

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Appeal No. : A274/2005

In the appeal between:-

MOTSEKI JOSHUA RATEFANE Appellant

and

THE STATE Respondent

CORAM: RAMPAI J *et* MATHEBULA AJ

HEARD ON: 15 MAY 2005

JUDGMENT BY: MATHEBULA AJ

DELIVERED ON: 1 JUNE 2006

[1] The appeal lies against both conviction and sentence imposed by the regional magistrate, Bloemfontein. The appellant was convicted and sentenced to 10 (ten) years imprisonment on 28 January 2004 for rape.

[2] The complainant, Joalane Aletta Motale, testified that on 15 December 2001 she was on her way to attend a graduation

party hosted by Pastor Lamane at a community hall. She was accompanied by her younger sister, Moleboheng Paulina Motale (“Moleboheng”). On arrival at the community hall, they found no-one and decided to go and while away time at the house of one of the members of the congregation.

[3] They met with the appellant, who requested to have a word with her, which she spurned. Then the appellant grabbed her and pulled her away down the street. Her sister who was walking behind them asked the appellant where was he taking her to and she was ignored by him. As they passed a public phone Moleboheng attempted to make a call to the police but was warded off by the appellant. He threw a stone at her. She returned to the safety of other congregants.

[4] The appellant dragged her by the neck until they reached his shack. At this time she was still crying as they were walking along. The appellant unlocked the door, pulled her in and locked her inside. He ordered her to take off her panty and lie on the bed, which she refused while still crying. He took out a fire-arm and threatened to shoot her. He grabbed her and pulled down her panty and in the process her dress was

torn. He took out a condom, put it on and later removed it. He had sexual intercourse with her.

[5] After the sexual intercourse when both of them were dressed, Thuso knocked at the door. The appellant asked him what he wanted. He replied that he wanted the complainant. The appellant told him that she was not there to which she replied that she was there. Thuso left and said he was going to report the matter to the pastor. The appellant opened the door and she left his shack.

[6] On the way to the community hall she met Sekgola and Mafa. Almost at the time Pastor Mojaje arrived and she told him that the appellant had raped her. She was still crying. He contacted the police and she was later taken to Zastron Hospital for medical examination.

[7] Under cross-examination she testified that she knew the appellant before that day. They were attending the same church before she joined the present one. They did not have a love affair. At the time that the appellant was dragging and

pulling her she was crying hard and no-one came to her rescue. She sustained a minor abrasion.

[8] The second State witness was her younger sister, Moleboheng Paulina Motale. Her testimony was that on 15 December 2001 she was accompanying the complainant to the community hall to attend the graduation party. They met with the appellant who requested the complainant to come to him. The complainant refused. The appellant just grabbed and started pulling her and she started crying.

[9] As they passed a telephone booth she wanted to make a call to the police. The appellant removed the handset from her and threw stones at her. She ran away and told him that she was going to report the matter to the pastor.

[10] At the house of a church member, Thabiso, she reported the matter to Sekgola and Thuso. She told them that the appellant was pulling the complainant by the neck. She was not willing to go with him. She does not know if the two had a love affair or not. Thuso and Sekgola spurred into action to look for the complainant.

[11] The third State witness was Sabata Paulus Mojaje. He testified that the complainant was a member of his church and the appellant was known to him as a community member.

[12] On 15 December 2001 he was attending a graduation party hosted by Pastor Lamane at the community hall. While waiting for the party to begin, Moleboheng and Thuso came to report to him that the appellant was pulling the complainant to his shack. He went to investigate. Along the way he met the complainant who was crying and she reported to him that the appellant had raped her. The hair of the complainant was unkept and her clothes were wrinkled. He reported the matter to the police. Cross-examination did not elicit any new facts.

[13] The fourth witness, Mbosilo Sekgola Sejali, briefly testified that on 15 December 2001 he was told by the complainant that the appellant had raped her. She was in tears. This witness did not testify on other aspects.

[14] The fifth State witness, Mafa Michael Lepine, testified that he was requested by Pastor Mojaje to accompany the complainant to her home. On the way the complainant informed him that the appellant had raped her. During that process the appellant had threatened her with a fire-arm into submission.

