

SOUTH AFRICA / JUDGMENT

Phosha v S (A933/2007) [2014] ZAGPJHC 148 (17 July 2014)

[2014] ZAGPJHC 148

COURT

South Gauteng High Court, Johannesburg

BEFORE

C. J. Claassen, PP Molefe

CASE / FILE NUMBER

A933/2007

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IN THE NORTH GAUTENG HIGH COURT OF SOUTH AFRICA

PRETORIA

CASE NO: A933/2007

DATE: 17 JULY 2014

In the matter between:

LAWRENCE MPHO PHOSHAAppellant

And

THE STATE.....Respondent

J U D G M E N T

C. J. CLAASSEN J:

- [1] This is an appeal against sentence only. In the court a quo the appellant was convicted of one charge of rape and one charge of attempted robbery with aggravating circumstances.
- [2] The facts are shortly that the complainant was walking in the veld on the day in question. She was approached by the appellant who drew a knife and demanded money and a cellphone from the complainant. She did not possess any such items, whereupon he decided to rape her, holding the knife against her throat.

- [3] The sentence on the rape charge was the minimum of fifteen years' imprisonment. The appropriateness of this sentence was not in any way questioned by counsel for the appellant. The court a quo, however, sentenced the appellant on the second count of attempted robbery with aggravating circumstances to a period of ten years' imprisonment, half of which was ordered to run concurrently with the serving of the sentence on the first count of rape.
- [4] In effect that meant that the appellant was sentenced to a total period of twenty years' imprisonment. Counsel for the appellant submitted that because the rape and the attempted robbery with aggravating circumstances were committed in close proximity as to time and place, the entire period of ten years' imprisonment on the second count should have been ordered to run concurrently with the sentence on the first count of rape.
- [5] I agree with that submission and counsel for the State was not able to argue to the contrary with the result that we are of the view that the court a quo misdirected itself in not ordering the entire period of ten years' imprisonment to run concurrently with the sentence on the first charge.
- [6] For that reason, we are of the view that the sentence should be set aside on count 2 and should be substituted with the following:

"The accused is sentenced to ten years' imprisonment on count 2 which is ordered to run concurrently with the sentence of fifteen years' imprisonment on the first count. In effect the accused is sentenced to a period of fifteen years' imprisonment."

DATED THE 17th DAY OF July 2014

AT JOHANNESBURG

C. J. CLAASSEN

JUDGE OF THE HIGH COURT

I agree

PP MOLEFE J

It is so ordered.

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