

South Africa - Justice Raped... Again!

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The court was silent. It was as if everyone was holding their breath, afraid to miss a single word as Judge Mailula delivered his verdict. The fate of Buyisiwe, the seven accused, and to some extent all of the activists who had been involved in this case since 2006, rested on the carefully worded and precisely enunciated judgment. It had taken more than three years, and more than twenty court postponements, delays and appearances to reach this point. Buyisiwe was gang raped in Tembisa on the 2nd of October, 2005 by a group of 8 young men who broke into her room. At least one of them was armed. On the 7th and 8th of June, 2009, the Judge found all of the accused guilty on all charges. One of the accused had a suspended sentence for a previous count of rape.

After eight men violently raped and assaulted her, first in the room and then later at a second site near the railway track in Tembisa, Buyisiwe managed to call for help. She reported the matter to the police the next day and underwent an invasive and violating medico-legal examination. Buyisiwe then approached the One in Nine Campaign, formed in March 2006 in response to the need for a new phase of activism and mobilisation on women's sexual rights. Meanwhile, the matter was struck from the court roll in Tembisa, and all of the accused were released from custody. This was after critical documents – including her statement and the transcripts from the bail application hearing – had gone 'missing' from the docket. Buyisiwe was, however, determined to see the case reinstated and justice served through the courts. Incredibly, her commitment to this struggle did not falter for the next three years despite the accused being released by the Wynberg Sexual Offences Court in Johannesburg, leaving them to roam free in the very area where Buyisiwe and her witnesses lived.

In July 2007, the matter was finally set for trial, and Buyisiwe was subjected to a gruelling cross-examination. The matter was postponed until August where other state witnesses gave further evidence. In April 2008, after a series of no-shows by the defence attorney, it was discovered that said attorney was no longer registered with the law society as a practising attorney and that consequently the magistrate set the matter aside for retrial. This effectively meant that all the witnesses – including the complainant – would have to give evidence again.

Following significant pressure by Tembisa residents and the One in Nine Campaign, the matter was transferred to the South Gauteng High Court and set down for trial from the 2nd to the 13th March 2009. When activists and supporters gathered outside the court during those two weeks, we were convinced that finally Buyisiwe would have her opportunity to address the court and tell the court of her rape four years earlier. However, we were outraged to learn that while a court room had been allocated, there was no judge present to hear the case. It was postponed once again to the 27th July, 2009. We immediately planned mass action outside the court for the 6th March 2009. The date was significant not only because of the trial date but also because it marked International Women's Day on March 8th.

On this day, activists occupied the court atrium in a silent protest, while representatives waited to speak to the Deputy Judge President of the High Court to state the demands of the 1-9 campaign that the court bring forward the case by one calendar month to March 6th. It was a turning point for the Campaign and a turning point for Buyisiwe's case. The Deputy Judge President agreed to move the date forward to 14 April 2009.

The case was heard by Judge Lucy Mailula and was not without its delays and attempts by the defence to divert justice. There was the assertion by the defence that the proceedings from the lower court be admissible before the High Court, and that because the transcripts for these proceedings were 'lost' those recreations of the record be admissible. Fortunately, the judge recognised that these recreations would severely prejudice the accused (whose legal representation was found to be unregistered in those proceedings) and ruled the proceedings from the previous hearings inadmissible.

The case was a victory not only for Buyisiwe but for countless other rape survivors who have been violated first by rape and then by the treatment they receive from the criminal justice system. While the court ruling may in a small way provide redress for the violations that took place on the 2nd October 2005, the State has yet to be held accountable for the numerous court delays and postponements. In effect this was the second rape – the rape of Justice.

Buyisiwe described her experiences of the criminal justice system like being raped again, saying that she felt the criminal justice system (CJS) treated her like a piece of paper – too easily misplaced, disregarded and discarded. She has had to endure endless postponements and delays. She has had to repeat the details of the rape endlessly to police, magistrates, prosecutors and doctors – each time reliving the violation. She has had to give evidence twice in court – and been subjected to cross-examination in two courts. She has been forced to spend long amounts of time in safe houses, isolated from her family and friends, because of the risk posed by the accused not being in custody. Her healing has been interrupted by every court hearing, and reversed by every postponement.

It is because of the anticipated secondary victimisation and the lack of confidence in the CJS's ability to deliver redress and justice that rape survivors often do not report rape to the police. It is estimated that for every one out of nine women who report rape to the police, another eight remain silent. Recent research undertaken by the Centre for the Study of Violence and Reconciliation (CSVR), Medical Research Council (MRC) and Tshwaranang Legal Advocacy Centre confirms some of the problems associated with how the CJS deals with rape cases, including:

- Half of cases (2 064 reviewed in their study) resulted in arrests but only 42.8% were charged in court
- Trials commenced in less than one in five cases
- Only 4.1% of rape cases resulted in a conviction
- 15.6% of rape convictions received less than the mandated 10 years minimum sentence.

These statistics translate into real experiences of secondary victimisation for rape survivors, generally lower levels of confidence in the justice system to deliver justice and a culture of impunity for perpetrators of rape and sexual violence. Buyisiwe and the countless other women who do speak out and report rape and sexual violence should be the spark that ignites the movement.

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P.S.

* From Amandla! website.