

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

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

**CASE NO: A699/2016**

**5/12/2018**

In the matter between:

**AARON SELE**

**Appellant**

and

**THE STATE**

**Respondent**

**Summary**

An appeal against conviction and a sentence of sixteen years' imprisonment imposed by the Sebokeng Regional Court for the crime of contravening the provisions of Section 3 read with sections 1, 56(1), 57, 58, 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Act 32 of 2007 read with sections 92(2), 94, 256, 257 and 281 of the Criminal Procedure Act, Act 51 of 1977 and the provisions of Section 51 and Schedule 2 of the Criminal Law Amendment Act, Act 105 of 1997, as amended by Act 38 of 2007.

Trial Court found that even in the absence of vaginal injuries, the evidence was sufficient to convict the appellant. No misdirection having occurred. The sentence imposed by the trial court confirmed on appeal.

## **Order**

### **1. The appeal against conviction and sentence is dismissed.**

---

## **JUDGMENT**

---

### **COLLIS J (PETERSEN AJ concurring)**

[1] The appellant, Mr Aaron Ndaweni Sele appeared in the Sebokeng Regional Court on the following charges:

1.1 Count 1: contravening section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Act 32 of 2007 (Rape) read with the provisions of Section 51(1) of the Criminal Law Amendment Act, Act 105 of 1997; and

1.2 Count 2: Kidnapping;

[2] The appellant, who was legally represented, pleaded not guilty to both counts. On 29 October 2014 he was subsequently convicted on both counts.

[3] On 17 March 2015, the appellant was sentenced as follows:

3.1 Count 1: Sixteen (16) years' imprisonment.

3.2 Count 2: Five (5) years' imprisonment.

The sentences were ordered to run concurrently in terms of section 280(2) of the Criminal Procedure Act, Act 51 of 1977. Therefore, the effective term of imprisonment imposed was a sentence of 16 years.

[4] On 28 January 2016, the *court a quo* granted the appellant leave to appeal both his conviction and sentence.

[5] Succinctly the appellant appeals his conviction on the following grounds:

5.1 That the State failed to prove the guilt of the appellant beyond a reasonable doubt;

5.2 that the *court a quo* erred in finding, in the absence of medical evidence, that the appellant assaulted the complainant several times and that he had raped her;

5.3 that there was insufficient evidence that the complainant was kidnapped by the appellant;

[6] The genesis of the convictions and the sentences arose from events which occurred on 11 May 2014. On this day, the complainant, Ms M[....] S[....] testified that she was in the company of her friend Z[....] who had earlier come to pay her a visit at her house. As it was getting late, she decided to accompany her friend to the street to board a taxi. Along the way she noticed that the appellant was following her and at that point they managed to signa la local taxi that they wanted to board a taxi. Since the appellant always used to stalk her, he banged on the door of the taxi for the taxi to stop. She informed the driver that the driver should drive off as the appellant was stalking her. The driver obliged. They proceeded in the direction of the local mall where she alighted in order to board another taxi to take her back home. On her way back she called her friend T[....] to ask him to accompany her home as she was afraid. He informed her that he was at a local tavern and that she could go across to meet him there which she did. Whilst waiting for her friend T[....] to finish his drink, the appellant arrived at the same tavern. Upon the complainant and her acquaintance leaving, the appellant confronted them outside producing a knife. He wanted to leave with the complainant against her will. Her friend T[....] intervened and told the appellant to leave her alone. On their way T[....] wanted to buy some chips at a shop and they all first proceeded to walk to the shop. As T[....] entered the shop, the appellant saw this as an opportunity to speak to her outside the shop whilst she was waiting for T[....]. At that point he pretended to T[....] that he would not take the complainant by force.

[7] Immediately, upon T[....] entering the shop, the appellant started to throttle

