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**MINISTRY: JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 2484**

**DATE OF QUESTION: 26 AUGUST 2022**

**DATE OF SUBMISSION: 09 SEPTEMBER 2022**

 **[Dr P J Groenewald (FF Plus) to ask the Minister of Justice and Correctional Services: †**

1. What number of cases of rape have been heard in courts in the (a) 2017-18, (b) 2018-19, (c) 2019-20, (d) 2020-21 and (e) 2021-22 financial years.
2. What number of cases of rape have (a) been prosecuted successfully and (b) failed to secure a guilty verdict in each of the specified financial years;
3. What (a) has he found were the different reasons why cases could not be prosecuted successfully and (b) total number of cases failed to reach a successful prosecution due to each of the specified reasons;
4. Whether he will make a statement on the matter?

**NW2930E]**

**REPLY:**

1. The only courts that have jurisdiction to hear rape cases are the Regional and High courts. The following number of verdict cases related to rape were heard in the Regional courts, and were extracted from the Electronic Case Management System in the Lower courts:

|  |  |
| --- | --- |
| **YEAR** | **VERDICTS** |
| 2018/19 | 4 215 |
| 2019/20 | 3 984 |
| 2020/21 | 617 |
| 2021/22 | 2 789 |

1. The following table reflects the number of cases finalised in the past five (5) years, both with convictions as well as acquittals in the Regional courts:

|  |  |  |  |
| --- | --- | --- | --- |
| **YEAR** | **CONVICTIONS** | **ACQUITTALS** | **CONVICTION RATE** |
| 2018/19 | 2 820 | 1 395 | 67% |
| 2019/20 | 2 684 | 1 300 | 67% |
| 2020/21 | 435 | 182 | 71% |
| 2021/22 | 1 821 | 968 | 65% |

Although no electronic system for the recording of court cases have been introduced for the High courts, the general conviction rates of the High courts, which include the charges of rape, is reflected in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **YEAR** | **CONVICTIONS** | **ACQUITTALS** | **CONVICTION RATE** |
| 2018/19 | 868 | 97 | 90% |
| 2019/20 | 782 | 78 | 91% |
| 2020/21 | 542 | 36 | 94% |
| 2021/22 | 647 | 65 | 91% |

1. (a) The reasons for acquittals are not recorded in each case. The prosecution will

present its case and lead evidence regarding the charges as contained in the police docket. The evidence of witnesses will then be tested during cross-examination in court by the defence. The presiding officer, after also hearing the evidence by the accused and/or defence when they have witnesses, will then make a judgement in the case. The burden of proof is *beyond a reasonable doubt* in criminal cases. It is important to note in this regard that the judgement of the court is based on all the evidence in court, considering as well circumstantial evidence, evidentiary rules and reliability of the evidence. There is seldom only one reason for either any acquittal or conviction as the court needs to weigh all the evidence before a conclusion may be reached. Some of the more common reasons that are included where convictions are not achieved include:

1. Consent – it is often difficult to disprove consent where the rape has not resulted in any injuries or where circumstances may not support an inference to be drawn from the facts of the case;
2. Identity – where the accused was not previously known to the victim, the identity may often be difficult to prove, especially in the absence of DNA or other evidence to support the identification of the accused. Unlike theft where articles may be found in possession of an accused to link them to an offence, there is seldom physical evidence to link the accused and the court has to e satisfied that the way identification took place, the method and circumstances in which the identification was made and reasons for identification are reliable and is trustworthy.
3. Witness(es) in some cases either detract from their statements, deviate from consultation, or make concessions during cross-examination.
4. Credibility findings are very important as in most instances with rape charges, the victim is the only witness that can testify on behalf of the State regarding the elements of the crime to be proved which include the identity, absence of consent, the place, and circumstances in which the crime was performed and the first reporting of the incident.
5. Less common reasons include key witnesses not being available for testimony, contradictions in evidence by State witnesses and alibi evidence of accused that cannot be disproved.
6. The complainant changes his or her version exonerating the accused.
7. Forensic evidence exonerates the accused.
8. Other evidence exonerates the accused.
9. Complainant not in a fit mental state due to the trauma she/he endured.

1. The numbers of acquittals have been reflected above. However, as indicated in paragraph 3 (a) above, it is not possible to record each reason in isolation, it is important to note that even where the court may not be satisfied that the evidence is insufficient to prove the commission of an offence of rape, the court may still convict and often does, convict the accused on a competent verdict such as indecent assault, assault to do grievous bodily harm or assault common.
2. The State is aware of the difficulties in proving cases of rape, as well as similar sexual offence charges, including general Gender Based Violence and Femicide (GBVF) related offences. The National Prosecuting Authority as well as the Department of Justice and Constitutional Development, in cooperation with other Government departments are doing a lot of work in this regard. One of the most important initiatives in this regard is the establishment of the various Thuthuzela Care Centres (TCCs) in the country where victims are being assisted, evidential support is provided including counselling for victims and matters can be reported. The prosecution is also assisting victims at court by means of Court Preparation Officers to prepare witnesses for court and facilitate victim impact statements in sexual offences matters.

It is also important to note that rape is one of the most difficult offences to prove beyond reasonable doubt, the crime has been committed by the specific accused. The conviction rate in general sexual offences, all crimes in terms of the Sexual Offences Act, Act No. 32 of 2007, is remarkably higher as indicated in the table below:

|  |  |  |
| --- | --- | --- |
| **YEAR** | **CONVICTIONS** | **CONVICTION RATE** |
| 2018/19 | 4 724 | 74.4% |
| 2019/20 | 4 098 | 75.2% |
| 2020/21 | 2 539 | 75.8% |
| 2021/22 | 3 402 | 74.2% |