

45/97

REPORTABLE

IN THE SUPREME COURT OF APPEAL

Case No: 345/96
K.P.A:A 674/94

In the matter between

GRANT CHAPMAN

Appellant

v

THE STATE

Respondent

Delivered : 22 - 5 - 97

JUDGMENT

MAHOMED CJ. VAN HEERDEN AND OLIVIER JJA

The appellant in this matter was convicted on three counts of rape in the Magistrates' Court and sentenced to seven years imprisonment in respect of each count. In terms of Section 280(2) of Act 51 of 1977 the sentence in respect of count 1 was ordered to run concurrently with the sentence imposed in respect of counts 2 and 3. The effective period of imprisonment imposed on the appellant was therefore 14 years.

An appeal against these convictions and sentences was pursued in the Cape Provincial Division of the then Supreme Court. That appeal was dismissed by a full Court consisting of two Judges.

The attack on the conviction of the appellant in this Court was premised on substantially the same grounds which were articulated in the Magistrates Court.

We have given careful consideration to both the detailed written and oral submissions in support of the attack on the Magistrates reasons. We have not been persuaded that the Magistrate misdirected himself in any relevant or material respect, in his assessment of the evidence and in his findings of fact, pursuant thereto. The guilt of the appellant on all three counts was established beyond reasonable doubt, by the witnesses who testified on behalf of the prosecution, assessed against the facts which were common cause, and the objective circumstances. The full and careful judgment of the Magistrate justified his conclusion that the evidence given by the appellant could not reasonably possibly be true.

During the course of the argument there was some debate on what was described as the "rule" in cases of sexual offences, which was said to require special caution in dealing with the evidence of the complainant in such cases. It is unnecessary for the purposes of this case to analyse whether or not there is such a "rule" and if there is, whether its existence or ambit of its application needs to be reviewed, having regard to the Constitution. Even assuming (without deciding) the existence of the rule and its applicability in the present case, in favour of the appellant, we are satisfied that the Magistrate was justified, in coming to the conclusion which he did and in convicting the appellant on all three counts.

Counsel for the appellant contended that we were entitled to interfere with the sentence imposed on the appellant, on the grounds that it was "startlingly inappropriate".

We are unable to agree. An effective sentence of 14 years imprisonment is undoubtedly a severe sentence, but the Magistrate did not misdirect himself in any relevant respect in imposing that sentence.

Counsel contended that the Magistrate was not justified in imposing the sentence because the appellant had sustained some brain injury in consequence of an accident which had taken place after the commission of these offences.

We disagree with that submission. Although the appellant did sustain some damage to his brain, the evidence established that the appellant retained an average IQ of about 111. He fully appreciated the force and relevance of the questions put to him in cross examination and was capable of rationality and even cunning and deception in his evidence. The prison authorities have facilities, which would enable him to receive such medical treatment as he needs for his condition.

The Magistrate gave consideration to all the other circumstances impacting on the appellant, but he correctly balanced such circumstances against the legitimate interests of the community.

This in our view is a correct approach. 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.

The rights to dignity, to privacy, and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilization.

Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives.

The appellant showed no respect for their rights. He prowled the street and shopping malls and in a short period of one week he raped three young women, who were unknown to him. He deceptively pretended to care for them by giving them lifts and then proceeded to rape them callously and brutally, after threatening them with a knife. At no stage, did he show the slightest remorse.

The Courts are under a duty to send a clear message to the accused, to other potential rapists and to the community: We are determined to protect the equality, dignity and freedom of all women, and we shall show no mercy to those who seek to invade those rights.

We communicate that message in this case, by an order that the appeal of the appellant against his convictions and sentences is dismissed. The convictions and sentences of the appellant are confirmed.

**I MAHOMED
CHIEF JUSTICE**

**H J O VAN HEERDEN
JUDGE OF APPEAL**

**P J J OLIVIER
JUDGE OF APPEAL**

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