the complainant and threatened her with the knife. He dragged her behind a house adjacent to the shop with the complainant crying at this point. The appellant was wearing a jacket which he took off, threw on the ground and ordered her to lie on it. He undressed her taking off her tight pants and her underwear. He undressed himself and raped her, ejaculating inside her. As this was taking place, she could hear T[...] call out her name. When this ordeal was over, the knife fell from his hands; she picked it up and tried to stab the appellant. They wrestled for the knife which she eventually threw across a precast wall. He ordered her to leave with him to his place and along the way continued to throttle and pull her along. Upon arrival at his place, he pushed her inside, locked the door and removed the key from the door. He pushed her inside the bedroom and punched her. She was ordered to undress herself and he raped her repeatedly throughout the night until both eventually fell asleep. When the complainant awoke in the morning she pleaded with appellant to let her go, as she was writing a test at school but he refused. For the remainder of the day, he kept her locked inside his house naked and continued to rape her again. That night she heard repeated knocking at his door and recognized the voice of the person as that of her mother. She screamed, the appellant unlocked the door and told her to leave his house. She put on her clothes, started crying and left the house where she met her mother who called the police. When the police arrived the appellant ran away. They fired a shot at him, but he evaded arrest. She was taken to hospital for a medical examination and at the time only exhibited some scratches on her neck. A few days later, the appellant was eventually arrested at his house.

[8] The complainant testified that in the past and prior to the incident in question, the appellant used to trouble her. On one occasion he found her walking with another young man and forcefully pulled her away. He called her mother and informed her what he was going to do to the complainant. On another occasion soon after the complainant and the appellant broke off their relationship, he broke the windows of her house and stole some of her clothes. The appellant had also resisted the break up and insisted on taking naked pictures of her, to distribute to other people.

[9] Ms S[...] S[...] testified that she is the mother of the complainant. She

testified that on the early evening at around 18h00 upon returning from Church, she did not find her daughter at home. She called her and was informed by her that she was in a taxi on her way home. That evening her daughter never returned home and the following day, after returning from work and having gone to buy some airtime, she went to T[....]'s place to make enquiries about her daughter's whereabouts. She found T[....]'s mother at his house, who relayed the story that T[....] had informed her that the previous evening the complainant was being followed by the appellant. As his mother knew where the appellant was living, she accompanied the complainant's mother to the appellant's house. On arrival, they knocked on his door, but he refused to open. They went next door and enquired about his whereabouts. The neighbours informed them, that indeed he was around during the course of the day and they returned to his house, knocking persistently on the door. He eventually opened the door and the complainant emerged. They called the police whom they met along the way and accompanied them to the house of the appellant. The appellant fled from the police who fired a shot at him. They accompanied the police to the police station to open a case. From there the complainant's mother was taken back home and her daughter was taken for medical examination. Upon her arrival from the hospital, Ms S[....] testified that her daughter had found her asleep and when she woke up the following morning she went to work. It was only upon her arrival from work that her daughter recounted to her, what had happened to her. Ms S[....] further confirmed that the evening her daughter did not return she had tried to call her several times without success and that after her return, she had noticed some bruising on her neck when she relayed her ordeal. She further confirmed that her daughter had reported to her, that the appellant whilst keeping her locked up inside his house that she was naked throughout and that when they first knocked on his door that he had covered her mouth with his hand. She also confirmed that on a previous occasion she paid a visit to the appellant along with his brother whom she asked to intervene. She explained that she had previously received several calls from the appellant who had informed her that he was in a relationship with her daughter and on a different occasion he had threatened to publish naked pictures of her daughter if she broke up with him. It was on this occasion that she had asked his brother to intervene.

[10] Mr T[....] M[....] testified that on the evening of the incident he was a patron at Aida's tavern when he received two calls from the complainant. The first she reported that she was being followed by the appellant and the second she requested the witness to accompany her to her house. He then informed her, that he was at a tavern and that she should come around and meet him at the tavern. Whilst in the tavern the appellant arrived and he moved in and out of the tavern. They eventually made plans to leave, and on their way out were followed by the appellant who took out a knife and demanded that the complainant accompany him. He wanted to buy some chips and gave the complainant and appellant some space to talk. When he returned from the shop he could no longer find them outside the shop. He called out after them without a response. He went to the place of the appellant pushed open the door and did not find them at his place. He tried to call the complainant but her phone was off. He returned home and reported what happened to his mother and his brother. The following day, he went to work, called the appellant from work, but his phone rang repeatedly and went to voicemail. Later that evening he received a report that the complainant had been found at the appellant's place of residence. During cross-examination he confirmed that he considered both the complainant and the appellant as his friends and that he was aware that the appellant and the complainant were previously in a relationship. He even conceded that when they were still in a love relationship, on occasion the appellant would ask him to arrange to meet up with the complainant. He confirmed that when he left the complainant and appellant outside the shop he did not think she was in danger any longer but was worried when he returned and did not find them. He confirmed that when he observed the complainant the following Monday, she exhibited some bruises on her face.

