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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

CASE NO.: CC 37/2023

In the matter between:

THE STATE

and

[P...] [J...] M[...]

JUDGMENT

GQAMANA J

Introduction

[1] The names of the accused and some witnesses will not be disclosed, due to the nature of the charges and their ages. The accused faces more than 700 charges relating to inter alia, unlawful possession, creation, production, procuring and transactions facilitating distribution of child pornography in contravention of section 24B (1) (a), (b), (c), (3) of the Films and Publication Act, human trafficking, in contravention of sections 4 (1), 7, 8(1)(c), (d), 10 (l)(b) and (c) of the Prevention and

Combating of Trafficking in Persons Act 7 of 2013, rape, in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, sexual assault, in contravention of section 5 (1) Act 32 of 2007, sexual exploitation of children, in contravention of section 17 (1), (3), (a), (4) of Act 32 of 2007, sexual grooming of children, in contravention of section 18 (1) (c), (2) (b) of Act 32 of 2007, exposing of children to child pornography, in contravention of section 19 of Act 32 of 2007, displaying of child pornography, to persons who are mentally disable, in contravention of section 25 of Act 32 of 2007, using children for or benefitting from child pornography, in contravention of section 20 (1) (c), (2) of Act 32 of 2007, failure to immediately report a sexual offence against a child, in contravention of section 54 (1) (a) of Act 32 of 2007 and bestiality, in contravention of section 13 of Act 32 of 2007, as comprehensively set out in the indictment.

[2] The aforesaid charges were allegedly committed over an extended period between 2015 to 01 September 2022. The complainants/ victims were the accused's minor children who were at all the relevant times herein resident in Paradise Beach, Jeffrey's Bay at the accused's house. Their mother and the accused were in a cohabitation relationship.

[3] The accused pleaded not guilty to all the aforementioned charges and tendered no plea explanation. However, the accused made certain admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977 as set out in detail in exhibit "A" read with the other exhibits Attached thereto.

[4] Number of witnesses were called by the State and below herein I will summarise their evidence in a chronological manner and not in the sequence that they were called. The accused also testified for his defence.

The State's case

[5] The first witness was Constable Azenha, the initial Investigating Officer for this case. Const Azenha interviewed the complainant [D...] the accused's daughter, on 31 August 2022. Pursuant to such interview, he applied for and obtained a search

warrant on 1 September 2022, from the magistrate in Humansdorp to search the accused's house.

[6] On the same day he arrested the accused in Humansdorp and confiscated from him a Samsung Note 5 cellular phone. The accused stepson [R] was also arrested and his cellular phone was confiscated by the police. Both cellphones were handed over to Warrant Officer Opperman together with the password of each phone.

[7] The search warrant was executed the same day and a number of devices including two hard drives, cell phones, PC and USBs were confiscated. After the arrest of the accused, a forensic report was received from W/O Opperman pertaining to the accused's cellphone. Further, the recordings that were found in the accused phone was transcribed, such recordings include a phone call made by the accused to the prosecutor Vicky Rossouw. The transcribed recordings were admitted as true and correct and were handed in marked exhibits "N" and "O". Furthermore, a WhatsApp chats between [R...] and the accused was exported from [R...]'s phone. The cellphone print out was admitted and handed in as exhibit "NL". The chat included reference to nude photos of the complaint [D...], as well as those of Ms [N...]. There were also photos found from [R...]'s phone that were sent from the accused's phone.

[8] A second search warrant on 1 December 2022 pursuant to information received from the accused minor child son [J...]. In the course of the execution of the second warrant, some devices were found hidden in the ceiling at the accused's house. Such devices were also handed over to the forensic expert Mr Johan Classen in Pretoria for purposes of extraction of the electronic data. A working copy of the various devices was given to Const Azenha for him to tag the relevant information in order for Mr Classen to complete his forensic reports. Const Azenha exported the images found from some of the devices which he considered constitute child pornography and handed them to Mr Murendeni, an official from the Films and Publication Board, in order to certify such images which could be classified as child pornography. The report confirmed that those images constitute child pornography. The affidavits deposed to by Mr Murendeni and the annexures thereto were admitted and handed in as exhibits "L" and "M".

[9] Azehna's evidence in respect of the confiscation of the cellphone devices, the exporting of the WhatsApp chats and the arrest of the accused was not challenged. Ownership of the PC that was in the main bedroom was admitted by the accused.

