

THE REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No A66/2015

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

In the matter between:

Philane Khanye

Appellant

and

The State

Respondent

SUMMARY

Carelse J:

The appellant was convicted in the Regional court, Johannesburg on charges of kidnapping (count 1); assault with intent to do grievous bodily harm (count 2); and contravening section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 – Rape (count 3). On count 3 the appellant is alleged to have unlawfully and intentionally committed an act of sexual penetration with the complainant and encouraged a number of male cohorts to engage in non-consensual sexual intercourse with her.

Because a sentence of life imprisonment was imposed on count 3, the appellant is entitled to an automatic right of appeal. This appeal lies against both conviction and sentence.

Conviction

The appeal against conviction concerns the court a quo's assessment and findings on the evidence as a whole and the complainant's evidence in particular. The appellant submitted that the complainant's evidence was not only marred with material contradictions, it was also unclear and inconsistent.

This Court found that the court a quo approached the evidence with the requisite caution required when assessing the evidence of the complainant as a single witness. The factual finding that the complainant was raped by three men was borne out by the evidence of the complainant. Throughout the testimony of the complainant and in particular during cross examination she was not challenged on this aspect of her evidence. The first time the appellant disputed this was in his evidence. Therefore this evidence remains unchallenged. This Court is satisfied that the court a quo correctly convicted the appellant as charged.

Sentence

The appellant submitted that the court a quo misdirected itself in imposing the life sentence. This Court is of the view that sec 51(1) read with Part 1 of schedule 2 properly construed does not mean that more than one person must be convicted to

trigger the provisions of sec 51(1) of the Act. The approach in *Mahlase*,¹ relied on by the appellant, with respect, reads words into the section that are not there, in conflict with the principles of contextual interpretation. The appeal at hand is further distinguishable from *Mahlase* on the basis that the latter dealt only with the issue of sentence whereas the conviction and sentence is challenged in this appeal.

The ratio of *Legoa*² is that once the jurisdictional facts have been proved, a court is obliged to impose the prescribed sentence unless substantial and compelling circumstances are found to exist. This court agreed with the court a quo in finding that there is a clear absence of substantial and compelling circumstances warranting a reduced sentence. Appeal against sentence for rape (count 3) fails.

¹ 2013 JDR 2714 (SCA) para 9.

² 2003 (1) SACR 13 (SCA).