

REPUBLIC OF SOUTH AFRICA

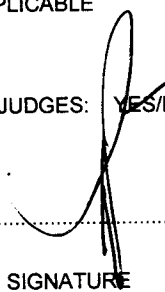


IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION: PRETORIA)

02/02/2015

CASE NUMBER: A909/2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
2.2.2015	
DATE	SIGNATURE

In the matter between:

JABULANI SAMUEL MSIBI

Appellant

and

THE STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] The appellant was convicted on a count of kidnapping and a count of rape in the Secunda Regional Court (Mpumalanga Division) and sentenced to an effective 18 years imprisonment.
- [3] The court *a quo* granted leave to the appellant to appeal against the convictions.

GROUND OF APPEAL

- [4] During argument, Mr Moeng, counsel for the appellant, attacked the finding of the court *a quo* in respect of the identity of the appellant. According to Mr Moeng, the evidence did not prove beyond a reasonable doubt that the appellant was the perpetrator of the crimes he was charged with. In this respect, Mr Moeng contended the court *a quo* erred and as a result the appeal should be upheld.

FACTS

- [5] I propose to deal only with the evidence pertaining to the identification of the appellant.
- [5] According to the complainant, a girl aged 13 years at the time, the appellant kidnapped her on 9 June 2011 and raped her on 1 September 2011.
- [6] On the first occasion, the appellant was from school and in the company of a friend of hers. Two children approached the complainant and informed her that her mother is calling her and that she should proceed to the tar road. On her way to the tar road, a male person endeavoured to convince her that her mother has sent him and that she must accompany him.
- [7] The complainant refused and was thereupon grabbed by the male person. She testified that she "*just went black*". When she regained consciousness she was seated on a chair in a certain room and was naked from the waist down. The complainant saw her attacker before she managed to escape.
- [8] During cross-examination and when asked whether she observed the area where her first ordeal occurred, the complainant answered as follows:

"When I was escaping from the house the first time, leaving this house, I could look at the house and see in which area is it and then when he took me back there I could see it was the same house."

- [9] The complainant described her attacker as a tall dark man with a scar on his forehead.
- [10] On 1 September 2011, the unknown male, once again accosted the complainant while she was on her way home from a shop. On this occasion, the male person used a knife to overcome the complainant's resistance and took her to the same house. He raped her.
- [11] On this occasion the appellant was conscious and spend approximately 30 minutes in the presence of her attacker. The complainant therefore had a good opportunity to observe her attacker. Both incidents occurred during the day and visibility was good.
- [12] Shortly after the second incident, the complainant informed her mother of the attacks on her and her mother took her to the police station to lay a charge against her attacker.
- [13] The complainant was able to take the police to the house where the incidents occurred and upon arrival she pointed out the room where she was raped. The occupant of the room was not at home and upon further questioning, the occupant's sister took the police to a certain tavern. On arrival the occupant was pointed out by the sister and identified by the complainant as the appellant.
- [14] In view of the aforesaid facts, Mr Moeng was requested to explain why the complainant would specifically point out the appellant's house, if the appellant, according to his version has never seen the complainant prio to the pointing out.
- [15] Mr Moeng, quite correctly, conceded that it is highly improbable that the complainant would know exactly where the appellant resides, if she was not taken to his abode during the attacks on her.

[16] I pause to mention, that the house had several rooms and that the complainant without hesitation, immediately pointed the room of the appellant out.

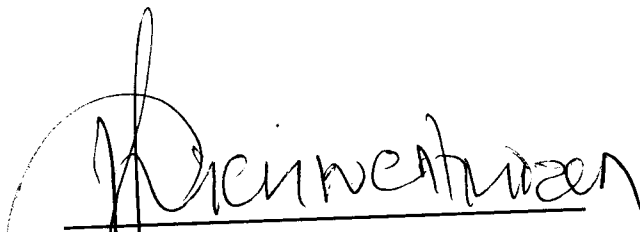
IDENTIFICATION

[17] The court *a quo* carefully and cautiously examined the aforesaid evidence and found that the identity of the appellant was established beyond reasonable doubt. I agree.

ORDER

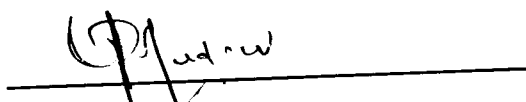
In the premises, I propose the following order:

The appeal is dismissed.



N JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree,



T P MUDAU
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

ADVOCATE FOR THE APPELLANT

ADVOCATE S. MOENG

ADVOCATE FOR THE STATE

ADVOCATE MENIGO

DATE HEARD: 30 January 2015

DATE OF JUDGMENT: 02 FEBRUARY 2015