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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

REPORTABLE

CASE NO: **A245/2021**

LOWER COURT CASE NO: GSH (2) 50/2018

APPEAL: 10/2021

In the matter between:

CHIFONDO AUSTIN

Appellant

And

THE STATE

Respondent

Coram: Gamble J et Grobbelaar AJ

Dates of Hearing: 5 August 2022

Date of Judgment: 12 September 2022

JUDGMENT

GROBBELAAR, AJ

[1] The appellant was charged in the Parow Regional Court with a contravention of Section 3 of the Criminal Law Amendment Act (Sexual Offences and Related Matters), 32 of 2007 ("the Act") read with the provisions of Section 51(1) and Schedule 2, Part I of the Criminal Law Amendment Act, 105 of 1997.

[2] The charge reads that the appellant contravened the said Act by inserting his penis inside the vagina of the 11-year-old complainant more than once in the period May 2016 up until the year of 2017, thus committing rape. The appellant was legally represented.

[3] The appellant pleaded not guilty, admitting that he had sexual intercourse with the complainant, but pleaded that he had her consent to do so. A trial followed, and the Appellant was found guilty as charged on 14 October 2021.

[4] On 14 October 2021 the appellant was sentenced to life imprisonment in terms of Section 51(1) of the Act.

[5] The following further orders were made:

[6.1] in terms of Section 103(1) of the Firearms Control Act, 60 of 2000 the appellant was declared unfit to possess a firearm;

[6.2] in terms of Section 120(4)(a) of the Children's Act, 38 of 2005 the appellant was declared unsuitable to work with children;

[6.3] in terms of Section 50(2)(a)(i) of the Sexual Offences Act, 32 of 2007 the particulars of the appellant were ordered to be included in the National Register for Sex Offenders.

[6] Due to the sentence of life imprisonment, the appellant has an automatic right to appeal against the conviction and sentence and the appellant now comes on appeal against his conviction and sentence.

[7] Condonation is granted for the late filing of appellant's heads of argument.

The Plea

[8] The appellant pleaded not guilty. His defence was that the complainant's father had given him the complainant as a child-bride in accordance with Malawian custom. He later testified that he was led to believe that she was 15 at the time.

The Evidence

[9] I will first deal with the evidence in the case.

[10] The appellant made several formal admissions in terms of Section 220 of the Criminal Procedure Act, 51 of 1977.

[11] Importantly, it was admitted that the complainant was eleven years old at the times that the appellant had sexual intercourse with her.

[12] The observations and findings in a report of a medical examination of the complainant by Dr D M Andrews on 12 September 2017 were admitted. The report stated that the complainant had old tears in her hymen consistent with vaginal penetration and that she was visibly pregnant.

[13] The Biology Report-DNA, which concluded that the probability of the appellant being the father of the complainant's child, is 99.95%, was also admitted.

[14] It is further admitted that the complainant gave birth to the child on 24 November 2017.

[15] The State led the evidence of Mr N L[...], the father of the complainant. Mr L[...] testified that the complainant was born in Malawi and came to stay with him in South Africa. Her mother remained in Malawi.

[16] In 2016 he and the complainant moved to Langa from Muizenberg. They stayed in a small shack which barely contained their two beds. He had stomach problems and had to jump over the bed of the complainant to relieve himself and sometimes even messed on her.

[17] In 2016 he went to his friend the appellant, who was his neighbour, and they agreed that the complainant would move into the second bedroom of the appellant's shack. They further agreed to cook and eat together in the appellant's shack, which had a kitchen.

[18] In evidence in chief he testified that he told the appellant that the complainant was eleven years old when they made this arrangement. He testified that in September 2017 he noticed that the complainant was pregnant, and he took her to another neighbour, Ms Nokobongwa. She advised him to purchase a pregnancy test kit. This was done and the complainant tested positive for pregnancy.

