

**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, GRAHAMSTOWN**

**CASE NO: CA&R 124/2015  
Date Heard: 9 September 2015  
Date Delivered: 11 September 2015**

**In the matter between**

**D. R.**

**Appellant**

**And**

**THE STATE**

**Respondent**

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**Appeal against sentence on charge of multiple rape and assault with intent to inflict grievous bodily harm – appellant aged 17 years and 6 months at time of commission of offence – trial court not misdirecting itself in relation to sentence – sentences not disproportionate or shockingly inappropriate – sentences confirmed – appeal dismissed.**

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**JUDGMENT**

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**GOOSEN, J.**

- [1] The appellant was convicted on 18 July 2012, pursuant to a plea of guilty, of rape in contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 and with assault with intent to do grievous bodily harm. At the time of the commission of the offence the appellant was 17 ½ years old. Prior to imposing sentence the matter was postponed in order to obtain a pre-sentence report. Thereafter, on 7 September 2012, the appellant

was sentenced to 16 years imprisonment on the count of rape and 4 years imprisonment on the count of assault. The trial court ordered the sentences to run concurrently. On 29 October 2012 the matter was placed before Eksteen J on automatic review pursuant to s 85 of the Child Justice Act and on 30 October 2012 the learned judge certified that the proceedings were in accordance with justice. The appellant now appeals against the sentence imposed by the trial court. The notice of appeal is dated 16 April 2015. It is not apparent from the record what the circumstances are in which the appeal is not prosecuted. There is no explanation for the delay nor any explanation for the circumstances for the late prosecution of the appeal.

- [2] The appeal against sentence is prosecuted on the basis that the trial court allegedly over emphasised the seriousness of the crime and under emphasised the personal circumstances of the appellant to the extent that the sentence imposed is unduly harsh. It is submitted that the trial court failed to give due consideration to the fact that the appellant had, by way of his plea of guilty and his statements to the social worker who compiled the pre-sentence report, expressed his remorse for what he had done. On this basis it was submitted that whilst a lengthy period of imprisonment is undoubtedly called for, given the nature and seriousness of the crime, the period imposed by the trial court is shockingly inappropriate.
- [3] For the reasons that follow, it is not necessary to consider the effect that certification pursuant to an automatic review may have on the entitlement of the appellant to prosecute an appeal. Nor is it necessary to consider the effect of the delay in the prosecution of this appeal. That is so because the matter may fairly and properly be disposed of on the merits of the appeal.
- [4] On the morning of 29 June 2012 the complainant was out jogging on a farm road in the district of Jeffery's Bay when she was accosted by the appellant. It appears from his plea of guilty, that he initially intended to rob her. However, upon discovering that she was in possession of no money or a cell phone he decided

to rape her. The appellant assaulted the complainant with a wooden fence pole that he was carrying. He hit her, strangled her and kicked her before throwing her over a fence alongside the road and dragging her into the veld where he raped her vaginally and her anally.

- [5] The complainant suffered extensive injuries. She was a virgin at the time of the rape. She had injuries to her vagina and anal orifices which resulted in bleeding, swelling and inflammation. She also suffered extensive bruising to her limbs and face as a result of the assault upon her. The medical report which was tendered in evidence records a long tramline bruise on the inside of her thigh. This injury is also depicted in photographs which were received in evidence and it appears to have been inflicted in an effort to force her legs apart so that she may be raped.
- [6] A victim impact assessment report which was submitted in evidence indicates that that the victim was deeply traumatised by the assaults and that it has had a significant impact both on her and on her family.
- [7] The victim was a young woman who is a committed Christian. She regarded her body as a temple of God and was committed to maintaining its purity. The violation of her body and her privacy and dignity was deeply traumatizing. Subsequent to the assaults she underwent numerous medical tests and was required to take anti-retroviral medication. The side-effects of the medication left her feeling ill and tired and unable to participate in sporting activities. The psychological trauma caused by the assault has been most difficult to bear. She has attempted to continue to live a normal life and has had the assistance of psychological counselling to make this possible. She nevertheless continues to experience anxiety and regularly relives the traumatic experience. She will continue to suffer long-term psychological trauma as a result of the rapes.
- [8] Her immediate family has also been deeply affected by the events. Her parents were intent on establishing themselves as farmers in the area and wished to expand the farming operation. As a consequence of these events they now are

ambivalent about those plans and have given consideration to relocating away from the area. According to the social work report the complainant's younger sister suffers feelings of guilt because she did not accompany her sister on the day when she went for a run. The entire family suffers anxiety and insecurity when going about their daily tasks on the farm.

- [9] When approaching the question of sentence the magistrate was mindful of the fact that she was dealing with a child, albeit one who was only six months short of his 18<sup>th</sup> birthday at the time of the commission of the offence. She took into account the personal circumstances of the appellant and his family background, evidence of which was contained in the pre-sentence report. In this regard the magistrate took account of the fact that the appellant grew up in an economically impoverished environment and that he was emotionally deprived whilst growing up. The pre-sentence report records that a number of family members described the appellant as aggressive. This appears to be borne out by a previous conviction for assault in respect of which the appellant was, at the time of the commission of the offence, still subject to a suspended sentence. The magistrate considered that this suspended sentence would in all probability be put into operation as a consequence of his conviction in this matter. The magistrate took this into account in determining an appropriate sentence.
- [10] It was argued on behalf of the appellant that his plea of guilty was indicative of remorse and contrition. Similarly, a pointing out undertaken by the appellant shortly after his arrest, it was also submitted, indicated a desire to cooperate fully with the police and therefore indicative of his remorse. In dealing with this however, the magistrate was unable to find that the plea of guilty was indeed a consequence of the appellant's genuine remorse. The appellant offered no explanation for why he decided to rape the complainant when he could not achieve his original objective, namely to rob her of her possessions. It is been noted on numerous occasions that in order to find that that an accused is genuinely remorseful, it is necessary for the accused to explain "what motivated him to commit the deed; what has since provoked his change of heart; and whether he

does indeed have a true appreciation of the consequences of those actions”.<sup>1</sup> In this instance, in the light of the fact that the appellant had pleaded guilty, there was no impediment which could have precluded him from taking the court fully into his confidence in this regard.

[11] In relation to the alleged influence of alcohol on the day in question similar considerations apply. Apart from the statement that he had been drinking earlier in the day no evidence was presented as to the extent of the alcohol intake and the effect that it had upon him. The trial court nevertheless took it into account as one of the general set of factors to be weighed in achieving the delicate balancing act that is called for in determining an appropriate sentence in matters such as this.

[12] In my view the manner in which the magistrate exercised the discretion in relation to sentence cannot be faulted. The appellant’s counsel could point to no misdirection in this regard. The sentence does not, in my view, induce a sense of shock. There can be no doubt that the offence for which the appellant was convicted is a particularly serious and heinous crime. The manner in which it was carried out is severely aggravating. In the circumstances there is no basis to interfere with the sentence imposed.

[13] I accordingly make the following order:

The appeal is dismissed.

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G. GOOSEN

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<sup>1</sup> S v Matyityi 2011 (1) SACR 40 (SCA) at par [13]

JUDGE OF THE HIGH COURT

**LOWE, J.**

I agree.

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M. LOWE  
JUDGE OF THE HIGH COURT

APPEARANCES:

For the Appellant
D. Geldenhuys
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For the Respondent
N. C. Turner
Director of Public Prosecutions