

SOUTH AFRICA / JUDGMENT

S v Nogodama (CC20/2017) [2017] ZAECPEHC 50 (17 October 2017)

[2017] ZAECPEHC 50

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

M Makaula

CASE / FILE NUMBER

CC 20/2017

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION – PORT ELIZABETH

Case No: CC 20/2017

Date Delivered: 17/10/2017

In the matter between:

THE STATE and

KWANELE NOGODAMA

Accused

SENTENCE

MAKAULA J:

A.

Introduction

- [1] The complainants are both from Limpopo. They came to Port Elizabeth in the year 2016 to study. They had been in Port Elizabeth for about ten months when the incident occurred. On 19 October 2016 at about 18:00 they took a taxi to town. Instead of taking them to town, the accused drove to a dark place in some area in town. He robbed them of their two cellular

phones plus a Tablet, the total value of which was about R11 000.00. He threatened them with an iron rod. After that, the accused drove to a secluded open field where he raped Ms C. at gunpoint. Thereafter, he took them to his room at Kwazakele Township. On arrival, he caused Ms M. to suck his penis and subsequently had sexual intercourse with her. After a while he in turn requested Ms C. to suck his penis. He raped her again for the second time. At all material times, the complainants did not consent to the sexual intercourse. The following morning the accused took them to a taxi rank where he left them.

- [2] Both complainants were taken to hospital. A forensic nurse examined and found that they had vaginal injuries. The forensic nurse confirmed upon examination that Ms C. was a virgin at the time of the incident.
- [3] Both complainants left Port Elizabeth on 21 October 2016. Ms M. testified that at the end of the academic year she came back to Port Elizabeth to write her examinations. However, she failed her examinations attributing that to the incident. She testified that she was badly affected by the ordeal to an extent that she does not trust people anymore. She does not feel comfortable using public transport. She is anti-social and wants to be alone at all material times. Currently she is enrolled with the University of Johannesburg. She was hysterical during her testimony to an extent that the court had to adjourn on numerous occasions to allow her compose herself.
- [4] The same effects which she alluded to were reflected by a Clinical Psychologist, Ms Monama Mpho who consulted with her. She observed thus:

“Ms Shalati presented with fear of going back to Port Elizabeth, she stated that she feared for her life as she no longer felt safe, though she understands that she has to go as she is supposed to sit for her end-year examinations. She stated that she is still experiencing nightmares, mild insomnia, and hypervigilance. She stated that she receives a lot of support from her family”.

- [5] Ms C. testified that the effect the raped had on her and her family is insurmountable. Her mother has developed hypertension and a mild stroke as a result of the trauma. She testified that at the time of the incident she was a virgin and was about to attend a culturally initiation school. She could no longer attend because she is no longer a virgin. She testified that she felt cheap after the incident because she did not know that she would lose her virginity in that manner. She has since developed hatred for men generally. She however, appreciated that not all men are like the accused. She stated that innocent men are suffering because of the actions of the accused. She testified that she lost an academic year. Her fees were raised through a loan which had to be paid by her parents. She further testified that she could not pursue a degree of her dreams which was only offered at NMMU. Ms C. shed tears throughout her testimony. At some stage she became very hysterical and sobbed uncontrollably especially when the version of the accused was put to her.
- [6] Ms C. further received counselling from a social worker in Limpopo. The report of the social worker reflects the following:

“Psychological wellbeing: The client’s psychological functioning seems to have been affected. .During the first session she could not concentrate on the questions that I asked her. . . . She appeared to be angry and forgetful as well. In our conversation she would repeat one sentence for more than once, and when the social worker tries to follow up on what she has said, she would forget what she has said. Emotional wellbeing: She appeared to be very angry when she was explaining how the rape occurred. She said that she has anger towards any other male person whom she comes across.

Social wellbeing: Initially she did not want to open up about the rape. The social worker explored further and she reported that since the rape she does not trust any other person. She even indicated that she preferred to be alone. According to her, she indicated that she does not even want to be closer to her family members. She reported that she walks and stays alone even at the University of Limpopo. Her level of trust to other people has been affected a lot.

