

SOUTH AFRICA / JUDGMENT

Ramotekwa v S (A91/2020) [2021] ZAGPPHC 688 (13 September 2021) [2021] ZAGPPHC 688

COURT

North Gauteng High Court, Pretoria

BEFORE

Cochrane, Janse Van Nieuwenhuizen

CASE / FILE NUMBER

A91/2020

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REPUBLIC
OF SOUTH
AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION,
PRETORIA
CASE
NO: A91/2020

REPORTABLE: NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED

DATE: 13 SEPTEMBER 2021
In

the matter between:

POKHA
RAMOTEKWA
APPELLANT

and

THE
STATE
RESPONDENT

This
Judgment
has been
handed down
electronically and
shall be circulated to
the parties by way of email. The date
and time for hand-down shall be deemed to be 09 September 2021
at 12h00.

JUDGMENT

COCHRANE AJ (JANSE VAN NIEWENHUIZEN J Concurring)

INTRODUCTION

- [1] The appellant Mr Phoka Ramotekwa appeared before the Tsakane Regional Court on a charge of rape of a minor to which he pleaded not guilty. He was subsequently convicted of the charge and sentenced to life imprisonment in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997 on 4 January 2020.
- [2] The appellant appeals both conviction and sentence by virtue of the automatic right of appeal provided in section 309(1)(a) of the Criminal Procedure Act No 51 of 1977.

SUMMARY OF FACTS

- [3] The origin of the conviction and sentence arose from events which occurred during the evening of 23 February 2018, at or near Tsakane, Gauteng.

States Evidence

- [4] The Complainant, who was 10 years old at the time of the incident, testified that she was watching TV in her grandmother's house with the appellant on the evening in question. The complainant was lying on the couch and the appellant was lying on the floor next to the couch. At some stage the complainant fell asleep until she felt she was being pulled off the couch and onto the floor where the appellant was lying. The appellant proceeded to remove the complainant's clothing and rape her, despite her attempts to stop him.

- [5] After the rape, the appellant told the complainant not to tell anyone and threatened to kill her if she did, he went further and told the complainant that he may have a heart attack as a result of her telling anyone.
- [6] The next morning the complainant's friend Modige came to visit her, and she eventually told Modige what had happened. After Modige left, the complainant cleaned the house, ate and had a bath. She then went to Modige's house and upon her arrival discovered that Modige had told her father. It did not appear to the complainant that Modige's father believed the report and she decided to go to her mother and report the rape.
- [7] Upon the complainant's arrival at her mother's home, her mother informed her that her father was seriously ill and had been taken to hospital, the complainant was not able to tell her mother about the rape as they were worried about her father. The complainant then returned to her grandmother's house.
- [8] Children of a similar age as the complainant, including Modige, came to visit the complainant at her grandmother's home that afternoon and they found her crying. The complainant went to the kitchen, took a knife and went to the bedroom. The complainant said her intention was to kill herself because her father was seriously ill. Modige found the complainant in her room with the knife and took the knife away from her.
- [9] Later that same day the complainant returned to Modige's home and learned that Modige's father had called the police. The police then arrived at the home of Modige with the complainant's mother and the complainant eventually went to the police station to lay a charge and make a statement and as subsequently examined by a doctor.
- [10] Modige's father, Mr Sebetla, testified that the complainant had told him what had happened. He also said that he had confronted the appellant with the complainant's accusations and the appellant had denied them.
- [11] The evidence given by the medical doctor, Dr Gambule, indicates that the complainant was examined on 25 February 2018, two days after the incident, and a Form J88 was accordingly completed. The Form J88 records bruising of the complainant's private parts. No tears or external injuries were recorded, and the hymen was intact. The doctor's conclusion, based on the evidence and what the complainant told him, was that a sexual assault had taken place.

Appellants Evidence

- [12] The appellant admitted to watching TV with the complainant on the evening in question, however he denied anything improper occurred. He stated that he fell asleep while watching TV and woke up the next day and everything was fine.

EVALUATION OF THE FACTS

- [13] In the absence of an irregularity or misdirection court of appeal is bound by the credibility findings of the trial court, unless it is convinced that such findings are clearly incorrect.