[19] When he asked the complainant who made her pregnant, she started crying and told him it was his friend, the accused. He asked her why she did not tell him about this and she replied that she was afraid to because the appellant told her he was going to slap her, kill her and throw her into the river.

[20] She told him the appellant slept with her on three occasions. He was very sad, went home and cried. He did not sleep all night. The next day he went to the appellant's place of employment and took him back to Langa.

[21] There the community asked the appellant who was sleeping with the girl (the complainant) and the appellant replied that it was him, adding that it was a mistake. The community asked the appellant how he can sleep with the complainant while he is staying with his wife.

[22] According to Mr L[...] the appellant was living with a girlfriend in his shack. The community started assaulting the appellant. Mr L[...] ran to the police station to inform them that the community was assaulting someone who raped his daughter. The police went to the scene, thereafter he, the complainant, the appellant and Ms Nokobongwa went to the police station.

[23] Ms Nokobongwa pointed the appellant out as the person who raped the complainant. Mr L[...] denies giving the appellant permission to marry the appellant

or to have sexual intercourse with her because, according to him, she was very young at the time.

[24] During cross examination he denied that he asked the appellant to marry the complainant. It was put to him that the appellant's shack had only one bedroom and a kitchen, he denied this. He stated that the complainant moved to the appellant's shack in July 2016. He denied that it only happened in 2017.

[25] When it was put to him that the appellant never stayed with a girlfriend and that there was no extra bed in the appellant's shack, he denied this. It was put to him that the agreement was that the complainant would sleep in the appellant's bed, he denied this.

[26] He admitted that when he initially noticed that the complainant put on weight and complained of stomach pains, she said nothing about being raped. It was put to him that the reason why he wanted the complainant to move out of his shack, was because she complained when he had intercourse with his girlfriend, he denied it.

[27] He stated that he went to buy the pregnancy test kit. He did not go to the police on the day he found out she was pregnant because he was in shock and crying.

[28] It was put to him that he agreed that the complainant will be married to the appellant, and he denied it. It was put to him that the appellant will come and testify that he told the appellant at work that he gave him his daughter to marry and now he has made her pregnant, he must pay the necessary fine, he denied this.

[29] He admitted that he brought the appellant home to Langa but denied that he wanted to talk about a fine, he wanted to know who slept with the complainant.

[30] It was put to him that he knew that the complainant was pregnant even before Ms Nokobongwa brought it to his attention, he denied that he gave consent for the appellant to marry the appellant. It was put to him that he told the appellant that the complainant was sixteen years old, he denied this.

[31] He admitted that he ran to the police station because he did not want the appellant to be assaulted. He again stated that the reason he allowed the complainant to move into the appellant's house was because the appellant's girlfriend was staying there with him. He denied that the complainant was doing appellant's laundry.

[32] It was put to him that it is cultural practice in Malawi for parents to give their children to older people to marry irrespective of the child's age, he denied it and stated that a small child cannot be married to an old or older man.

[33] It was put to him that the defence will bring research to demonstrate to the court that in Malawi parents give their daughters, as young as ten years old, to older men to marry, he denied this.

[34] During cross-examination he testified that he told the appellant that the complainant is 15 years old at the time when the crime happened and then changed his evidence to state that he told the appellant the age of 15 in relation to a party not the marriage, he goes on to state that he has a problem explaining himself.

[35] The State then called the complainant. She testified that at the time of testifying she was fourteen years old, it was not disputed that she is a competent witness.

[36] She testified in camera with the assistance of an intermediary. She testified that she was ten years old when she moved to Langa with her father. She initially lived with her father in their shack and then moved to the appellant's shack. The appellant's girlfriend lived with them on weekends because in the week she had a sleep-in job. The appellant's shack had two bedrooms and a kitchen, she had her own bedroom and bed.

[37] One day the appellant called her to his room, she thought he wanted her to go to the shop for him. She went to his room, and he said he loved her, he started

touching and kissing her. She told him to stop it. The appellant started to take off her clothes and she started to cry.

