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

CASE NO:A296/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: 19/06/2024

SIGNATURE:

In the matter of:

D[...] P[...] N[...]

Appellant

And

THE STATE

Respondent

*This judgment is prepared and authored by the Judge whose name is reflected as such, and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of handing down is deemed to be the **19 June 2024**.*

JUDGMENT

BALOYI-MERE AJ

Introduction

[1] The Appellant was convicted on a charge of rape read with the provisions of section 51(1) where life imprisonment was applicable. The Appellant pleaded not guilty to the charge as preferred against him and a trial commenced. At the end of the trial the Appellant was found guilty as charged and sentenced to life imprisonment. As the Appellant was arraigned at the Regional Court and sentenced to life imprisonment, he had an automatic right of appeal to the High Court on both conviction and sentence. This appeal is heard by this court of appeal on those basis.

The State Case

[2] The State called the Complainant who at the time of testifying was 14 years old and she testified that when the incident occurred she was 12 years of age. The Complainant testified that the Appellant was her uncle who has been asked by her father to come and look after the Complainant and her siblings between February 2019 up until July 2019. The Appellant is therefore the Complainant's father's brother.

[3] The Complainant testified that the Appellant called the children, the Complainant included, one by one to his room and asked them about the money that was allegedly stolen.

[4] When it was the Complainant's turn to be asked, the Complainant testified that the Appellant then took off her clothes and penetrated her with his penis. The Complainant further testified that after the rape she then later wrote a letter explaining what happened to her and left it on a sofa where her father could find it.

[5] The State further called the Complainant's father who corroborated the

Complainant's testimony on the letter that was written by the Complainant. The Complainant's father further testified that he asked the Complainant about the contents of the letter and verified that she understood what she wrote in the letter. The Complainant's father further confronted the Appellant who denied having had any sexual intercourse with the Complainant.

[6] The Complainant's father then took the Complainant to the Far East Hospital where the Complainant was medically examined.

[7] The State further called Doctor Madonsela who examined the Complainant at the Far East Hospital. Doctor Madonsela testified that upon examining the Complainant, his clinical findings were consistent with previous penetration.

The Defence Case

[8] The defence called the Appellant who testified that indeed he did call the Complainant and he was alone with the Complainant when he asked her about the alleged stolen money. Appellant further testified that there was no reason why the Complainant and her father could falsely implicate him with a rape accusation.

[9] I now proceed to deal with the grounds of appeal as raised by the Appellant.

Single Witness and Cautionary Rule

[10] The Appellant alleges that the court *a quo* only paid lip service to the cautionary rule and incorrectly applied it when it rejected the version of the Appellant as being reasonably possibly true.

[11] The only witness called by the State who could give a first-hand account

of the rape incident is the Complainant who was 12 years old when the incident occurred. The issue of a single witness has been considered on a number of occasions by our courts and there is a plethora of cases that deals with single witnesses. In **S v Hadebe**¹ and cited with approval in the matter of **S v Mbuli**² by the SCA, it was held as follows:

"the question for determination is whether, in the light of all the evidence adduced at the trial, the guilt of the appellant was established beyond reasonable doubt. The breaking down of a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. But, in doing so, one must guard against a tendency to focus too intently upon the separate and individual part of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in a trial may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that the broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood from the trees".

[12] The court *a quo* followed exactly what *S v Hadebe supra* instructed. The court considered the evidence as a whole in order to come to a finding³. The court further held that if there is any doubt in the court's mind, the accused must then get the benefit of the doubt and also that if the version of the Appellant is reasonably possibly true then the Appellant was entitled to his acquittal. In this regard the court *a quo* cannot be faulted.

[13] Section 208 of the Criminal Procedure Act provides that an accused may be convicted of any offence based on evidence of a single competent witness.

¹ 1998 (1) SACR 422 (SCA) at para 426 F - H.

² ZASCA 78 (07 June 2002).

³ Record judgment page 63 para 20.

The court *a quo* found that the Complainant was a competent witness whose evidence was of such clarity that the court could rely on in order to come to a finding.

[14] The issue of a child witness who is a single witness was also considered in **Woji v Santam Insurance Co Ltd**⁴, **State v Reddy**⁵, and **State v Jackson**⁶ where the court held that a court may not treat the evidence of a complainant in a sexual offence with caution on account of the nature of the offence. The court further held that a court should not easily convict unless the evidence of the child has been treated with due caution.

[15] In this instance, the court *a quo* acknowledge that the Complainant in the matter is a child and that she is also a single witness. The court *a quo* further indicated that the evidence must be approached with caution and the cautionary rules applicable to the evidence of a child and that of a single witness.⁷

[16] The court further found that the Complainant's evidence was corroborated by firstly the J88 form that was admitted as an exhibit. The court further found that the Complainant gave so much detail when she testified and her evidence was, to a large extent corroborated by the Appellant himself.⁸

[17] It should also be borne in mind that the court *a quo* was in a better position to observe the demeanour of the witnesses, appraised the witnesses and also see and hear the words from the mouths of the witnesses, unlike an appeal court.

