



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 8 February 2024

Status: Immediate

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Mthanti v The State (Case no 859/2022) [2024] ZASCA 15 (8 February 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal against the decision of the KwaZulu-Natal Division of the High Court, Durban (the high court) and replaced it with the following orders: '2.1 Counts 1, 2, and 5 are taken together for purposes of sentence. The accused is sentenced to 15 years' imprisonment. 2.2 Counts 3 and 4 are taken together for purposes of sentence. The accused is sentenced to life imprisonment. 2.3 In respect of count 6 the accused is sentenced to 15 years' imprisonment. 2.4 All the sentences are to run concurrently. 2.5 All the sentences are antedated to 1 April 2015.'

The appellant, Mr Siyabonga Mthanti was convicted and sentenced by the KwaZulu-Natal Division of the High Court, Pietermaritzburg, (the high court) on three counts of robbery with aggravating circumstances, a count of assault with intent to cause grievous bodily harm and two counts of rape. The sentences were imposed as follows: (a) 15 years' imprisonment for the three counts of robbery with aggravating circumstances (counts 1, 2 and 5), (b) life imprisonment for the counts of assault with intent to do grievous bodily harm and the first count of rape (counts 3 and 4), and (c) life imprisonment on the second count of rape (count 6). His appeal to the full court of the same division against the sentences imposed in respect of counts 2 to 6 was dismissed. He then appealed, with the leave of this Court, against the dismissal of his appeal by the full court. The appellant's convictions and sentences related to three incidents that occurred between June 2014 and January 2015. In all three incidents the appellant used the same method of enticing the victim to an isolated spot under false pretences of employment offer. There he either threatened to or stabbed them with a knife, and robbed and raped them.

In this appeal the appellant contended, first, that in respect of the second incident there was duplication of convictions and therefore improper punishment. The argument posits that even though the appellant was found guilty of three separate offences (rape, robbery with aggravating circumstances and assault with the intent to do grievous bodily harm), he had a single intent: he used the knife to subdue the complainant with the intention of carrying out the robbery and rape of the complainant (counts 1 and 3). Therefore, the conviction of assault with intention to cause grievous bodily harm (count 2) resulted from an impermissible duplication of charges which led to duplication of punishments. The second leg on which the appeal stood was that the first rape did not involve the infliction of grievous bodily harm as provided in item (c) of Part I in Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (CLAA) read with s 51(1) of that Act. Therefore, he should not have been sentenced to life imprisonment in respect thereof. Thirdly, he contended that when he was sentenced for the second rape in the third incident (count 6) he had not yet been convicted of two or more incidents of rape as provided in the same law. The second rape therefore did not attract the sentence of life imprisonment. Lastly, he contended that his personal circumstances, when considered cumulatively, constituted substantial and compelling circumstances that justified deviation from the minimum sentences prescribed in the CLAA.

With regard to the first ground of appeal, the SCA agreed with the high court's finding and held that there was no duplication of punishment as contended by the appellant. It emphasised that the appeal was not against conviction. It reasoned that the high court took count 2 (assault to do grievous bodily harm) and count 3 (rape) together for purposes of sentence and found that the rape in count 3 involved the infliction of grievous bodily harm which attracted a life sentence and therefore resulted in one sentence of life imprisonment. With regard to the second ground of appeal, the SCA again agreed with the high court's finding that that the rape involved the infliction of grievous bodily harm as it was common cause that the appellant stabbed the complainant with a knife to subdue her so that he could rape her. The appellant fell to be sentenced as provided in s 51(1) read with Part 1 of Schedule 2 of the CLAA. With regard to the third ground of appeal pertaining to the sentence of life imprisonment imposed for count 6 under s 51(1), Part I (a)(iii) of Schedule 2 of the CLAA, the SCA found that the high court erred in that regard. It held that section 51(1) of the CLAA provided that a regional court or a high court shall sentence a person it had convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life. Part I (a) in Schedule 2 specified the circumstances in which the offence of rape would attract the sentence of life imprisonment. In terms of that provision the sentence of life imprisonment became applicable where rape was committed 'by a person who had been convicted of two or more offences of rape or compelled rape, but had not yet been sentenced in respect of such convictions'. The SCA held that it was apparent that the appellant was not yet convicted of rape in count 4. Therefore, the imposition of life imprisonment was a misdirection and held that an appropriate sentence under these circumstances would be Fifteen years' imprisonment. Relating to the last issue of whether there were substantial and compelling circumstances that justified deviation from the minimum prescribed sentences in this case, the SCA held that the aggravating circumstances present when committing the crimes by far outweighed the mitigating factors and therefore, the high court was correct in its finding that there was no reason to deviate from the prescribed minimum sentences. The SCA also found that in all three incidents there was no basis for a departure from the prescribed minimum sentences and as a result the appeal was dismissed, save for the reduction of sentence in count 6.

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