[38] The accused put her own hand on her mouth, and she could not speak or scream. He had sexual intercourse with her, and she cried because it was painful, and she could not think that the appellant was doing this to her. When he was finished, she bled.

[39] The appellant then told her that she must not tell anybody and that if she told her father the appellant would kill her. She did not tell anybody about this incident because she was scared.

[40] She testified that the appellant raped her three times. The further two instances of rape occurred in her bedroom and bed.

[41] On the second occasion the appellant was naked when he came into her room, he took off her clothes and raped her, she again cried because it was painful, he again told her that he would kill her if she told her father what happened. She was afraid and did not tell anybody about this incident.

[42] The last rape also took place in her own room and bed. The appellant came in, took off his and her clothes and raped her, she cried because of the pain and bled. The appellant again told her that he would kill her if she told her father what happened. The next day at dinner she wanted to tell her father what the appellant did, but she was too scared.

[43] The complainant testified that she did not give the appellant permission to have sexual intercourse with her on any of the occasions that it happened. The appellant told her he was going to marry her, but she said she was too young. The appellant did not use a condom on the three occasions that he raped her. The rapes came to light when she became pregnant.

[44] Nokobongwa told her that she was pregnant after she tested her with a pregnancy kit. She then told her father that the appellant made her pregnant. She

was examined by a doctor but could not have an abortion because she was already seven months pregnant.

[45] The complainant gave birth to a boy. She briefly held him before he was taken away from her. She said she cried because she never thought this was going to happen in her life.

[46] After that the social worker took her to see the child on one occasion. She herself was taken into foster care and is still in foster care.

[47] She never washed the appellant's clothes.

[48] During cross examination she testified that she was not present when her father negotiated with the appellant about her moving into his shack. She moved because her father's shack was too small. In her bedroom at the appellant's place there were also tyres, car seats and a chair.

[49] She did not attend school while she lived in Langa. When she told her father that the appellant made her pregnant she was afraid of the appellant because of his threats, her father said she must not tell anybody else.

[50] That evening she still slept at the appellant's shack, but her father said she must not tell the appellant that she is pregnant. She did not want to sleep there but her father said she had to because her bed was there. The next day her father went to the police station and after that she slept at the house of her father's girlfriend.

[51] Since she has been in foster care her father had visited her on weekends, the last time he visited her was on the previous Sunday.

[52] She was cooking and cleaning the appellant's shack. She also dished up his food for him, but she did not iron his clothes. The appellant's girlfriend only slept in his shack over weekends. When she was raped, the girlfriend was working. She denied that the appellant's shack only had one bedroom.

[53] She does not know about her father asking the appellant to marry her. She denied that she agreed to be the appellant's wife.

[54] Ms Nokobongwa Mbekela testified that she was a neighbour of the accused, the complainant, and her father in Joe Slovo camp, Langa.

[55] The complainant lived in an L-shaped shack with the appellant. They each had their own room. In the early evening on a day in September 2017 the complainant was brought to her by her father because he suspected that she was pregnant.

[56] She spoke to the complainant, who informed her that she could feel kicking in her stomach. She concluded that the complainant was pregnant and asked her who made her pregnant, the complainant answered that it was the appellant. She then asked the complainant how this was possible because the appellant had a girlfriend. The complainant told her that the appellant had intercourse with her three times and that the appellant's girlfriend was not present when it took place.

[57] She further testified that the complainant told her that the appellant gave her twenty rand after intercourse on each occasion. She asked the complainant why she did not tell anybody about what the appellant did to her and she answered that the appellant told her that she must not mention it to anybody and that he will kill her.

[58] The complainant's father wept and slept at his shack. Ms Mbekela did a pregnancy test on the complainant, which indicated she was indeed pregnant. She phoned the police, and they told her to come to the police station the next morning

[59] According to her the complainant slept with her father's girlfriend that evening. The next morning, she told another woman of the community the story of the complainant. They were overheard and the members of the community said that the complainant's father must rent a vehicle for them to fetch the appellant from his work.

