



Reportable:	YES / <b><u>NO</u></b>
Circulate to Judges:	YES / <b><u>NO</u></b>
Circulate to Magistrates:	YES / <b><u>NO</u></b>
Circulate to Regional Magistrates:	YES / <b><u>NO</u></b>

**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION, MAHIKENG**

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

**CASE NO: CA 58/2024**

In the matter between:

**OUPA HERMAN MABALANE**

**APPELLANT**

**AND**

**THE STATE**

**RESPONDENT**

**CRIMINAL APPEAL**

**QUORUM: DJAJE DJP; WESSELS AJ**

**Heard: 24 JANUARY 2025**

**Delivered:** This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **6 MARCH 2025**.

**ORDER**

The following order is made:

1. The appeal against sentence is dismissed.

## JUDGMENT

### DJAJE DJP

[1] The Regional Court sitting in Mogwase convicted the appellant herein on a charge of rape after he pleaded guilty. He was subsequent thereto sentenced to life imprisonment. This appeal is against sentence only.

[2] The charge against the appellant was that he on **25 April 2022** had sexual intercourse unlawfully and intentionally with the complainant more than once without her consent. As stated above, he pleaded guilty and gave an explanation as follows:

*" .....I the accused did unlawfully and intentionally commit an act of sexual penetration with a female person, to wit F [REDACTED] L [REDACTED] by forcefully inserting my penis into her vagina, having sexual intercourse with her more than once without her consent. I admit I had the intention to have raped the complainant and that I did so by sexually doing penetration without her consent. I admit that I knew what I did was wrong and against the law and constitutes to a criminal offence. I admit that I have no defence in this matter and that the complainant never consent to sexual intercourse with me. On the 25 April 2022 I was with the complainant F [REDACTED] and F [REDACTED]'s girlfriend from a tavern called Thabiso Tavern. All four of us walked to my parental house to sleep, my father George*

*was at home. Me and the complainant were in a love relationship. We entered my bedroom and me and the complainant when we were inside I requested sexual intercourse from her and she did not agree. I then had twice sexual intercourse with her there and then and I raped her."*

- [3] After admitting all the elements of the offence the appellant was convicted of contravening the provisions of section 3 of the Criminal Law (Sexual Offences and related Matters) Act 32 of 2007 as read out with sections 1,55,56(1), 57, 58,59 and 60 and 61 of the said Act and also as read with Sections 256 and 261 of the Criminal Procedure Act 51 of 1977, rape and read with the provisions of section 51(1) and schedule 2 of the Criminal Law Amendment Act 105 of 1997 as amended.
- [4] In sentencing the appellant the court *a quo* found that there were no substantial and compelling circumstances to deviate from the prescribed minimum sentence of life imprisonment. The basis for such finding was that the appellant was found to have planned the offence and used a screwdriver to subdue the complainant.

## **Submissions**

- [5] This appeal is being decided on papers as requested by counsel for both the appellant and the respondent. The argument on behalf of the appellant is that the sentence of life imprisonment is harsh and evokes a sense of shock. Further that the court *a quo* failed to take into consideration the personal circumstances of the appellant that



he was only 47 years old, unmarried with two children. He was not formally employed and only surviving on odd jobs. It was submitted that the appellant pleaded guilty and that should have been seen as a sign of remorse. It is the appellant's case that the appropriate sentence to be imposed is that of fifteen years imprisonment.

[7] In contention the respondent argued that the sentence imposed against the appellant is appropriate in that the offence of rape is a serious one that constitute violation of women's rights to dignity. It was submitted that the appellant raped the complainant more than once and stabbed her with a screwdriver to subdue her. The respondent's submission is that the court had no basis to deviate from the minimum sentence of life imprisonment. As such the appeal should be dismissed because there was no misdirection by the court *a quo*.

[8] The appellant in this matter was convicted of a serious offence. The complainant testified in aggravation of sentence that even though she is healed physically, she still experiences vaginal infection because of being raped by the appellant. He admitted having forced the complainant to have sexual intercourse with her more than once. He however denied having stabbed her with a screwdriver on the thigh. The appellant's conduct on that day is an indication that he did not respect the complainant who he claimed to have been in love with. He took advantage of her and not accept when she did not want to have sexual intercourse.

- [9] Section 51(1) of the Criminal Law Amendment Act 105 of 1997 (“the Act”) provides that:

*“Notwithstanding any other law, but subject to subsection (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part 1 of Schedule 2 to imprisonment for life.”*

In Part 1 Schedule 2 life imprisonment may be imposed in the offence of rape where the complainant was raped more than once.

- [10] In sentencing the appellant the Court *a quo* applied the provisions of section 51(1) of the Act and imposed life imprisonment having found that the complainant was raped more than once.

- [11] Sentence is a matter for the discretion of the court burdened with the task of imposing it. A Court of Appeal will be entitled to interfere with the sentence imposed by the trial court if the sentence is disturbingly inappropriate or out of proportion to the seriousness of the offence. **See: S v Romer 2011 (2) SACR 153 (SCA) paragraph 22**

- [12] In imposing the appropriate sentence the court should always balance the nature and circumstances of the offence, the personal circumstances of the offender and the impact of the crime on the community, its welfare and concern. **See: S v Banda and Others 1991(2) SA 352 BGD) at page 355.**

- [13] The appellant’s personal circumstances were stated as follows:

- He was 47 years old at the time of sentence;
- He has two children and is single;
- He was unemployed at the time of arrest;

- He had previous convictions of unlawful possession of firearm and ammunition, robbery, attempted murder, assault with intent to do grievous bodily harm and theft which he admitted.

[14] In **S v Vilakazi 2009 (1) SACR 552 (SCA)** paragraph 58 it was held that:

*"In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background".*

[15] The offence of rape has been described in various judgments as an offence that is horrific, dehumanizing and violating a person's dignity. It not only violates the mind and body of a complainant but also one that infuriates the soul. The complainant is scarred for life and there is no telling when she will heal emotionally from the ordeal suffered.

[16] Looking at the facts of this case, the personal circumstances of the appellant, the mitigating and aggravating features, as well as the submissions by both counsel, the sentence imposed by the court *a quo* is not severe and excessive, but appropriate under the circumstances of this case. The court *a quo* correctly found that there were no substantial and compelling circumstances to deviate for the prescribed minimum sentence. There is no misdirection by the Court *a quo* that warrants any interference by this court.

**Order**

[17] Consequently, the following order is made:

1. The appeal against sentence is dismissed.



**J T DJAJE**

**DEPUTY JUDGE PRESIDENT**

**NORTH WEST PROVINCIAL DIVISION, MAHIKENG**

I agree



**M. WESSELS**

**ACTING JUDGE OF THE HIGH COURT**

**NORTH WEST PROVINCIAL DIVISION, MAHIKENG**

## **APPEARANCES**

**DATE OF HEARING : 24 JANUARY 2025**

**DATE OF JUDGMENT : 06 MARCH 2025**

**COUNSEL FOR THE APPELLANT : MR THUWE**

**COUNSEL FOR THE RESPONDENT : ADV J J VAN NIEKER**