[15] The sixth State witness, Thuso Lepine, testified that Moleboheng reported to him that the appellant was pulling the complainant away. He went out to investigate and when he could not see them in the street he proceeded to the shack of the appellant. He knocked at the door and the appellant answered. He asked him whether the complainant was in there and his answer was in the negative. Immediately afterwards, the complainant answered and said she was inside. She told him that the appellant is pointing a fire-arm at her and that he is raping her. He told him that he is going to report to the pastor to which the appellant replied that he does not give a dam. He later saw the complainant who was crying. Cross-examination did not reveal any new facts.

[16] The appellant testified that on 15 December 2001 he met the complainant who was with her younger sister. They briefly spoke about their love affair and when are they going to meet as he was going to leave for Bloemfontein where he was attending school. The younger sister interfered in their conversation and he reprimanded her. She left and told them that she was going to report the matter to the pastor.

[17] Together with the complainant they went to his shack away from the sight of other church members. On arrival there, he went out to the shop to buy her some refreshments. They consumed them and thereafter decided to have sexual intercourse.

[18] A short while thereafter he heard a knock at the door. On enquiry, he found out that it was Thuso who was looking for the complainant. He told him that she was not there. He left and said that he is going to report the matter to the pastor. He then asked the complainant that they have to hatch a plan seeing that their secret has been revealed. Complainant told him not to worry as she will take care of the situation.

[19] She opened the door and walked the complainant up to the church. He returned to his shack and later went to the tavern. While at the tavern the police arrived in the company of the complainant, Moleboheng, and their brother. The brother accused him of having raped the complainant. His reply was that if that was the case then he must be arrested. He denied having raped the complainant and being in possession of a fire-arm.

[20] Under cross-examination he testified that sexual intercourse lasted for about 20 minutes. Their love affair has been in existence for about three months and this was the first time that they had sexual intercourse. On the way to the shack they had passed other people who were at a stokvel. The complainant has laid this false charge against him because of influence from the church members. The church strictly forbids sexual relations before marriage.

[21] At the time when Thuso knocked at the door, the complainant only answered that she is inside and did not mention anything about rape. When she left his shack, she was not crying and said that she was neat and presentable.

[22] The State, represented by Adv. Giorgi, and appellant by Adv. Kenny Pretorius submitted detailed heads of argument. On the day of the hearing, Adv. Pretorius conceded that the appeal has no merits on both conviction and sentence. He submitted that the court *a quo* had erred in that the standard of proof is beyond reasonable doubt and not on a balance of probabilities as it appears on page 147 of the record. The State submitted that the court *a quo* did use the correct test even though not in so many words as per p. 148 of the record. This, in my view, is the correct submission as Mr. Pretorius also conceded that even taken that into consideration the court *a quo* has correctly convicted the appellant. In my view, the court *a quo* did not err or misdirect itself in that regard.

[23] On the issue of sentence it is trite law that the court of appeal will only interfere with the sentence if it is of opinion that such sentence is unreasonable, unjust or is vitiated by irregularities or the court *a quo* has misdirected itself. See **S v DE JAGER AND ANOTHER** 1965 (2) SA 616 (AD) and **S v PILLAY** 1977 (4) SA 531 (AD) at 535 E – F.

[24] In this matter the appellant committed a heinous crime. He violated the bodily integrity of the complainant without remorse. It is clear that he preyed on the defenceless complainant. The community is looking at the courts to deal firmly and decisively with individuals in the ilk of the appellant. See **S v MOHASE** 1998 (1) SACR 185 at 193. Women and children like men are equal before the law. They must be protected. In my view, the court *a quo* was correct in imposing the sentence of ten years. The appeal ought to fail.

[25] Accordingly my order is the following:

25.1 The appeal is dismissed.

25.2 The conviction and sentence are confirmed.

M.A. MATHEBULA, AJ

I concur.

M.H. RAMPAL, J

On behalf of appellant: Adv. K. Pretorius
Instructed by:
Justice Centre
BLOEMFONTEIN

On behalf of respondent: Adv. S. Giorgi
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN

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