[60] They left and brought the appellant back to his shack. He was undressed and assaulted by the members of the community. He cried and initially he said he did nothing and then said that it was a mistake.

[61] The police arrived and asked them what happened. After they told the police what happened the police took the appellant to the police station. She never heard the appellant referring to the complainant as his wife.

[62] During cross examination she testified that the complainant's father has his own shack and that his girlfriend was staying with her (Ms Mbekela). The complainant originally lived with her father in his shack in Langa and later moved into the appellant's shack. The appellant's shack had two bedrooms, the appellant and the complainant each had their own room. She was under the impression that the appellant rented his room and that the complainant's father rented the complainant's room for her.

[63] She concluded that the appellant raped the complainant because the complainant told her he would just climb into her bed and gave her twenty rand afterwards. The complainant also told her that the appellant slapped her on her thighs to open them.

[64] The accused testified that he was born in Malawi and is 30 years old. He knew the complainant's father from work where he was doing landscaping. At that time, they both lived in Capricorn, Muizenberg and became friends.

[65] The complainant's father borrowed money from him. They both moved to Langa, he moved there in the beginning of 2017 and the complainant, and her father moved there approximately a month later. Their houses were very close to each other.

[66] He thought that about a month later the complainant and her father came to his house. The father told him that he was giving the complainant to him as his wife because the complainant was unhappy about what the father was doing with his girlfriend. The father told him that the complainant was fifteen years old.

[67] He then started living with the complainant as his wife, they slept together in his bed, she cooked his food, they ate together, she did his laundry and ironed his clothes.

According to him everything was going nicely and smoothly.

[68] After about four months the complainant's father asked him if he would pay to send the complainant home to Malawi. He said he could not, and everything continued smoothly as before. He and the complainant went to the shops together and did things as man and wife. The complainant's father was happy with the way they were living.

[69] On the evening of 11 September 2017, he greeted the father at his house and went home. The complainant started cooking and went to fetch her father to come and eat. Nothing seemed to be wrong. The next day he went to work.

[70] At work the security guard came to call him. The father, three Xhosa men and one Malawian man were waiting for him, they told him to come home with him in their vehicle. In the vehicle everything was normal.

[71] When they arrived back in Langa they went into his house. The men asked him why he raped the complainant. He answered that he does not know them, only the father can ask him questions.

[72] Further men came into his house, and they assaulted him. The complainant's father tried to stop the assault and said the others must go outside so that he can talk to him. The others kept on assaulting him. He was slapped and hit with a sjambok. His landlord came and stopped the assault in the house.

[73] They then took him outside, undressed him, and kept on assaulting him until the police arrived. He got dressed and they took him to the police station where he was eventually charged with raping the complainant. He admitted to the police that he slept with the complainant but did not force her saying she was his wife who was living with him. He did not have another girlfriend.

[74] He had no relationship with the complainant before her father gave her to him as his wife. According to him that is how a marriage starts, there was no ceremony. He was going to save up for a small ceremony with the respective families.

[75] He testified that there is in fact another bedroom in the shack, but the landlord's sister lived there. The shack has two entrances and they each used one. He had sexual intercourse with the complainant for the first time on the night that her father brought her to him to be his wife.

[76] They had a meal together, watched television in his bedroom. He testified that he then asked her for permission to have intercourse with him. She answered that there is no problem. They undressed themselves and started touching each other, "like lovebirds" and proceeded to have sexual intercourse and went to sleep. The next day he went to work. Thereafter they had intercourse again while the complainant lived with him. He cannot remember how many times.

[77] The complainant was present when her father told him she was fifteen years old, she heard this and did not disagree. He believed her father. Where he comes from that is old enough to be married.

