

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: SS118/2003

DATE: 17-11-2003

In the matter of: 5

THE STATE

versus

VUYISILE MALOTANA

S E N T E N C E 10

GRIESEL, J: The accused was charged in the Regional Court with rape. He pleaded not guilty but after the hearing of evidence he was convicted as charged. Because the complainant was a girl under the age of 16 years at the time of the offence, the accused was committed to the High Court for sentence in accordance with the provisions of section 52(1)(b) of Act 105 of 1997. 15

According to the evidence the complainant was born on 29 October 1985, which means that when the rape was committed on 18 March 2000, she was 14 and a half years old. She lived with her father in a house in Khayelitsha. The accused, who lived in the same area, was known to both of them. On the day in question the accused went to the house of the complainant and her father in order to invite the complainant's father to a traditional ceremony to be held at the house of the accused later that day. The complainant's father accepted the invitation and then left the house. The complainant was left behind where she was busy with domestic chores. 20 25

The accused returned to the house a short while later, whereupon he requested the complainant to play some music. After locking the door he proceeded to assault the complainant and thereafter he raped her. While the rape was still in progress the complainant's father returned to the house and found the door locked. When the door was eventually opened he found the complainant inside, naked and crying, with the accused busy putting on his pants. The father of the complainant also gave evidence at the trial, confirming her evidence in all material respects.

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The district surgeon examined the complainant later the same day. He likewise gave evidence on behalf of the State and handed in his report as contained in form J88. It corroborates the complainant's version in material respects in that it reveals evidence of "acute genital area trauma" as he described it. There were four fresh tears to the hymen, as well as two superficial mucosal tears. In addition, he found slight swelling to her right eye, accompanied by sub-conjunctival bleeding. There were also fresh abrasions to her neck as a result of choking with hands.

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The version of the accused was complete denial. According to him, he left the complainant's house at the same time as her father and did not return thereto. He cannot think why they would falsely accuse him of such a serious crime when there had been no prior problems between them. In these circumstances, the Regional Court had no difficulty in rejecting the version of the accused and I concluded earlier today that there are no grounds for interfering with that conclusion.

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Against this background it is now the duty of this Court to impose sentence on the accused. It is a sad fact of life that sexual violence against children is an everyday occurrence in our society. The rape statistics in our country, especially in this Province, are quite horrific. It is a further fact of life that due to a variety of circumstances only a small percentage of perpetrators of these crimes are eventually prosecuted and convicted. Society is justifiably upset about this naked abuse of male power. They demand protection from the law enforcement agencies of society, especially the courts of law. Parliament has also taken note of this state of affairs and has passed the Criminal Law Amendment Act in 1997. The purpose behind the legislation is clearly to serve as a deterrent so as to try and stem the tide of violent crime threatening to engulf us.

In terms of the provisions of section 51(1) of that Act, the Court is ordinarily obliged to sentence a person to imprisonment for life where such person has been convicted of an offence referred to in Part 1 of Schedule 2. The rape of a girl under the age of 16 years is such an offence. The basic starting point when it comes to sentence is, therefore, that life imprisonment must be imposed unless the Court is satisfied that there are substantial and compelling circumstances which justify the imposition of a lesser sentence than the prescribed minimum. The Act itself does not define what is meant by "substantial and compelling circumstances" and this is something that must be determined by the Court on the facts of each case. In this context I refer to the decision by the Supreme Court of Appeal in S v Malgas 2001(1)

SACR 469 at 481I-482A.

Mr Aggenbach, who appeared on behalf of the accused in this court today, did not have an easy task in trying to find substantial and compelling circumstances which would justify the imposition of a lesser sentence than life imprisonment. As far as his personal circumstances are concerned, the accused is presently 36 years old. He completed a matric education in 1983 and thereafter went into exile where he joined the political struggle. He returned to the country in 1994, was appointed to the South African National Defence Force and apparently attained the rank of captain until he was arrested during 2000. The accused is married, although he has been separated from his wife for some time. He is the father of four children.

Against these mitigating factors, however, there are also several aggravating factors as pointed out by Mr Stephen, who appeared on behalf of the State. The physical injuries sustained by the complainant are undoubtedly serious and would in itself have justified a severe sentence. This brutal attack on a young, defenceless victim was completely unnecessary and is regarded by the Court as a strong aggravating factor. The emotional and psychological stress endured by the complainant - and which she still endures - appears clearly from the probation report handed in by consent. That is also a seriously aggravating feature.

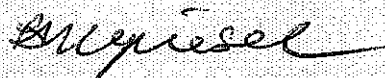
To the present day the accused has not shown any remorse for his senseless deeds, but persists in falsely proclaiming his innocence. The accused also has certain previous convictions for assault and theft

SENTENCE

dating back to the early and mid-1980s. More recently and significantly, however, he was convicted of rape committed on 29 October 1999, that is less than five months before the present crime was committed. For such rape he was sentenced to 10 years' imprisonment on 19 October 2001.

After a careful consideration of the facts of this case, both mitigating and aggravating, I have come to the conclusion that there are no substantial and compelling circumstances that justify a lesser sentence than the prescribed sentence. It is accordingly the Court's duty today to give effect to the will of Parliament as expressed in the Act in question.

In the circumstances the accused is sentenced to life imprisonment.



GRIESEL, J