

SOUTH AFRICA / JUDGMENT

S v Molosi (46/2016) [2017] ZAFSHC 2 (17 January 2017) [2017] ZAFSHC 2

COURT

Free State High Court, Bloemfontein

BEFORE

I.R.O Bokwa

CASE / FILE NUMBER

46/2016

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

number: 46/2016

In

the matter between:

THE
STATE
and
JOHANNES
MOLITI PHEPENG MOLOSI
Accused

JUDGMENT

BY: BOKWA, AJ

DELIVERED ON: 17 JANUARY 2017

SENTENCE

- [1] The accused was convicted on 16 January 2017 on one count of house breaking with intent to rape, three counts of rape and two counts of armed robbery with aggravating circumstances.
- [2] The court has to impose an appropriate sentence in accordance with the law. The purpose of sentence is to achieve the following objective: viz rehabilitation, deterrence, prevention and retribution (see *S v Rabie* 1975
- (4) SA 855 (A).
- [3] Rehabilitation is aimed at reforming an offender so that he/she may change his/her criminal conducts. Deterrence is aimed at deterring future offenders from further involvement in crime. Prevention is aimed at protecting the society from offenders.

The retributive element is aimed at punishing the offender so that he/she can in a way feel the pain of the victim.

- [4] When deciding on an appropriate sentence I will take into consideration the well-known triad of sentence, namely the personal

circumstances of the accused, the nature of the offence as well as the interest of society. Regarding these three factors I have to strike a balance, so that one factor is not overemphasised at the expense of the other.

- [5] The offences, the accused has been convicted of is of a very severe nature, as it is a very serious invasion of a victims'

privacy. It is not only a crime which involves sexual intercourse, but it is also an act of violence.

- [6] The legislature has deemed it fit to prescribe lengthy imprisonment sentences as minimum sentences. If the court imposes life imprisonment upon conviction, it also must consider whether there exists substantial and compelling circumstances justifying a departure therefrom.

- [7] In terms of section 51(1)(3) of Act 105 of 1997, if a court find that these circumstances exist, it is duty bound to enter them on record and is then allowed to impose a lesser sentence than the prescribed.

- [8] Mr. Nel acting on behalf of the accused placed the following circumstances on record for the accused:

8.1 He is 33 years of age and at the prime of his life. He stayed with his parents before he was arrested at nr. [...] F. S., Free State Province and at the back of his parents' house for 8 years. His highest educational standard is Standard 7 / Grade

9. Regarding his employment he did odd jobs of plumbing firstly for a period of one year. For a few months before he was arrested, he worked as a car watchman or car guard, earning an income of R500.00 per month. He is not married nor does he have any dependants.

8.2 The accused still protests his innocence even after his conviction. Despite his attitude, Mr. Nel request the court to temper his sentence with mercy.

8.3 In the present case the minimum sentences are applicable. The crimes committed by the accused are not only prevalent to this country and the court's area of jurisdiction but society expects our courts to act firmly against those who perpetrates these crimes. Mr. Nel has placed at length on record the personal circumstances of the accused. In my view, the interest of society far outweighs the personal circumstance of the accused. The interest of society demands that this scourge be addressed effectively and that the court sends out a clear message that crime will not be tolerated.

[9] The accused has previous convictions some of which are relevant to the offenses he has been convicted of. It is clear that the accused does not wish to take responsibility and accountability for his actions. He has ignored the red lights which had been flickering for a long time and has persisted with a pattern of unlawful activities unabated.

[10] In my view I am satisfied that there are no substantial and compelling circumstances warranting the departure from the applicable

minimum sentences.

[11] In my view therefore the appropriate sentence is the following:

11.1 Count 1, life imprisonment.

Count 2, life imprisonment.

Count 3, 10 years imprisonment.

Count 4, life imprisonment.

Count 5, 10 years imprisonment

11.2 The sentences in count 1 – 5 will run concurrently.

I.R.O BOKWA, AJ

On behalf of the State: Adv. Hoffman

Instructed by:

Director of Public Prosecutions Free State

On behalf of accused: Adv. Nel

Instructed by:

Justice Centre South Africa

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