[11] The appellant testified in his own defence. His evidence was that on the day in question he first socialized with the complainant and her friend Zandile smoking dagga and drinking beers. The witness, T[....] arrived and socialized with them. At around 18h00 the complainant accompanied Zandile to catch a taxi and agreed to meet him again at Aida's tavern. T[....] was in the company of his girlfriend and when the complainant returned the four socialized further. At some point a decision was taken for the four of them to return to the residence of the appellant where they all spent the night at his house. The following day, T[....]

and his girlfriend left and he continued to sleep in his house with the complainant. Later that day, the complainant's mother arrived and knocked on his door. The complainant requested him not to raise the alarm that she was in his house as her mother would shout at her. When she returned to his bedroom he opened the front door at which point the complainant started screaming. She reported that she had been taken forcefully against her will. He encouraged the complainant's mother to report the matter to the police to investigate her claims that he had raped her. In the meantime a police van arrived and when he requested to go to the police station with them the police refused. He returned to his house at which point the police shot at him and it is for this reason that he ran from his property. Later that week he was arrested for the rape of the complainant. The appellant denied that he had sexual intercourse with the complainant without her consent. He also denied the complainant's evidence that he had assaulted her and dragged her to a deserted house where he raped her before taking her against her will to his place of residence.

[12] Mr. Mohalise Mabatwana testified that he was the owner of Aida's tavern and confirmed that on the evening of the incident the appellant was in the company of three other persons as patrons at his tavern. At some point these patrons left his tavern together and he was unable to shed light on what transpired after they left.

[13] The powers of a court of appeal to interfere with the findings of fact of a trial court are limited. In the absence of any misdirection the trial court's conclusion, including its acceptance of a witness' evidence is presumed to be correct. In order to succeed on appeal, the appellant must therefore convince the court of appeal on adequate grounds that the trial court was wrong in accepting the witness' evidence - a reasonable doubt will not suffice to justify interference with its findings. Bearing in mind the advantage which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional circumstances that the court of appeal will be entitled to interfere with a trial court's evaluation of oral testimony.<sup>1</sup>

[14] As regards the alleged rape the complainant was a single witness. In

---

<sup>1</sup> S v Francis 1991 (1) SACR 198 (A) at 198j-a

evaluating her evidence the court should apply the cautionary rule in section 208 of Act 51 of 1977.<sup>2</sup> Nothing more and nothing less. The dictum of De Villiers JP in *R v Mokoena* 1932 OPD 79 at 80, on the approach to the evidence of a single witness which has its origins in the following passage, is often misconstrued:

"Now the uncorroborated evidence of a single competent and credible witness is no doubt declared to be sufficient for a conviction in terms of section 208 of the Criminal Procedure Act, but in my opinion *that section should only be relied on where the evidence of a single witness is clear and satisfactory in every material respect (my emphasis)*. Thus the section ought not to be invoked where, for instance, the witness has an interest or bias adverse to the accused, where he has made a previous inconsistent statement, where he contradicts himself in the witness box, where he has been found guilty of an offence involving dishonesty, where he has not had proper opportunities for observation, etc."

[15] In *S v Mahlangu and Another* 2011 (2) SACR 164 (SCA) the court held that the evidence of a single witness has to be substantially satisfactory in every material respect or corroborated in order for the court to base its finding on. Corroboration also is to be found in the improbability of the appellant's version.

[16] In the present matter, the court *quo* carefully approached the evidence of the complainant with caution and found corroboration in the evidence of the witnesses who testified for the State. The corroboration is found in the evidence of Mr. T[....] and also in the evidence of the complainant's mother. T[....] corroborated the complainant's evidence that she had requested him to accompany her home that evening as she was afraid of the appellant. He further corroborated the complainant's evidence that the appellant had a knife with him on the night in question that he threatened the complainant with. T[....] further testified that he had gone in search of the complainant at the appellant's house, but could not find either of them there. This is corroboration for the complainant's testimony, that the appellant had initially dragged her to the back of a deserted

---

<sup>2</sup> Section 208 provides that a single witness evidence is adequate to sustain a conviction, provided that it is satisfactory in all material respects. It is further trite that the evidence of children must be treated with circumspection



house where he raped her the first time. T[....] also corroborated the complainant's evidence, that she was assaulted by the appellant, as she had some bruises on her face, when he saw her the following day.

