IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA DIVISION)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.
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DATE SIGNATURE

Case No. 567/17

In the matter between:

LUCKY MOKHAHLANE **APPELLANT**

and

THE STATE **RESPONDENT**

JUDGMENT

MILLAR, A J

1. On 6 July 2017, the appellant, a 40-year-old man was convicted in the Regional Court Oberholzer of the rape of a 14-year-old child. He was sentenced to life imprisonment for the rape. It was also ordered that his name be placed on the National Register for Sex Offenders and orders were made in terms of the Firearms Control Act[1] declaring him unfit to possess a firearm[2] and ordering the seizure of any firearm in his possession[3].
2. The appeal before this court is against conviction and sentence, such appeal being automatic in terms of section 309(1)(a) of the Criminal Procedure Act 51 of 1977 by virtue of the imposition of the sentence of life imprisonment.
3. The appellant was legally represented throughout the proceedings. He pleaded not guilty to the single charge. The state called three witnesses to testify. The appellant was the only witness for the defence.
4. The complainant was a 14-year-old girl at the time of the complaint. She lived in a single roomed dwelling with her mother and siblings together with the accused. She testified that on the evening of 26 April 2016 she had gone to sleep. The home was divided at night by a curtain with her mother and the accused, together with the baby sleeping on a bed on the one side and she and her younger brother on a mattress on the other. The home does not have running water or ablutions inside and so for that purpose a bucket was set on each side of the curtain for use by the persons sleeping on that side.
5. During the night she was awoken by the feeling of the accused penetrating her and when she woke up, he was on top of her and the tights and panties in which she had gone to sleep pulled down. She attempted to scream, and the accused put his hand on her mouth. She subsequently managed to scream, and her mother woke up.
6. When her mother got up, she switched on the light and found the appellant standing over the complainant. He was wearing only a t shirt and was naked from the waist down. The

[1] 60 of 2000
[2] In terms of section 103(1)
[3] In terms of section 103(4)

complainant was lying on the mattress with her tights and panties pulled down.

7. She told her mother what the accused had done. He threatened them with a hammer if they did not keep quiet. Her mother had then assisted her up and taken her to a neighbor where they had been advised to call the police. The police were called and by the time they arrived the accused had fled. The complainants mother also testified and corroborated her evidence in every material respect.

8. The appellant testified that he had awoken during the evening and had gone to the other side of the curtain as he wanted to use the ablution bucket. His evidence was that he had had to do so as there was only one bucket for use by all the occupants of the home. He testified that he was indeed wearing only a t shirt and was naked from the waist down but that he had had intercourse earlier with the complainants' mother and since it was dark, did not think anything of going to the other side of the curtain in that state of undress.

9. He was adamant that there was only 1 bucket available for ablutions and that it was on the other side of the curtain. His evidence was that on the evening in question he had and stumbled into the complainant in the dark and that this is the reason for her crying out. After the complainant and her mother had gone out and he heard a whistle blowing he fled out of fear for what the local community might do to him. His evidence was that he had a good relationship with everyone in the home.

10. Besides the complainant, her mother and the appellant testifying, the state had also called a medical practitioner to testify about the subsequent examination of the complainant. This evidence did not take the matter any further.

11. In the judgment of the *court a quo* the evidence tendered by the respective parties was analyzed as a whole and the court had no hesitation in accepting the evidence of the state over that of the appellant. Significantly, notwithstanding the appellant's evidence regarding the number of ablution buckets, the fact that the complainant was in the state of undress that she was while the accused stood over her, was not placed in dispute.

12. The evidence of the complainant and her mother was correctly accepted. There was no evidence by the appellant to explain why the complainant and her mother in particular would have testified that he behaved as he had when on his version neither had any reason to harbor any ill will towards him.

AD CONVICTION

13. In my view, there can be no doubt that the appellant, committed the offence with which he was charged.
14. There is in the circumstances, no reason to interfere with the factual findings of the court *a quo* in respect of the conviction on count 1.

AD SENTENCE

15. The appellant was convicted, on Count 1 of a crime referred to in Part 1 of Schedule 2 of The Criminal Law Amendment Act 105 of 1997 and the court a quo was obliged to impose the prescribed minimum sentence of life imprisonment in terms of Section 51(1)(a) of that Act, absent substantial and compelling circumstances. See S v Malgas[4].
16. The court a quo explained to the appellant[5] before he pleaded that the minimum sentence should he be convicted was life imprisonment and he confirmed he understood this.
17. Consideration must be had to whether the prescribed minimum life sentence was appropriate or whether there were substantial and compelling circumstances to impose a lesser sentence.
18. No evidence was led in mitigation of sentence, the parties electing to rely on a victim impact statement on the part of the state in support of the imposition of the minimum

[4] 2001 (1) SACR 469 (SCA) at paragraph 8
[5] Mpontshane v S [2016] 4 All SA 145 (KZP)

sentence and the appellant on a pre-sentence report in support of the imposition of a lesser sentence.

19. The appellant is a 38-year-old male. He has a grade 10 education, is unmarried and unemployed. He has 2 children of his own, both girls with different women. The probation officer reported that the appellant does not accept responsibility for the offence of which he was convicted and shows no remorse. The victim impact report sets out the extent to which the victim has been traumatized and affected by the rape, the consequences of which she will have to bear in the years to come.

20. The trial court did not overemphasize the interests of the community and was not dismissive of the personal circumstances of the appellant. The prevalence of this type of crime and the seriousness with which it is viewed are the very reason for the imposition of minimum sentences.

There are in the present case no substantial and compelling reasons[6] for the court to have departed from the minimum sentence in respect of count 1.

21. In the circumstances, I propose the following order:

21.1 The appeal against the conviction on count 1 is dismissed.

21.2 The appeal against sentence on count 1 is dismissed.

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A MILLAR

ACTING JUDGE OF THE HIGH COURT

I AGREE AND IT IS SO ORDERED

[6] S v Salzwedel & Others 2000 (1) ALL SA 229 (AD) at 232I

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J MAUMELA

JUDGE OF THE HIGH COURT

HEARD ON:	12 MARCH 2019
JUDGMENT DELIVERED ON:	12 MARCH 2019
COUNSEL FOR THE APPELLANT:	ADV RH MABAPA
INSTRUCTED BY:	LEGAL AID SA PRETORIA JUSTICE CENTRE
COUNSEL FOR THE RESPONDENT:	ADV MJ NETHONONDA
INSTRUCTED BY:	THE STATE ATTORNEY