[78] Three months after the complainant became his wife, he became aware that she was pregnant, he called her father and gave him the good news. He never said anything about a mistake while he was being assaulted by the community members.

[79] The accused was cross examined. This was not done comprehensively. It mostly amounted to putting the evidence of the State witnesses to him insofar as it contradicted his version, and he denied it.

[80] He testified that they were all getting along, and everything went well. Even when it was discovered that the complainant was pregnant there were no problems between him, the complainant, and her father.

The Conviction

[81] It is apparent from the appellant's plea and evidence that his defence is that he is not guilty of rape because he believed the complainant to be 15 years old and she consented to sexual intercourse.

[82] On behalf of the appellant, Mr Strauss argued before us that the appellant's evidence in this regard should be accepted, and that the Regional Magistrate erred in finding the appellant guilty of rape in terms of Section 3 of the Act.

[83] He argued that the conviction should be set aside and substituted with a conviction of consensual sexual penetration of a child who is 12 years or older but under the age of 16 in terms of Section 15(1) of the Act.

[84] This cannot be done because it is not in dispute that the complainant was 11 years old when the appellant had sexual intercourse with her, and Section 15(1) of the Act specifically refers to the victim being a person of 12 years or older.

[85] Section 57(1) of the Act provides that "Notwithstanding anything to the contrary in any law contained, a male or female person under the age of 12 years is incapable of consenting to a sexual act."

[86] This does not mean that a person who has sexual intercourse with a person under the age of 12 is automatically guilty of rape in terms of Section 3 of the Act. Such person may not have the required intent to rape because he or she lacks knowledge of unlawfulness if he genuinely believes that the other person is capable of giving consent to sexual intercourse and gave such consent.

[87] Be that as it may, the Regional Magistrate rejected the evidence of the appellant and found that the complainant in fact did not consent to sexual intercourse. The court must consider whether the Regional Magistrate erred in making this finding.

[88] When addressing the court Mr Strauss did not persist with his argument that the Regional Magistrate erred in not calling the girlfriend of the complainant's father

and the girlfriend of the appellant to give evidence in terms of Section 186 of the Criminal Procedure Act, 51 of 1977.

[89] In my opinion she was correct in doing so. The evidence of the girlfriend of the complainant's father as to where the complainant slept on the evening when it was established that she is pregnant is not essential to the just decision of the case in view of the strength of the evidence against the appellant.

[90] The appellant denied that he had a girlfriend at the time of the rape. The Regional Magistrate was accordingly not able to have a summons issued and served on such person.

[91] In his heads of argument Mr Strauss further argued that the Regional Magistrate should have treated the evidence of the complainant with more caution due to the cautionary rules applicable to single and child witnesses, the complainant being 11 years old when the offence was committed and 14 years old when she testified.

[92] From her judgement, it is however clear that the Regional Magistrate did not lightly accept the evidence of the complainant. She correctly found that the complainant appeared to be credible and convincing and that her version was not discredited by any material contradictions or obvious improbabilities. The Regional Magistrate further found that the complainant's version of the events was corroborated in material respects by the other State witnesses.

[93] It must be noted that there are contradictions between the evidence of the State witnesses, for example, who purchased the pregnancy testing kit and where the complainant slept the evening that she tested positive for being pregnant. These contradictions, however, do not relate to the material aspects of the case.

[94] The evidence of the State witnesses remained consistent and uncontradictory on the material aspects of the case, that the appellant's shack had two bedrooms, that the appellant and the complainant each had a room, that the appellant had a girlfriend, that the complainant's father did not give her to the appellant as his wife on

any occasion when the three of them were together, that he did not treat the complainant as his wife, that the complainant told them she had sexual intercourse with the appellant on three occasions and that the appellant threatened to kill the complainant if she told others that he had intercourse with her.