Conviction

- [14] The appeal against conviction is directed mainly on the basis that the court a quo did not exercise the necessary caution in accepting the complainant's evidence as a single witness and that the State had accordingly not proved its case beyond a reasonable doubt.
- [15] Section 208 of the Criminal Procedure Act 51 of 1977 provides that:
- 'An accused may be convicted of any offence on the single evidence of any competent witness.'
- [16] The court can base its finding on the evidence of a single witness if such evidence is substantially satisfactory in every material respect or if there is corroboration.[1]
- [17] The merits and demerits of the evidence of a single witness should be weighed and the court must satisfy itself that the truth has been told despite shortcomings, defects or contradictions in the evidence.[2]
- [18] The court a quo accepted the complainant's version as true and correct after carefully evaluating the evidence led by the complainant and the state's witnesses, the magistrate carefully considered and evaluated the discrepancies in their evidence and correctly concluded that the discrepancies were not material and that the material facts were indeed sufficiently corroborated.

Sentence

- [19] The essential inquiry in an appeal against sentence is not whether the sentence was right or wrong, but whether the sentencing court exercised its discretion properly and judicially. If the discretion was exercised improperly, the appeal court will interfere with the sentence imposed.[3]
- [20] Furthermore, the SCA has summarized the approach to be followed by an appeal court when dealing with sentence in *S v Hewitt*[4] as follows:

"It is a trite principle of our law that imposition of sentence is the prerogative of the trial court. An appellate court may not interfere with the discretion of the trial court merely because it would have imposed a different sentence. In other words, it is not enough to conclude that its own choice of penalty would have been an appropriate penalty. Something more is required; it must conclude that its own choice of penalty is the appropriate penalty and that the penalty chosen by the trial court is not. Thus the appellate court must be satisfied that the trial court committed a misdirection of such a nature, degree and seriousness that shows that it did not exercise its sentencing discretion at all or exercised it improperly or unreasonably when imposing it. So, interference is justified only where there exists, a 'striking' or 'startling' or 'disturbing' disparity between the trial court's sentence and that which the appellate court would have imposed. And in such instances the trial court's discretion is regarded as having been unreasonably exercised."

[21] In exercising its discretion, the trial court must weigh both mitigating and aggravating factors, focused on the nature of the crime, the personal circumstances of the offender and the interest of society.

[22] The appeal against sentence is premised on the court a quo's failure to consider the cumulative effect of all the mitigating factors and that the life sentence is accordingly disproportionate to the facts of the case.

[23] The court a quo considered the following factors

- (i) the heinous and very serious nature of rap ;
- (ii) the age of the complainant, who was 10 years old at the time;
- (iii) the fact that the appellant was 55 years old and held a position of trust with the complainant in much the same way as a grandfather would;
- (iv) that the courts are under a duty to send a clear message to potential rapists and the community; and
- (v) the pre-sentencing report in which the probation officer stated that the appellant maintained his innocence and accordingly did not show any form of remorse.

[24] The mitigating factors and personal circumstances presented by the appellants counsel were:

- (i) the appellant's age, namely 58 years old;
- (ii) he has two children;
- (iii) he was previously employed as a petrol attendant and was self-employed as a builder at the time of his arrest, earning an income of about R25,000.00;
- (iv) he resided with his partner and children;
- (v) he went to school up to form 3;
- (vi) he was described as a loving person by his sister;
- (vii) his elderly father was sickly; and
- (viii) he had spent more than 2 years in custody awaiting trial.

[25] Section 51(1) of the Criminal Law Amendment Act No. 105 of 1997 prescribes a minimum sentence of life for the rape of a girl under the age of 16 unless the court can find substantial and compelling circumstances to deviate from that prescribed sentence.

[26] In my view the magistrate correctly found that the mitigating factors and personal circumstances presented to the court did not qualify as substantial and compelling circumstances. The court accordingly exercised its sentencing discretion properly and reasonably when it imposed the said sentence, and I can find no reason for this court to interfere with it.

[27] In the circumstances I conclude that the evidence proved the guilt of the defendant beyond a reasonable doubt and consequently the appeal must fail.

[28] In the result the following order is made:

28.1. The appeal against the conviction and sentence is dismissed.

J. COCHRANE

ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT

Appearances

For the Appellant

: Mr MB. Kgagare

Instructed by

: Pretoria Justice Centre

For the Respondent

: Adv. C. Pruis

Instructed by

: The Director of Public Prosecutions: Pretoria

Date of Hearing

: 8 June 2021

Date of Judgment

: 13 September 2021

Judgment

transmitted electronically.

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- [1] Mahlangu v The State (2011) ZASCA 64 at [21]
- [2] S v Sauls and Others 1981 (3) SA 172 (A) at 180E-G
- [3] S v Malgas 2001 (1) SACR 469 (SCA)
- [4] S v Hewitt [2016] ZASCA 100; 2017 (1) SACR 309 (SCA) para 8
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Prepared on 26 October 2026 · Esheria