

**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not Reportable
Case no: 179/13

In the matter between:

ROBERT RUDZANI MUDZANANI

Appellant

and

THE STATE

Respondent

Neutral citation: *Mudzanani v S* (179/13) [2013] ZASCA 170
(26 November 2013)

Coram: Ponnau, Shongwe, Petse JJA

Heard: 26 November 2013

Delivered: 26 November 2013

Summary

:ORDER

On appeal from:

JUDGMENT

Ponnan JA (Shongwe and Petse JJA concurring)

[1] The appellant, Rudzani Mudzanani, then 35 years old was convicted of raping his mentally retarded, 10 year old biological daughter. He was sentenced by the Venda High Court (per Makoba J) to imprisonment for life being the minimum sentence prescribed by the legislature for an offence of this kind in terms of the Criminal Law Amendment Act 105 of 1997. The appellant appeals with the leave of the high court against the sentence.

[2] The high court observed that:

'You have been found guilty of raping your own child, biological child for that matter. That child looked upon you as her protector. Instead of protecting the poor child, you happened [to be] the very same person who molested her.'

In the circumstances, the high court viewed the offence 'in a very very serious light'. In arriving at that conclusion the high court took into account that the complainant had sustained very serious, perhaps even potentially life- threatening, injuries as a result of the attack on her by the appellant. In this regard the high court recorded:

“... that both the labia minora and the labia majora were lacerated. The vestibule as well as the hymen were also lacerated. That there was a deep laceration in the vagina and that the vagina could allow three fingers. That there was a 30 degree perineum laceration and that there was . . . profuse bleeding. Further the doctor goes on to say that there was a deep vagina laceration in the perineum wall, which was bleeding profusely...”

As a result of those injuries the complainant had to be admitted to hospital for seven days. During that time she required a blood transfusion and she had to undergo surgery in theatre under general anaesthetic to enable the tears in her vaginal area to be sutured.

[3] The personal circumstances of the appellant that were placed before the high court were that he was a first offender, who was married with three young children two of whom were disabled. Those obviously paled into insignificance when compared to the objective gravity of the offence. The high court was accordingly not persuaded that there were any substantial and compelling circumstances present, which justified a departure from the sentence prescribed by the legislature. What also weighed with the high court was the evident callousness on the part of the appellant. In this regard the high court recorded:

'Although he [the appellant] accompanied the victim's mother to the clinic, while in the clinic he did not seem to care as to what was happening to the victim. He even left the victim and the mother at the clinic and went to his own places, left them behind at the clinic. As a result that when the ambulance came to collect the victim to go to hospital the applicant was not even there. When asked as to where he was he explained that he had gone to buy a cigarette. Apparently, according to him, a

cigarette was more important than the life of his own child. When the child was in hospital for more than seven days the applicant never cared to visit the child to monitor her progress.'

[4] Before this court counsel for the appellant was hard pressed to point to any factors that could be construed as constituting substantial and compelling circumstances within the meaning of that expression. It follows that the high court cannot be faulted. In the result the appeal must fail and it is accordingly dismissed.

V PONNAN

APPEARANCES:

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For Respondent:

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