REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION: PRETORIA)

5/2/15

CASE NO: A 463/2014

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

05 February 2015

In the matter between

STRYDOM, JACQUES **APPELLANT**

and

THE STATE **RESPONDENT**

J U D G M E N T

MUDAU AJ:

[1] The appellant, Mr Jacques Strydom, appeared before the regional magistrate, Benoni, on 2 counts of rape and 3 counts of sexual assault in violation of section 3 and 5 respectively, read with other relevant provisions of the Criminal Law Amendment Act (Sexual Offences and Related Matters) 32 of 2007 and with the provisions of section 51 of the Criminal Law Amendment Act 105 of 1997. He was convicted and sentenced as follows:

Count 1 rape-10 years' imprisonment

Count 2 (sexual assault)-3 years' imprisonment.

Count 3 (rape)-10 years' imprisonment.

Count 4 (sexual assault)-3 years' imprisonment.

Count 5 (sexual assault) -5 years' imprisonment

[2] In consideration of the cumulative effect of the sentences, the trial court ordered that some of the sentences imposed were to run concurrently. An effective sentence of 21 years imprisonment was therefore imposed. The appellant was declared unfit to possess a firearm. An order was made to have his personal details entered on the register of sexual offenders. The appeal is directed only against the sentence in respect of the rape and sexual assault charges with leave of the court below. The appellant asks for a reduction in sentence.

[3] A brief background surrounding the offences committed is essentially as follows: at the time of the incidents of rape and sexual assault, the appellant was the director of sport at the high school where the complainants, all below 16 years of age, attended. His duties included coaching boys whose ages ranged between 14 to 15 years in various sporting codes for example cricket, rugby and athletics. The *modus operandi* of the appellant was ingenious and simple. The incidents in question were apparently preceded by a grooming process during which time the appellant established a relationship of trust not only with the complainants, but also with some of their families' members. The boys would from time to time visit him in his office and also at his house where they engaged in such activities such as watching movies and at times, having a braai. It was during these visits that the offences were committed. In most cases he made them perform sexual acts on him and he, in turn, performed oral sex on some of them.

[4] The trial court considered a pre-sentencing report that was presented by the appellant. From this report, it is clear the appellant was during the sentencing stage, 31 years of age, a bachelor and without dependents. His highest standard of

education attained is matric. As the director of sport at the school where he worked, he earned R10, 000-00. His biological parents divorced when he was still a toddler. He has one sibling from their relationship. His biological father, who refused to have anything to do with him from a young age, has since passed. The mother remarried which resulted in 2 additional step-siblings. By the age of 17, he had moved out of the house he lived with his mother as he felt there was no stability in her love life. He felt unwanted. At the time of his arrest the appellant lived with friends and had no stable home. No record of previous convictions was proved against him. The appellant informed the trial court that he was a diabetic patient.

[5] The legal position with regard to the question of appeal against sentence was clearly dealt with in ***S v RABIE 1975 (4) SA 855 (A)*** by Holmes JA at page 857 in the following terms:

> *"1. In every appeal against sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal –*
>
> *(a) should be guided by the principle that punishment is "pre-eminently a matter for the discretion of the trial Court"; and*
>
> *(b) should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been "judicially and properly exercised".*
>
> *2. The test under (b) is whether the sentence is vitiated by* irregularity or misdirection or is disturbingly inappropriate."

It is therefore **settled law** that an appeal court's power to interfere with a sentence is circumscribed to instances where the sentence is vitiated by an irregularity, misdirection or where there is a striking disparity between the sentence and that which the appeal court would have imposed had it been the trial court. See generally: *S v Petkar 1988 (3) SA 571 (A); S v Snyder 1982 (2) SA 694 (A); S v Sadler 2000 (1) SACR 331 (SCA); Director of Public Prosecutions, KZN v P 2006 (1) SACR 243 (SCA) para 10; and Mayisela v S 2013 (2) SACR 129 (GNP).*

[6] In considering the appellant's counsel's contention of misdirection, it is necessary to have regard of the appellant's offences, and of the trial court's concept thereof as well as its assessment of the scope and gravity thereof. The rape of any child under the age of 16 is a heinous and abhorrent crime, which is why the lawmaker has placed this type of rape in the category of crimes attracting a life sentence in terms of Section 51 of the Criminal Law Amendment Act, 105 of 1997 (hereinafter referred to as "the Act") (as amended) . Section 51(3) of the Act provides that the court is at liberty to impose a lesser sentence provided there are substantial and compelling circumstances to justify the imposition of such a lesser sentence.