Late Reporting of the Rape Incidence

[18] There is no time limit for reporting a rape case, unlike other sexual

⁴ 1981 (1) SA 1021(A).

⁵ 1996 (2) SACR 1 (A).

⁶ 1998 (1) SACR 470 (A).

⁷ Record judgment page 64 para 1.

⁸ Record judgment page 64 para 2.

offences that have a 20 year time limit. In **Monageng v State**⁹ in the majority judgment, the court had an opportunity to look at the delay in reporting a rape charge. The court held that:

*"it has been firmly established in a number of studies on the impact of violence, including rape, against women that victims display individualized emotional responses to the assault. Some of the immediate effects are frozen fright or cognitive dissociation, shock, numbness and disbelief. It is therefore not unusual for a victim to present a facade of normality."*¹⁰

[19] A delay in reporting a rape is not necessarily fatal to the prosecution's case. In **S v Cornick and Another**¹¹ the SCA upheld convictions where the complainant had laid charges 19 years after the event. In that case, the delay was fully explained and the complainant was also found to have been a credible witness.

[20] From the facts in this present case, it is clear that the Complainant's father was away from home attending to his initiation and had left the Complainant together with her siblings in the care of the Appellant. The Complainant's father only came home some months later and it was only then that the Complainant informed the Complainant's father about the rape. Also, the method with which the Complainant employed to inform the father clearly indicated that the Complainant was scared, hence she wrote her story on a piece of paper and left it where she knew that her father would find it. The court *a quo* found this explanation satisfactory and plausible.

The Evidence of the State Witnesses

[21] The court *a quo* found that the evidence of the state witnesses was truthful and credible. The two state witnesses who testified were the

⁹ [2008] ZASCA 129 (01 October 2008).

¹⁰ Monganeg *supra* at para 23.

¹¹ 2007 (2) SACR 115 (SCA).

Complainant's father and the doctor that examined and confirmed that the Complainant had been penetrated. There is no reason why the court *a quo* should be faulted for accepting the truthfulness and credibility of the evidence by the state witnesses.

[22] A court of appeal should be slow in interfering with the findings of a trial court unless if the appeal court finds that the trial court's findings of fact and credibility are vitiated by irregularity, or unless also that an examination of the record reveals that those findings are patently wrong. The trial court's finding of fact and credibility are presumed to be correct because the trial court, and not the court of appeal, has had the advantage of seeing and hearing the witnesses and it is in the best position to determine where the truth lies.¹²

[23] In my view, the appeal against the conviction must fail.

[24] The Appellant was sentenced to life imprisonment. A sentence of life imprisonment is prescribed for rape and it can only be deviated from if the court finds substantial and compelling circumstances and impose a lesser sentence.

[25] The court *a quo* did not find any substantial and compelling circumstances to afford it to deviate from imposing a life sentence. It is submitted on behalf of the Appellant that the following circumstances should be considered as substantial and compelling:

24.1 The Appellant was 25 years of age during sentencing;

24.2 The Appellant was a first offender;

24.3 The Appellant was unmarried and has one child aged 2 years;

24.4 The Appellant was unemployed and was relying for maintenance and

¹² S v Jackson 1998 (1) SACR 470 (SCA).

financial support from his father who was employed as a farm labourer; and

24.5 The Appellant had good prospects of being self-rehabilitated without undergoing long term imprisonment.

[26] The fact that Parliament enacted the minimum sentencing legislation is an indication that it was no longer business as usual. A court no longer has a clean slate to inscribe whatever sentence it thought fit for the specified crimes. It had to approach the question of sentencing conscious of the fact that the minimum sentence had been ordained as the sentence which ordinarily should be imposed unless substantial and compelling circumstances were found to be present.¹³

[27] In paragraph 23 of *S v Matyityi*¹⁴ the court held as follows:

"Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as "relative youthfulness" or other equally vague and ill-founded hypothesis that appear to fit the particular sentencing officer's personal notion of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, is foundational to the rule of law which lies at the heart of our constitutional order.

[28] The court *a quo* considered all the factors and did not find any substantial and compelling circumstances that would compel the court to deviate from the minimum sentence that is prescribed by legislation.

[29] Considering the absence of compelling and substantial circumstances and having regard to the best interest of the Complainant at the age of 12, who was raped in her home environment, by an uncle, the sentence imposed by the court *a quo* is proportionate to the crime perpetrated and thus it is just.

¹³ *S v Matyityi* [2010] ZASCA 127 (30 September 2010).

¹⁴ *S v Matyityi* *ibid*

[30] In the circumstances this court does not wish to disturb the sentence discretion of the court *a quo*.

In the circumstances I propose the following order:

1. The appeal against the conviction and sentence is dismissed.

EM Baloyi-Mere

Acting Judge of the High Court

I agree

NP Mali

Judge of the High Court

Appearances for the Appellant

Mapanga BM

Email: brianm1attorney@gmail.com

Cell: 082 971 6655

Appearances for the Respondent

GJ C Maritz

Cell: 084 257 9436