[10] The next witness was W/O Opperman. He was involved in the execution of the search warrants at the accused's place of residence and the confiscation of the devices listed in paragraphs 10 to 14 of the section 220 admissions. The aforesaid devices were properly sealed in forensic bags as evident in exhibits "H" and "J", the photo albums. Further evidence was that he obtained information from the two hard drives of the accused's PC and the Samsung note 5. The digital information from the devices and the cellphone was not altered or tempered with. The witness identified the photos that he had extracted from the accused's Samsung note 5, i.e. exhibit "S". In addition, he testified about exhibit "U", the schematic presentation whereby he found certain linkages pertaining to the classified child pornography that was found on accused's cellphone device, the 640 GB and 160 GB hard drives that were removed from the accused's PC.

[11] The main factual witness in relation to most of the counts was Ms [D...], the accused biological daughter. It was her evidence that the accused introduced and exposed her to pornography from an early age of 10 years. The accused would watch pornography from his TV in his bedroom and also in his PC in her presence. The PC would be left open on porn sites even when the accused goes to work. On some occasions the accused would watch pornography in the presence of her mother, or her half-brother [R...] and her younger siblings. When she was approximately 11 or 12 years of age, the accused would touch her breasts and her vagina. She vividly recalled an incident whereby the accused sucked her breasts while they were watching 7 de Laan TV program, at the time she was between ages 13 or 14 years. There were numerous occasions that the accused would touch her legs and rub her vagina while watching TV. There was also an incident where the accused said to her that he would insert his finger in her vagina and that was said in the presence of her mother. The accused stopped touching her breasts and vagina when she was 15 years old. She also testified about an incident where the accused licked her vagina. She also mentioned incidents of sexual violation and rape by her

half-brother. On some occasions the accused was present and would take photos using his phone of such sexual acts. The accused also gave instructions in respect of sexual positions that she and her half-brother must perform. She also mentioned an incident when she was approximately 14 years wherein, she was forced to commit fellatio on the accused in the presence of her half-brother. Her half-brother also raped her on her fifteenth birthday, but the accused was not present on this occasion. That was not the only rape incident, because her half-brother again raped her at Joshua's house, but she never reported such incident to the police.

[12] There were also incidents where the accused would take photos of sexual acts between herself and her half-brother. The accused would sometimes record such incidents. She was alerted by her younger brother [J...] that her photos were posted on the porn sites by the accused.

[13] She also gave evidence about the accused taking photos from his PC of her seated on top of her half-brother and where she was also sucking his penis. She also testified about her nude photos that she had forwarded to the accused on his instructions after he had found out that she had sent such photos to her boyfriend. She also mentioned that she reported to Ms Jobse that her half-brother had raped her. In addition, she also made a report of the rape incident by her half-brother to her aunt Louisa, but she did not implicate the accused. She feared that no one would believe her if she were to implicate the accused. Pursuant to her report about her half-brother, the latter was kicked out of the house and went to reside with his maternal grandmother. Although he was no longer welcomed at their house, but it was as business as usual. She confirmed that she was taken and examined by Dr Maritz on 25 January 2021 as per the J88, exhibit "E" which was admitted as true and correct.

[14] Her younger brother [J...] informed her that the accused was warned about the possible search that the police were to conduct at their house. The witness also mentioned that her mother reminded her that what happens in their house must remain internal. She further testified that the accused also warned her about possible investigation by the police and that she should not say anything to them. Despite

taxing and lengthy cross examination, the witness was unshaken and refuted the accused's propositions put to her that he denies that he had sexually abused her.

[15] The report that her half-brother had raped the complainant [D ...] was confirmed by the witness Ms Jobse and also Ms Wentzel.

[16] The accused's minor son [J...] also testified. His evidence was that he was taught from the age of 10 years about the process of hacking by the accused. The accused informed him that it was the family business. His evidence was that users would be able to view the porn sites on the accused's shop and purchase those sites that that they find interest on and payment would then be effected into the accused's PayPal account. The witness also had a PayPal account which was used as a backup, but all the payments to his account would eventually go to the accused. He also testified that the accused had pornography of naked women on his computer screen. He also saw nude photos of her sister [D...] on the accused's computer. His evidence was also that the accused had encrypted files on his computer. He testified that the accused built up computers. He mentioned that although his half-brother was kicked out of their house, but often he would come and sleep over at their house. He also testified about the instructions given to him by the accused that he must hide certain items because of the possibility that the police were investigating the accused and his hacking.

[17] The other witness was Ms [B...], she was 34 years of age but due her mental capacity of 6-9 years old child, her full names would also not be disclosed. Her evidence was that the accused would watch "sex movies" on his computer. She was aware that the accused was also selling pornographic videos online and was getting money for that. She also testified about her watching an Afrikaans porn. She also mentioned that she saw the accused having sex with the family dog. It was disputed in cross examination that the accused had sex with the dog. In addition, it was put to her that the age restriction on the Afrikaans porn was 16.

