



**IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

CASE NUMBER: A310/10

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED

18/04/2013
DATE

SIGNATURE

In the matter between:

WALTER MANDLA MAZIBUKO

APPELLANT

V

THE STATE

RESPONDENT

JUDGMENT

RATSHIBVUMO (AJ):

1. The appellant, then aged 41 was charged and convicted of kidnapping and theft by the Regional Court, Nelspruit. On 27 November 2008 he was sentenced to 5 years imprisonment for kidnapping and 18 months imprisonment for theft. The court ordered the sentences to run

concurrently, meaning the appellant has to serve an effective sentence of 5 years' imprisonment. This appeal might turn out academic, as, in few months from now, the appellant would have served the full sentence, if he was not released on parole earlier. The appeal, with leave of this court, is only against the conviction.

2. The appeal was on the roll on the 6th September 2011, on which occasion it was struck off the roll after the appellant failed to file the heads of argument. There is nothing on record or from the heads of arguments that explains this delay, especially since the appellant had instructed the Justice Centre to represent him during trial and for this appeal. This inordinately lengthy and unexplained delay ~~since it~~ has a the potential to defeat the whole purpose of appeal.

3. Back to the merits of the appeal. The appellant pleaded not guilty to both counts. In his plea explanation, he stated met the complainant and proposed love after which she accompanied him to his home voluntarily. He spent R30 to buy her food from a shop which they took home with. He paid R15 for each one of them as taxi fare. Once at his place and he wanted to have sex with her, she demanded to see if he has money saying she would charge him R100 since it was at his home. If it was in town, she told him she would have charged him R50. The reason he did not pay is that he had with him only R12. Before she left the next day, he offered to go and borrow R20 from his uncle so he would give her but she declined this saying she would be fine since it was day time. Once at his home he wanted to have sex with her but then she demanded money from him, at which point he realised that she was a sex worker. He did not have money with him and as a result, he did not have sex with her.

4. The complainant's version was that she was walking home after she had alighted from a bus when a taxi stopped near her. The appellant who was a passenger in it offered her lift to her home. She declined the offer saying she was near home. He then approached her, slapped her with an open hand and forced her into the same taxi with the help of the driver. She had with her a hand bag and a bag containing groceries she had bought after work. The taxi was stopped at the appellant's house. The appellant alighted and pushed the complainant into this house. The driver drove off with her groceries in the taxi.
5. Once in the house, the appellant instructed her to undress so they would have sex and she refused. They had a physical struggle and argued until late. He tried undressing her forcefully, causing her clothes buttons to fall off and her panties' seam became loose as a result. In an effort to put him off, she suggested to him that she was suffering from a dreaded disease. She believes this discouraged him. He then took cash, R270 from her handbag damaging it in the process. He kept the house locked and only opened for her in the morning so she could go. She remained in the house the whole night and only left the next morning. She went straight to the police station to lay charges against him. She was not familiar with the area and she did not have money for taxi fare when she left the appellant's house. After laying the charges with the police, she led them to his home and he was arrested.
6. The trial court rejected the appellant's version and convicted him of all the charges. It is now submitted on his behalf that this court should set aside his conviction since the case for the State was not proved beyond a reasonable doubt and the accused's version is reasonably possibly true which entitled him to an acquittal.

7. The State is indeed expected to prove the case for the State beyond a reasonable doubt – see *S v Van der Meyden* 1999 (1) SACR 447 (W). The complainant was a single witness and her evidence should be approached with caution – see *R v Mokoena* 1932 OPD 79 and *S v M* 2000 SACR 484 (W). The cautionary rules do not require that common sense should be replaced – *S v Sauls and Others* 1981 SA 172 (A). Further to this, court can convict on the basis of a single competent witness see section 208 of Act 51 of 1977.
8. In this case, the trial court found the complainant to have been a credible witness and there is nothing from the arguments advanced that suggests that such a finding was misplaced. She was steadfast in her version of events and she stood firm during cross examination without contradicting herself.
9. The appellant's version on the other hand cannot be said to be reasonably possibly true, having regard to the improbabilities inherent in it. If his version is accepted as true, there would be no sense in the complainant not divulging to him the first time they met that she was a sex worker and the fee she would charge. She would not have waited to tell him after he was undressed, ready for sex in his house, at which stage she could find he does not even have sufficient cash. There would equally be no logic why the complainant would agree to join him in a long journey for which he paid R15 in a taxi, only to stop without finishing what she started (the journey towards having sexual intercourse with the appellant) once inside his house.
10. There would have to be an explanation on how the two adult and responsible lovers would embark on a journey with no money that can

secure the safe return of the complainant (who according to the appellant was a newly found girlfriend) by taxi since from his version, she had no money with her and he only had R12. In an attempt to show how caring he was, the appellant told of how he offered to borrow R20 from his uncle so he could give her as taxi fare, an offer that for unknown reasons she declined. But a proper calculation of what he earlier claimed to have in his pocket leaves R55 that he must have had at that stage. Why would there be a need to borrow R20 from the uncle while he still had this amount? To explain his way out he claims he had reserved this to buy electricity. He expects the court to believe that he was willing to go out of his way to borrow R20 from an uncle so his newly found lover would fetch a taxi to work, because it was urgent; but not urgent enough for him to use R55 which he had reserved for electricity. This version was correctly rejected as improbable.

11. It follows therefore that the appeal must fail and it is dismissed.

T.V. RATSHIBVUMO
ACTING JUDGE OF THE HIGH COURT

I agree,

T. M MAKGOKA
JUDGE OF THE HIGH COURT

DATE HEARD:	:08 APRIL 2013
JUDGMENT DELIVERED	:18 APRIL 2013
FOR THE APPELLANT	:ADV J. VAN ROOYEN
INSTRUCTED BY	:PRETORIA JUSTICE CENTRE PRETORIA
FOR THE STATE	:ADV K.M. MASHILE
INSTRUCTED BY	:DIRECTOR OF PUBLIC PROSECUTIONS, PRETORIA