

SOUTH AFRICA / JUDGMENT

S.T v S (CA&R346/2014) [2015] ZAE CGHC 30 (19 March 2015)

[2015] ZAE CGHC 30**COURT**

Eastern Cape High Court, Grahamstown

BEFORE

G Goosen, P Maseti

CASE / FILE NUMBER

CA&R 346/2014

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

CASE NO: CA&R 346/2014

Date Heard: 11 March 2015

Date Delivered: 19 March 2015

In the matter between

S[...] T[...].....Appellant

And

THE STATE.....Respondent

Appeal on sentence – appellant 17 year old first offender who pleaded guilty to rape and robbery with aggravating circumstances – facts disclose that victim raped by two persons in presence of partner – partner assaulted with brick and robbed – appellant sentenced to 8 years imprisonment – sentence reflects leniency – sentence not shockingly inappropriate or disproportionate – appeal dismissed.

JUDGMENT

GOOSEN, J.

- [1] The appellant was charged in the Regional Court, Port Elizabeth on a charge of rape in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 and on a count of robbery with aggravating circumstances. He pleaded guilty to the charges and was convicted on the strength of his plea. He was sentenced to undergo eight years imprisonment in respect of both counts. The appellant now appeals against his sentence.
- [2] At the time of the commission of the offence the appellant was 17 years of age. He was a first offender. The plea explanation sets out the circumstances in which the offences came to be committed. The appellant stated that on 29th of June 2014 he was walking along a street in New Brighton at about 6:30am. He saw two people enter an old abandoned building. He then saw a friend of his in the street and he told him that he had seen two people entering the building. The two of them then decided to enter the building with the intention of robbing them. His friend picked up a brick and when they entered the building his friend assaulted the complainant in the robbery charge, one K[...] B[...], with the brick. The appellant took a cellular phone from the complainant and his friend took other items. B[...] then ran to another room and the appellant followed him. The appellant's friend was left in the company of the complainant on the rape charge, to whom I shall refer to as SN.
- [3] According to the plea explanation, the appellant caught up with B[...] and thereafter his friend brought SN into the room where he was. He noticed that she was naked. The appellant's friend then raped SN whilst the appellant watched. After his co-accused had raped her, the appellant raped her. Thereafter the two perpetrators fled from the scene.
- [4] The appellant further explains in his plea explanation that he has a drug abuse problem and that he has been trying to rehabilitate

himself with his mother's help. On the day in question he had taken drugs and he was to some degree under the influence of those drugs at the time of the commission of the offence, but that he nevertheless could differentiate between right and wrong and that he acted in accordance with that appreciation.

- [5] As already indicated the appellant was 17 years of age at the time of the commission of the offence. Prior to sentencing the appellant a pre-sentence report was prepared and submitted in evidence. The appellant's mother also testified in mitigation of sentence.
- [6] It is clear from the magistrate's judgment on sentence that the magistrate gave very careful consideration to the age of the accused and his family circumstances. These included that the appellant was alienated from his biological father and that as a consequence he suffered from a loss of appropriate fatherly affection and guidance. It was also considered that the appellant had become dependent upon drugs and that despite the efforts made by his mother and by school counsellors and psychologists that the appellant had not been able to rehabilitate himself and break his dependence upon those drugs. The magistrate noted that at the time the commission of the offence the appellant may well have been influenced by having taken drugs. The magistrate also accepted that the appellant had pleaded guilty, and

that he had expressed remorse for his conduct. Having taken into account all of these mitigating factors the magistrate nevertheless came to the conclusion, correctly it was conceded before us, that that the only appropriate sentence was one of direct imprisonment.

[7] It was not submitted on appeal that the magistrate had in any manner misdirected himself as to the approach to be taken to sentencing a youthful offender such as the appellant, nor was it suggested that the magistrate had exercised his sentencing discretion upon a wrong principle. The only contention in argument before us on appeal was that the sentence was shockingly inappropriate.

[8] In my view there is no merit at all in that submission. The appellant was convicted of a gang rape as well as robbery with aggravating

circumstances. There can be no doubt whatsoever that these are particularly serious crimes which, ordinarily, call for the imposition of lengthy periods of imprisonment. Although the minimum sentences do not apply in this matter, by virtue of the age of the appellant, it is worth noting that in the case of an 18-year-old, statutory provision is made for imposition of life imprisonment for an offence such as that for which the appellant has been convicted. No evidence was led regarding the impact that the rape has had upon the victim of that terrible crime. There can however be no doubt that SN suffered a terrible ordeal. Rape, it has been noted on numerous

occasions, strikes at the foundational values of freedom, equality and dignity which underpin our constitutional order.

[9] The magistrate took the view that the two offences should be treated as one for the purpose of sentence. It is not necessary to comment on the correctness of that approach, save to state that it is apparent from the judgment that the magistrate was inclined to treat the appellant with a measure of leniency and that he was moved to consider the shortest possible period of imprisonment that could be imposed upon the appellant as youthful offender.

[10] It cannot, in my view, be suggested that the sentence imposed is disproportionate or that it is in any manner shockingly inappropriate. I can find no reason to interfere with the trial court's discretion on sentence. It follows that the appeal cannot succeed.

[11] I therefore make the following order:

The appeal is dismissed.

G. GOOSEN

JUDGE OF THE HIGH COURT

MASETI, AJ.

I agree.

P. MASETI

ACTING JUDGE OF THE HIGH COURT

APPEARANCES: For the Appellant

Adv. D Geldenhuys

Grahamstown Justice Centre

For the Respondent

Adv. M. September

Director of Public Prosecutions

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