[95] I cannot find that the Regional Magistrate erred in finding that the other State witnesses corroborated the complainant's version in material respects. The Regional Magistrate also correctly found the appellant not to be a credible and convincing witness. This is a further factor in favour of the credibility of the complainant.

[96] The Regional Magistrate was correct in finding that there were contradictions between the version of the appellant as put to the State witnesses during cross examination and his version when he testified.

[97] It was put to the State witnesses that the appellants shack had only one bedroom and a kitchen. The complainant therefore had to sleep with him in his bed and bedroom.

[98] During his evidence he testified that his shack did in fact have two bedrooms but that another person occupied the second bedroom. It was never put to any state witness that there was a second bedroom.

[99] It was put to the complainant's father that he informed the appellant that the complainant is 16 years old. During his evidence the appellant testified that the complainant's father told him that she is 15 years old.

[100] It was never put to a State witness that the appellant did not have a girlfriend at the time that the complainant lived in the shack with him. It was in fact only put to the complainant's father that he never lived with a girlfriend.

[101] It was put to the complainant's father that he came to the appellant's workplace to negotiate the payment of a fine because the appellant made her

pregnant and that he was not upset or angry because the complainant was pregnant. In his evidence the complainant did not mention anything about a fine.

[102] It was put to the complainant's father that it is cultural practice that parents give their daughters to older men to marry them, irrespective of the age of the daughters, even as young as ten years old. The appellant gave no such evidence. His evidence was only that where he comes from a 15- or 16-year-old girl is old enough to get married.

[103] There was no evidential basis for the appellant's instructions to his legal representative that it is cultural practice in Malawi that parents give their daughters to older men to marry them, irrespective of the age of the daughters, even as young as then years old.

[104] The Regional Magistrate was also correct in finding that the appellant's version is not reasonably possibly true. The following improbabilities arise.

[105] Why would the father, out of the blue, suddenly decide to start mentioning a fine at the appellant's workplace if he had been given the "good news" months before, that the appellant made the complainant pregnant, and the complainant and her father was happy with this?

[106] Why would the members of the community have become involved in fetching him from work to interrogate and assault him regarding the complainant if his evidence is true that he openly lived with the complainant in one bedroom and bed, and they acted as man and wife?

[107] One cannot lose sight of the fact that the complainant was only 11 years old when she moved into the house with the appellant, and he started having sexual intercourse with her. Not only was she physically 11 years old but she had the mental maturity of an 11-year old.

[108] How the appellant, who was more than 25 years old at the time, and according to him was living with this 11-year-old child as husband and wife on a

permanent basis could have thought that she had the mental maturity and capacity to consent to sexual intercourse is beyond comprehension.

[109] The Regional Magistrate did not err in making the above findings and she was correct when she rejected the version of the appellant and accepted the version of the complainant.

[110] I am accordingly satisfied that there is no basis for interference with the finding of the Regional Magistrate that the appellant is guilty of rape.

The Sentence

[111] No oral evidence was led regarding sentence. A victim impact statement regarding the complainant was handed in by consent as evidence regarding sentence.

[112] There are two reasons why a discretionary minimum sentence of life imprisonment as prescribed in Section 51(1) read with Part I of Schedule 2 of The Criminal Law Amendment Act, 105 of 1997 is applicable in this case.

[113] Firstly, the appellant raped the complainant more than once and secondly, the complainant was below the age of sixteen when the rape took place.

[114] The appellant was therefore required to show that substantial and compelling circumstances existed which justified the imposition of a lesser sentence in terms of Section 51(3)(a) of The Criminal Law Amendment Act, 105 of 1997.

[115] In *S v Malgas* 2001 (1) SACR 469 (SCA) the court held that in determining whether there are substantial and compelling circumstances justifying a lesser sentence than life imprisonment, the court must consider that the default position for certain offences is life imprisonment unless there are truly convincing reasons for a lesser sentence. The reasons do not have to be exceptional and the court must consider all the particular circumstances of the case including the traditional mitigating factors. The court must also not lose sight of the aggravating factors.