[17] Corroboration is also found in the testimony of the mother of the complainant. She corroborated the complainant's testimony that the appellant was stalking her. Further, that she had called the complainant on her arrival home, and was informed by the complainant, that she was in a taxi travelling back home. Her mother also corroborated her testimony, that the appellant on a previous occasion had taken naked pictures of the complainant in an attempt to expose her by publishing the pictures. She also corroborated the complainant's testimony that she had bruises around her neck which is in line with the evidence of the complainant that she was throttled by the appellant. Ms. S[....] also corroborated the complainant regarding the emotional state that she was in when she eventually emerged from the house of the appellant. This gives credence to what the complainant had endured in the appellant's house.

[17] During argument counsel for the appellant argued that the absence of medical evidence somehow, is indicative that no rape had taken place. The court *a quo* in its judgment on point had remarked, that the absence of genital injuries, does not necessarily suggest that the complainant was not raped.<sup>3</sup> Furthermore, the court *a quo* was not prepared to venture into an argument as to why the doctor did not note the scratches on the complainant's neck on his medical report.<sup>4</sup>

[18] The evidence of the appellant was that he had consensual intercourse with complainant. He denies having kidnapped complainant. He testified that on a previous occasion the complainant slept at his house over a weekend and did not go to school the following Monday. That on the evening in question she had gone to his house voluntarily and because she was afraid of her mother finding her at his place the next day, she had falsely accused him of having kidnapped and raped her. It was on his insistence he testified, that the police were called albeit that he had left his premises unlocked and did not wait for the police to arrive.

---

<sup>3</sup> Record page 191

<sup>4</sup> Record page 192

This behaviour by the appellant, the court a *quo* found to be improbable. The court also found it improbable, that the appellant as he professed his innocence, would find himself running from the police even risking the police shooting at him instead of waiting on the police to arrive to sort out the confusion. The court a *quo* , further found it to be improbable on the version of the appellant that the complainant would remain at his house the entire Monday, missing out on a scheduled exam, when she had gone to his place voluntarily on his version.

[19] Given the totality of the evidence presented, I could find no misdirection with the evaluation of the evidence by the court a *quo*. The judgment was properly motivated given the totality of the evidence presented on behalf of the State. Accordingly, the appeal on the conviction must fail.

[20] On sentencing counsel for the appellant in his heads of argument and during the hearing of the appeal argued that in the event of the appeal not being successful on conviction that this court should conclude that the sentencing court properly applied its sentencing discretion. For the purposes of judgement on sentence, the following personal circumstances of the appellant appear to have been placed on record:

20.1 the appellant was 40 years old and single at the time when he was sentenced;

20.2 he has two dependents aged 17 and 8 years old in respect of whom he was the sole breadwinner;

20.3 he attended school and only reached Grade 9;

20.4 he was part-time employed and earned an income of R 800 a month; and

20.5 the appellant had one previous conviction for housebreaking with the intent to commit theft and theft.

[21] Albeit, that sentencing is inherently within the discretion of the sentencing court, the powers of an appeal court to interfere with the sentencing court's discretion in imposing sentence are limited unless the sentencing court's discretion was exercised improperly. The essential inquiry in an appeal against sentence is not whether the sentence was right or wrong, but whether the sentencing court exercised its discretion properly and judicially. If the discretion

was exercised improperly, the appeal court will interfere with the sentenced imposed.<sup>5</sup>

[22] This court having considered the court a *quo*'s judgment on sentence, I could not find that the sentencing court's discretion was not exercised properly and judicially. The sentencing court did not over-emphasise one part of the triad over another. The court further had regard to the object of punishment, namely; retribution, rehabilitation and deterrence and that a balance ought to be found when imposing an appropriate sentence.

[23] Accordingly, and even without the submission made by counsel for the appellant in this regard, I conclude that the appeal on sentence must also fail.

[24] In the result and consequently the following order is made: The appeal against conviction and sentence is dismissed,

---

**C.J COLLIS**

**JUDGE OF THE HIGH COURT**

**I agree**

---

**A.H PETERSEN**

**ACTING JUDGE OF THE HIGH COURT**

---

<sup>5</sup> S v Malgas 2001 (1) SACR 469 (SCA)

**IT IS SO ORDERED.**

Appearances:

For the Appellant: Adv. LA Van Wyk  
Instructed by: Legal Aid South Africa

For the Respondent: Adv. F.A Van Der Merwe  
Instructed by: Director of Public Prosecutions  
Pretoria

Date of Hearing: 23 August 2018  
Date of Judgement: 05 December 2018