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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) REVISED.

CASE NO: A716/2015

17/5/2018

In the matter between:

SANDILE MONYAI

Appellant

And

THE STATE

Respondent

JUDGMENT

AC BASSON, J

[1] The appellant was charged in the Pretoria Regional Court with the rape of a 13 year of girl (K N) as well as with attempted murder . He pleaded not guilty to both charges. He was found guilty on both charges and was sentenced as follows:

Count 1: Rape of a 13-year-old read with the provisions of section 51(1) of the Criminal Procedure Act, 105 of 1997: Life

imprisonment.

Count 2: Attempted murder: 10 years' imprisonment.

- [2] The applicant was legally represented throughout the trial. This matter comes before this court with an automatic right to appeal. The current appeal is against both the convictions and sentences.
- [3] At the time, the complainant stayed in the house of her aunt (Mrs T N). N was the first witness for the State. N testified that the appellant is the uncle of the complainant and that he had been staying with them for some time in an outside room.
- [4] On 25 November 2010 the complainant was watching television with N and later indicated that she was going to sleep. N testified that at approximately 3H00 she heard a noise from the room of the complainant. When she entered the room she found the complainant on the floor with her panty around her ankles. The window was open. The complainant was dizzy and was unable to speak. She was taken to the clinic by N . On their arrival at the clinic the complainant started to bleed from her mouth. N testified that, when she managed to wake the victim up at the hospital, the victim immediately told her: " *It is Sandile [the applicant] who did this to me*". N also testified that the complainant had told her that she (the complainant) fought with the appellant and that the appellant bumped her against the wall and that he hit her with a metal pipe. N also observed semen on the legs of the complainant. N thereafter went to the Mamelodi East Police Station and reported the incident. The appellant was thereafter arrested.
- [5] Regarding the night of the incident, the complainant confirmed that she had fair visibility in her room and that she was able to identify the person assaulting her as the appellant. She confirmed that he closed her mouth and that he raped her. When she fought back he hit her with a metal pipe. She testified that she became dizzy and that she was unable to scream as her throat was painful. After the appellant exited through the window her aunt came in and asked her what had happened. She confirmed that she

was unable to answer her aunt. She testified that she received surgical stitches on her head and that she experienced severe pain as a result of the rape.

[6] The evidence shows that the complainant was severely injured during the attack and that she was transferred to the Steve Biko Academic Hospital where she was admitted to the intensive care unit. The complainant sustained serious injuries to her head where she was beaten with a heavy iron pipe. She sustained haematomas to both the front and side of her head. The attack was so severe that she lost consciousness. In this regard it was submitted on behalf of the State that the extent of the injuries suffered by the complainant was of such a nature that the appellant either inflicted them with direct intent to kill her or with *dolus eventualis*, foreseeing that the victim may die and reconciling him with that possibility. N also testified that the complainant is severely traumatized by the incident and that she no longer is the same person as she was before the incident. Her performance at school has also deteriorated significantly.

[7] Doctor Sebopa testified about the extent of the injuries suffered by the complainant and confirmed the aforementioned head injuries. She also confirmed that her findings are in keeping with physical assault. Dr Sebopa further confirmed that she did a gynaecology examination and that the complainant had a plus minus four millimetres tear on her private parts and that there was some bleeding present. She further confirmed that her gynaecology findings were "*highly consistent with forceful penetration*".

[8] The appellant denied the charges against him and testified that he only heard the following morning that the complainant had been raped

Ad Conviction

[9] On behalf of the appellant it was submitted that the court did not, at the commencement of the proceedings, properly establish whether the complainant was able to distinguish between a lie and the truth and the consequences of telling a lie.

[10] There is no merit in this submission. The record shows that the

complainant was 14 years old at the time. She confirmed that she was in school and that she was in grade 8 at the time. She confirmed that she understood what it meant to speak the truth and that the court required of her to only speak the truth. From her answers to questions posed to her by the court and her answers generally during her evidence in chief and cross-examination, the learned magistrate was satisfied that the complainant was competent to testify at a criminal trial and that she had the capacity to understand the difference between the truth and a falsehood.¹ I can find no reason to interfere with this conclusion. Moreover, the complainant's evidence was consistent with that of N. Lastly, the complainant knew the appellant well and immediately identified him as her assailant when she was able to speak in hospital after she had regained consciousness.