[116] Mr Strauss argued on behalf of the appellant that the Regional Magistrate erred in under-emphasizing the interests of the appellant by failing to impose a sentence which will allow the accused to be rehabilitated and re-integrated in society.

[117] He further argued that there were compelling and substantial circumstances to justify a lesser sentence to be found in appellant's personal circumstances.

[118] The Regional Magistrate took rehabilitation, one of the chief objectives of sentencing, into account when she considered which sentence to impose. She correctly found that the appellant's failure to accept responsibility for the offences, even up to sentencing, impacted negatively on his prospects of rehabilitation. She also considered the personal circumstances of the appellant, the seriousness of the offence and the interests of society.

[119] Except for the fact that the appellant has no previous convictions, there are no other significant mitigating circumstances in his favour.

[120] He is a thirty-year-old unmarried male with no children, he was employed but lost his employment due to his arrest in this case, he lost his parents when he was young and was raised by his aunt. He has not expressed any remorse for his actions.

[121] When I consider all the particular circumstances of the case, I have no hesitation in concluding that it falls within the most serious categories of rape. The complainant was very young when she was raped. She was raped three times and the indications are that it was not done on the spur of the moment.

[122] The appellant exploited the fact that the complainant was residing with him in the shack. He called her to his room before raping her the first time and went into her room on the two subsequent occasions to rape her. This constitutes a pattern of abuse. The appellant abused the trust of the complainant and his friend, her father, when he raped the complainant while she was entrusted to live with him in his shack.

[123] It appears that the complainant was a virgin when the first rape occurred, she experienced pain, she cried and bled from her vagina during each rape. The appellant threatened to kill her if she told anybody of incidents of rape. She was specifically traumatised by the fact that her father had his meals with her and the appellant, but she could not inform him of the incidents due to the death threats, while the appellant sat there acting as if nothing has happened.

[124] The complainant's child could not be aborted because she was 7 months pregnant when the pregnancy was discovered. She had to endure giving normal vaginal birth to a child when she herself was still a young child. She bled excessively during the birth and had to stay in hospital for 7 or 8 days after giving birth, due to loss of blood.

[125] She only held her son briefly before he was taken into foster care, she was crying because she had never thought "that this is going to happen in my life". She was told to say goodbye to him and thereafter she only saw him once. She herself was taken away from her father and placed into foster care and is currently still in foster care.

[126] In this matter the effect that the rape had on the complainant is devastating. In her victim impact statement, the complainant states that the appellant destroyed her life. She has become an angry child and carries this burden wherever she goes.

[127] It must be stressed that gender-based crimes have, with justification, in recent times been highlighted as particularly prevalent and serious offences. This type of crime must be combated on all fronts in South Africa by making use of every suitable means, even more so when the victim is a young child.

[128] Where justified, the other chief objectives of sentencing, being the prevention of crime, the protection of society and retribution, will prevail over rehabilitation of offenders. This is such a case, I cannot find that the Regional Magistrate erred in finding that there are no compelling and substantial circumstances to justify a lesser sentence than imprisonment for life. I can therefore not interfere with the sentence of life imprisonment.

[129] The further orders made by the Regional Magistrate regarding the appellant being unfit to possess a firearm, unsuitable to work with children and his particulars being included in the Register for Sex Offenders were not challenged on appeal.

[130] In the result I would make the following order:

- (a) The appeal against conviction and sentence is dismissed
- (b) The appellant's conviction and sentence are confirmed.

E S GROBBELAAR
Acting Judge of the High Court

I AGREE. IT IS SO ORDERED.

P A L GAMBLE
Judge of the High Court

Attorney for Appellant	MR M W STRAUSS
Attorneys for Applicant	Cape Town Justice Centre

Counsel for Respondent	ADV M J SEPTEMBER
Attorneys for Respondent	The Director of Public Prosecutions, Cape Town