

SOUTH AFRICA / JUDGMENT

T v S (A496/2015) [2017] ZAGPPHC 581 (12 September 2017)

[2017] ZAGPPHC 581

COURT

North Gauteng High Court, Pretoria

BEFORE

SP Mothle, A Millar

CASE / FILE NUMBER

A496/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NUMBER: A496/2015

In

the matter between:

D.
A.
T. Appellant
And
THE
STATE Respondent

JUDGMENT

MOTHLE J (Millar AJ concurring)

1. This is an appeal against conviction and sentence imposed on the Appellant in the Regional Magistrate's Court Division of Gauteng,

Vanderbijlpark on 10 June 2011. The Appellant was charged with 4 counts; 1 of attempted rape and the other 3 of rape, read with the provisions of Section 51(1) of the Criminal Law Amendment Act, ("Act 105 of 1997").

2. On conviction, the Appellant was sentenced as follows: 4 years imprisonment on Attempted Rape and 10 years imprisonment on each of the three counts of Rape; Count 3. The Court ordered that the four-year imprisonment sentence should run concurrently with that of the ten-year sentence for Rape on Count 2; the effective sentence being 30 years imprisonment. In addition thereto, Appellant was declared unfit to possess a firearm. With the leave of the Court a quo, Appellant now appeals against conviction and sentence for Rape on Count 4.
3. The convictions followed complaints lodged that the Appellant had raped 2 of his minor daughters. The elder daughter was a complainant

in Count 1, 2 and 3 against which the Appellant has not been given leave to appeal. In regard to Count 4, the allegation was that he also raped the younger daughter.

4. The Regional Court accepted the evidence that during or about 2008 and 2009, the younger complainant's mother took her to the clinic for treatment of Influenza. Having being made aware of the rape of the elder daughter, the mother requested the nurse to check if the younger daughter had also not been sexually assaulted. The nurse asked the younger complainant if she had been sexually assaulted, which she denied. When the nurse indicated that she would have to examine her, she then revealed that she was sexually assaulted by the father.
5. The Regional Court found on the strength of the evidence of the younger complainant and the report of the medical examination that during 2008, she was raped twice by her father. It was her evidence that her mother was not aware of this and that she did not report the incidents to anyone.
6. The medical examination revealed evidence that was consistent with sexual assault.
7. The Appellant testified in his defence and did not call any witnesses. He denied the allegations against him. His ground of appeal is that the State did not prove its case beyond reasonable doubt on this charge, in that

the younger complainant is not only a single witness but a minor child whose evidence should have been treated with caution. The

argument advanced on his behalf is that the nurse and the mother of the complainant had suggested to her that she had been raped. It is indeed correct that when the younger child was initially asked by the mother whether she had been raped she denied this.

8. It is indeed trite that the evidence of a single witness particularly that of a child should be treated with caution. However, a court can convict on the evidence of a single witness. The mere fact there were no other witnesses does not mean that the evidence of that single witness is inadmissible. See *State v Sauls and Others* 1981 (3) SA 172 (A). In *S v Jackson* 1998 (1) SACR

470 (SCA) the Supreme Court of Appeal held that the cautionary rule in sexual assault cases unjustly stereotypes complainants (overwhelmingly Women) as particularly unreliable. Section 60 of Act 32 of 2007 expresses the law in clear terms on this subject.

9. In this case, there is evidence that Appellant used to threaten his victim as he did with the elder sister not to mention to anyone as to what happened. He did so with the younger complainant. This would explain why when asked for the first time by the mother, she denied it. However, the strong evidence that was admitted against the Appellant is the medical report, which showed signs of penetration. The Magistrate took into account the circumstances of the whole case; the rape of the sister as well as the medical report of both of them that rape has been proved.
10. I could not find any other evidence that suggests that the Magistrate misdirected himself, which misdirection calls on this Court to interfere. I am accordingly of the view that the conviction was correct in terms of the law and the appeal against such conviction on Count 4 should fail.
11. Appellant also appeals against all three 10-year sentences. In terms of Act 105 of 1997 above, Counts 2, 3 and 4 of Rape, each has a prescribed sentence of life imprisonment applicable to it. The Regional Magistrate however found that there were substantial and compelling circumstances in favour of the Appellant and deviated from the prescribed life imprisonment sentence. He imposed a 10-year sentence for each of these counts.
12. In the matter of *State v Chapman* [1997] ZASCA 45; 1997 (2) SACR 3 (SCA) the Court described the offence of rape as follows:

"Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim."

13. It is clear that by departing from possible life imprisonment to 10 years imprisonment, the Regional Magistrate was very lenient with the Appellant. It cannot be said that the 10-year sentence imposed on each count of the 3 counts, is disturbingly or shockingly

inappropriate. Considering the fact that the elder daughter became pregnant consequent to the Rape by the father and that both

complainants were Appellant's own daughters, minors aged 15 and 12 at that time, the 10-year sentence on each of the three counts is very lenient. I am thus of the view that the Appeal Court has no basis to interfere with this sentences and that the appeal in this regard must also fail.

14. In the premises I make the following order:

- (a) The appeal against conviction in respect of Count 4 is dismissed.
- (b) The appeal against sentences on all Counts is dismissed.

SP MOTHLE

Judge of the High Court ,

Gauteng Division Pretoria

I agree:

A MILLAR

Acting Judge of the High Court

Gauteng Division Pretoria.

For the Appellant: Ms MB Moloi Instructed by: Pretoria Justice Centre.

For the State: Adv. S Scheepers

Instructed by: Director of Public Prosecutions, Pretoria.

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