[7] According to Marais JA, in the Malgas case, (***S v Malgas*** **2001 (2) SA 1222** (SCA) the factors which are to be considered in determining whether substantial and compelling circumstances exist are all the factors traditionally taken into account in assessing an appropriate sentence, bearing in mind, however, that it is no longer '*business as usual*' and that the emphasis has shifted to the objective gravity of the type of crime as well as the need for effective sanctions. The magistrate found in this matter however and as indicated above, that there were substantial and compelling circumstances justifying a departure from the mandatory minimum sentences in imposing the effective sentence complained of.

[8] In considering an appropriate sentence, the traditional approach which is of general application is that, let the punishment fit the criminal as well as the crime and the interests of society (*see Karg, 1961 (1) SA 231 (AD) at p. 236A - B, and S v Zinn 1969 (2) SA 537 (AD)* at page *540G.)* The trial court observed that that the appellant expressed no remorse and that this must count against him. I agree. The appellant clearly took advantage of the complainants' respective young age. As sport director, the appellant without doubt abused the position of authority and trust he held in relation to the children for his own ulterior motives and selfish interests. In order to gain the victims and their parents' trust, he offered the children sport bursaries. He was no longer primarily a sport mentor as he set out to be doing. His conduct was described by Dr Labuschagne, a psychologist, as that of typical paedophile.

[9] According to the victim impact report admitted at the trial, the appellant "*purposely targeted children with emotional problems, financial needs, unsupportive or un involved parents or children that have experienced a traumatic loss*". All the complainants were severely and negatively affected by the incidents of crime and have poor self-image. Some of them had to repeat their classes. They continue to have difficulties with interpersonal relations which will require "*extensive psychological intervention to minimize the impact of the trauma they experienced*".

[10] It has been contended on behalf of the respondent that the appellant had been grooming each victim over time enabling him to sexually abuse them. In ***S v Muller 2007 (2) SACR 60 (W)*** para 35 (also referred to by counsel), Satchwell J, defined grooming as "*a psychological process used by the paedophile to access his victim(s)*". This best describes the appellant's conduct in relation to the children in this matter.

[11] It was contended on behalf of the appellant that crimes were committed without the use of physical force or weapons. This aspect however, cannot be considered in isolation. Rape is inherently an act of violence (see *S v Ncheche 2005 (2) SACR 386 (W)* at para 25. In ***S v GN 2010 (1) SA CR 93 (T)*** at page 98 c-e where this court stated:

> "*The unquestionable emotional harm that rape does may very gravity, but it generally deserves more emphasis than physical injuries*".

It makes no difference whether the victim is a female or a male person. The rape of a male is just as abhorable as the rape of a female person.

[12] In ***GK v S 2013 (2) SACR 505 (WCC)*** for example, the sentence imposed by the court a quo of life imprisonment was set aside and substituted by a sentence of 17 years . In that case, the similarities are that it involved oral rape as well albeit in respect of a 7-year-old child. The differences however, are the accused was young and further that alcohol was found to have played a role. The trial court considered the circumstances with regard to the commission of the offence by the appellant, cumulatively with the appellant's personal circumstances, as well as the other traditional factors.

[13] Consideration being had to the totality of all the relevant factors, I have great difficulty in holding that the trial court, with the advantage of the atmosphere of the trial, exercised judicial discretion improperly. It remains my view that the sentence imposed does not induce any sense of shock. No grounds exist upon which interference is warranted in the sentence so carefully decided upon by the trial court in this matter. In the contrary, the trial court was merciful as the sentence borders on the lenient side.

[14] It follows accordingly, that, there is no basis for this court's interference with the trial court's sentence. In my respectful view, the trial court passed the sentence in a dispassionate and objective manner required of our courts. The appeal is without any merit.

[15] In the result the following order is proposed:

1. The appeal against sentence is dismissed.

MUDAU TP
ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered.

DE VOS J
JUDGE OF THE HIGH COURT

Date of hearing: 5 February 2015

Date of judgment: 5 February 2015

APPEARANCES

For the appellants: Mr I Monethi

For the respondent: Ms A Coetzee