Physical impact: She is angry that her virginity has been violated by the person who raped her. She felt her privacy has been violated as she did not give consent to the rapist to access her private parts. She reported that after the rape she could not sleep perfectly like she used to, her eating pattern was also affected since she said that she lost appetite. She also indicated that she had lot of pains around her waist after the incident.

Powerlessness: She felt powerless and helpless and the incident makes her to be very suspicious and scared to interact with other people.

Spiritual wellbeing: The client reported that she finds it difficult to trust even the male pastors as they remind her of the person who raped her”.

- [7] The impact the offences had on the complainants is inexplicable. They testified that from the time of kidnapping till the following day they cried and prayed for their lives not knowing what would befall them. They could not run nor escape because the accused had been carrying a gun throughout, so they testified. Even if they wanted to, it was at night and did not know the area. Both of them testified in camera because they could not testify in open court.
- [8] The accused was in the service of the public. He used a taxi to convey passengers. Most South Africans rely on public transport for commuting. The complainants boarded the taxi for a fare expecting to be dropped at their destination. Little did they know that they would be put to such a trauma for more than ten hours. The accused showed no mercy on them. He asked them to perform fellatio on him. He alternated in having sexual intercourse with them in the presence of the other. Ms M. testified that when the accused had sexual intercourse with Ms C. the latter’s head was on her lap. Ms C. was crying uncontrollably even after she had been threatened with a firearm by the accused to keep quite. She had to use her hands to close her mouth because she feared the worst. The accused was undeterred by such actions. He continued to rape her.

[9] The offences are serious. The accused did not show any remorse throughout the trial. His defence is despicable in the circumstances of this case. He caused the complainants to re-leave the events of the day by claiming that they willingly went to his home, agreed to the perform fellatio on him and had sexual intercourse when he knew that was a blatant lie.

[10] Rape of people especially women remains awful. It is more on the increase despite the sentences handed down by our courts.

There is a public outcry clumnering for a stop to the scourge of rape. But that seemingly does not work. Rape is serious

and causes the victims untold physical and emotional trauma, like in the instant matter. The accused knew about this because after he had raped both complainants he cried and apologised to them and handed their belongings back. But out of nowhere, he suddenly changed his mind by demanding back the cell-phones and ordered Ms C. to perform fellatio on him. He thereafter raped her again at gunpoint. She testified that the accused held the gun against her head whilst he was raping her on the second occasion.

[11] In sentencing the accused, I have to take into account his personal circumstances. He was born on [...] 1998 and that makes him 29 years old. He is not married but has four children who are six, five, and three years old. The three year olds are twins. The first two children are born of different mothers. They are all schooling and stay with the accused's grandmother who is about 90 years old. They survive on the grandmother's pension and the children's grant which they receive. The accused left school at standard nine due to financial constraints. He has no previous convictions and no pending cases. He has been in custody since his arrest.

[12] Mr Bodlo submitted that the personal circumstances of the accused, the fact that it appears from the witnesses that he smoked drugs before he raped them and the fact that he acted out of character should be viewed as constituting substantial and compelling

circumstances justifying a departure from the minimum sentence of life imprisonment. I disagree with this submission, for the reason that if one views the offence, the interest of the community and the effect the crime had on the complainants and their families, the personal circumstances of the accused viewed in totality are far outweighed. Ms C. was raped more than once by the accused. I therefore see no reason why I should deviate from the minimum sentence. I therefore hand down the following sentences:

Count 1: Kidnapping, to undergo 3 years imprisonment.

Count 2: Robbery with aggravating circumstances, 15 years imprisonment.

Count 3: Rape, life imprisonment.

Count 4: Rape, 15 years imprisonment.

Count 5: Pointing of anything which is likely to lead a person to believe it is a firearm, 5 years imprisonment.

Count 6: Rape, life imprisonment.

Count 7: Kidnapping, 3 years imprisonment.

M MAKAULA

Judge of the High Court

Counsel for the State:

Adv I Cerfontein

Instructed by:

National Director of Public Prosecution, Port Elizabeth

For the Accused:

Mr X Bodlo

Instructed by:

Legal Aid, Port Elizabeth

Dates Heard:

10-17 October 2017

Date Delivered:

17 October 2017

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