[11] It was also submitted that the complainant was a single child witness in a rape case and that her evidence therefore ought to have been evaluated with caution. In this regard the court was referred to the matter in *S v Dyira*² where the court set out some guidelines in approaching the evidence of a single child witness in a rape case:

"Our courts have laid down certain general guidelines which are of assistance when warning themselves of the dangers of relying upon a single witness who is also a child witness. In the ordinary course:

- a) a court will articulate the warning in the judgment, and also the reasons for the need for caution in general and with reference to the particular circumstances of the case;
- b) A court will examine the evidence in order to satisfy itself that the evidence given by the witness is clear and substantially satisfactory in all material respects. Here the delay of 17 weeks in making a complaint must be regarded as a material defect in the evidence;
- c) Although corroboration is not a prerequisite for a conviction, a court

¹ See in general: *S v V* 1998 (2) SACR 651 (C).

will sometimes, in appropriate circumstances, seek corroboration which implicates the accused before it will convict beyond reasonable doubt. Here there was no corroboration;

d) Failing Corroboration, a court will look for some feature in the evidence which gives the implication by a single child witness enough of a hallmark of trustworthiness to reduce substantially the risk of a wrong reliance upon her evidence (*S v Artman* 1968 (3) SA 339 (A) 340H). This is the route which the State must take to support this conviction".

[12] In his judgment, the learned magistrate dealt with the evidence of the complainant in great detail and it appears from the record that he was acutely aware of the fact that the complainant was 14 years old at the time. In this regard the learned magistrate also specifically pointed out with reference to the decision in *S v Manda*³ that the evidence of a child must be approached with caution. He referred to the fact that the complainant knew the appellant - he was her uncle - and that, at the time, he was living with them for approximately two weeks. The complainant was also cross-examined in respect of her assailant's identity. She was adamant that she saw him during the assault She also confirmed that she had informed her aunt at the hospital that the appellant was the one who raped her.

[13] In light of the foregoing I am satisfied that the learned magistrate did not err in his conclusions regarding the identity of the complainant's assailant. I am also satisfied that the magistrate approached the complainant's evidence with the required caution.

Attempted murder

[14] In respect of the charge of attempted murder, it was submitted on behalf of the appellant that the conviction on this charge amounted to a duplication.

² 2010 (1) SACR 78 (ECG).

³ 1951 (3) SA 158 (AD).

[15] There is no merit in this submission: The appellant attacked the complainant with a steel pipe and hit her so hard that she had sustained serious injuries and had to undergo an operation to her head. The violence was clearly so excessive that it could not have been merely to restrain her so as to rape her. I am on the evidence therefore satisfied that the appellant inflicted the injuries either with a direct intent to kill her or with *dolus eventualis* foreseeing that the victim may die and reconciling him with that possibility.

Sentence

[16] The appellant was convicted on two particularly serious charges: Rape of a young girl and attempted murder.

[17] Before considering an appropriate sentence, the trial court requested a probationer officer 's report. In sentencing the appellant, the learned magistrate duly considered the applicant's personal circumstances, the probationer officer's report and the nature of the crime.

[18] The learned magistrate had regard to the contents of the probationer officer's report and noted that the appellant did not acknowledge that he was guilty nor does he accept that he is responsible for the crime. The probationer officer recommended that imprisonment is a suitable option and that the appellant is a threat to society and should be removed from society.

[19] The impact of the crime on the complainant is also dealt with in this report: It is recorded that the complainant suffered physical injuries to her head and now has permanent scars on her head. She was a virgin before the rape and sustained injuries to her private parts. She was in intensive care for three weeks after the incident and missed school exams. After the incident her school grades deteriorated and she became forgetful. She has also lost trust in males.

[20] The learned magistrate also took into account that the appellant was a guest in the house where the complainant resided with her aunt and that he is a family member of the complainant. As such he violated the

relationship of trust between him and the complainant. He misused his position of trust and raped this young girl in the supposed safety of her own home and bedroom. The applicant further has previous convictions for which he received the benefit of a suspended sentence. He committed this offence not even a year and a half after having had a brush with the law.

[21] The South African public is increasingly disillusioned with the sexual abuse and rape of women and children. Children, in particular, are the most vulnerable group in society and so often the victims of this horrendous crime. This fact was highlighted in *S v D⁴* where the Court held as follows:

"Children are vulnerable to abuse, and the younger they are, the more vulnerable they are. They are usually abused by those who think they can get away with it, and all too often do."⁵

[22] I can find no reason to interfere with the imposition of the prescribed sentence in respect of both counts. The legislature has imposed minimum sentences that are regarded as appropriate and just punishment for certain specified crimes. Rape is a repulsive crime by its very nature and even more so in the case of a vulnerable young girl. In this case her rape was accompanied by a brutal assault. The magistrate found that there are not substantial and compelling circumstances to deviate from the prescribed sentence. The learned magistrate duly took into account the particular circumstances of this crime in evaluating whether the imposition of the prescribed maximum sentence is appropriate in the circumstances. I can find no reason to interfere with the exercise of the learned magistrate's discretion. Imposing the maximum sentence in circumstances of a rape of a young girl coupled with excessive violence is not, in my view, disproportionate to the crime.

Order

⁴ 1995 (1) SACR 259 (A).

The appeal against conviction and sentence in respect of both counts is dismissed.

AC BASSON

JUDGE OF THE HIGH COURT

I agree

STRIJDOM

ACTING JUDGE OF THE HIGH COURT