH AFRICA / JUDGMENT

Ngcamlela v S (A157/2020) [2021] ZAFSHC 105 (3 May 2021) [2021] ZAFSHC 105

COURT

Free State High Court, Bloemfontein

BEFORE

Mathebula, Boonzaaier

CASE / FILE NUMBER

A157/2020

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Appeal

number: A157/2020

In

the matter between:

KE
NGCAMLLELA
Appellant
and
THE
STATE
Respondent

CORAM:

MATHEBULA, J et
BOONZAAIER, AJ
HEARD

ON:

03 MAY 2021

JUDGMENT

BY: MATHEBULA, J

DELIVERED ON: 03 MAY 2021

- [1] This is an appeal against sentence only which serves before us as of right. The appellant was convicted of housebreaking with intent to rape and rape by the regional magistrate, Welkom. He was sentenced to life imprisonment. The appeal is resisted by the State.
- [2] The facts giving rise to this matter are fairly simple and straightforward. On the night of the 27th to the morning of the 28th July 2018, the appellant broke into the Thabong home of an elderly sickly woman who was staying alone. He gained entry through one of the windows. Once inside he proceeded to have sexual intercourse with her at least twice against her will. He managed to do so by overpowering and strangling her. Having satisfied his insatiable lust, he simply escaped to his home. On the strength of this formidable evidence, the court a quo rejected his version and found him guilty as charged. I am convinced that the conviction is in order.
- [3] The offence is one of those that a minimum sentence is ordained. The court a quo did not find any substantial and compelling circumstances to deviate from imposing the minimum sentence. This is the crux of this appeal.
- [4] The mitigating arguments submitted before the court a quo is that the appellant was 22 years old, a life partner to his wife with a two (2) years old son. He was a first offender. An only economically active member of his family who was supporting his five (5) other siblings. In aggravating the court a quo noted that the victim, an elderly woman of 68, was helpless and defenceless, the appellant showed no remorse and importantly the very nature of the offence.
- [5] It is trite that a court considering a proper sentence must consider the often-quoted triad of sentencing. This is so to give expression to the objectives of sentencing namely retribution, rehabilitation deterrence and prevention of crime. In matters of this nature the court must consider all factors in order to determine whether there are/no substantial and compelling circumstances. However, the court must be cautious not to deviate from imposing the minimum sentence for flimsy or unconvincing reasons. See *S v Malgas* 2001 (1) SACR 469 (SCA) at para 7-9.
- [6] Housebreaking with intent to rape and rape is abhorrent in our society. In this matter, the appellant contrived a sinister plan to attack an elderly woman in the comfort of her home. Not only that, he must have been aware that she was unwell and defenceless. Raping her was the ultimate humiliation. He did not only stop there, but concocted a version that was correctly rejected by the court a quo. In so doing he continued to attack her character and standing in society. In a long list of decided cases, the Supreme Court of Appeal and this court have lamented the menace that this offence is to society and that those who are

perpetrators must be handed long and hard sentences to drive the message home. That said, I am unconvinced that the court a quo was wrong and that this appeal has any merit.

[7] Therefore I make the following order: -

7.1 The appeal is dismissed.

MATHEBULA, J

I concur

BOONZAAIER, AJ

On behalf of appellant: Adv. P.L Van der Merwe

Instructed by:

Justice Centre

Bloemfontein

On behalf of respondent: Adv. L.B Mpemvane

Instructed by: Director

of Public Prosecutions

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Prepared on 23 October 2026 · Esheria