[18] The accused's partner Ms [A.. N...] testified and confirmed that she was residing at the accused's house in Paradise Beach with her children. She confirmed

that she pleaded guilty for failure to report a sexual offence in respect of her minor daughter and for defeating the ends of justice. Her daughter [D...] had reported to her that the accused fiddled with her, but she never confronted the accused about it because she wanted to protect her children and had no alternative accommodation. She was also scared of the accused as the latter would often yelled at her. Her evidence was also that the accused's PC would be on the whole day on pornography even in the presence of her minor children. The accused would watch adult and child pornography. She also confirmed that she had sent her own nude photos to the accused. She was also aware that the accused locked her daughter and [R...] in the room and would at times take the key with him. She further testified that the accused saved his pornography on the hard drives. She disavowed any knowledge about the accused having sex with the family dog. It was denied in her cross examination that the accused's PC was always on pornography sites.

[19] [R...] testified that he was initially charged together with the accused but his trial was separated and he pleaded guilty to rape of his half-sister. He is the accused's stepson and was also residing with them at the accused's house in Paradise Beach. He confirmed that they were exposed to child pornography by the accused from a very young age. They would often watch pornography in the accused's bedroom. His evidence was that he was at the age of 8 years when the sexual acts involving her sister [D...] started. He mentioned that the accused would lock him and her sister in the room and would be intimate with them. He also mentioned that he instructed him and her sister to perform sexual acts, and he would take videos of same. Further the accused had also instructed him and her sister to perform sexual acts including '69 position' and would take photos of such either using his phone or the webcam on his computer. He was also instructed by the accused to force his half-sister to commit fellatio with the accused and he took photos of such using the accused's phone. Accused instructed him to forward to him nude photos of his girlfriends. Regarding the rape incident at Joshua's house, his evidence was that he was instructed by the accused to sleep over at that house, to have sex with her half-sister and to take video and photos of such acts and to send same to him. He also confirmed the chat between him and the accused as contained in exhibit "N". The accused had also sent to him the nude photos of his mother. The accused and his mother instructed him to keep quiet on whatever happens in the

house. He also testified about the voice note that he had received from the accused and that the same voice note was played to his sister. He also mentioned that the accused has his own blog where he used to sell pornographic sites and was also assisted by his son [J...] and the proceeds of such sales were paid into the accused's PayPal accounts.

[20] The State also led evidence of Col Kirsten Clark, a psychologist in the employment of the SAPS. Her evidence and her reports, i.e. exhibits "O2" and "Q" form part of the admissions in terms section 220. She confirmed her findings that both the accused's daughter and son that gave evidence in this trial were groomed and exposed to pornography from an early age. Furthermore, the accused's daughter [D] was also sexually abused.

[21] To insulate its case on the extraction of the data on the various devices that were confiscated from the accused and his house, the State led the expert evidence of Mr Johan Claasen, a senior criminal investigator and a computer forensic analyst employed by the United States Department of Homeland Security stationed at American Embassy in Pretoria. His forensic report was handed in as exhibit "K" together with the annexures thereto. It forms part of the exhibits that were admitted by the accused in terms of section 220. His additional report is also contained in exhibit "W". Much is said about the latter in this judgment the content and the importance of such reports in relation to the charges herein. I now turn on to summarise the defence evidence.

Accused's evidence

[22] The accused was the biological father of the complainant [D...] and [J...]. He was in a cohabitation relationship with the mother of his children Ms [A... N...]. All of them as well as his stepson were residents at his house in Paradise Beach. The witness [B...] also resided with them.

[23] His evidence was that he was arrested on 1 September 2022 at Humasdorp by Const Azehna. His cellphone, a Samsung note 5 was confiscated by the arresting officer. He also gave the arresting officer his PIN code of his phone. On both

occasions he was not present when the police searched his house. His defence is that of denial. He testified that he was shocked when he heard the evidence of her daughter because they had a good relationship. He was a present father to his children and would often assist her daughter with her school homework. Initially he also had a good relationship with his stepson. But that deteriorated due to his stepson's behavior. He described his stepson as the "Prince of Darkness".

[24] Prior to his arrest, he was employed as a technician and also conducted a side business wherein he was advertising on facebook newsletters. Updating of his facebook page on his computer was time consuming and because of that, he had no time to watch pornography.

[25] He admitted that there was a PC in his main bedroom, but it had no password and accordingly it was readily accessible to any person at his house. He even referred to occasions where his stepson and his friends would spend time on the PC. In addition, he also mentioned that his son [J....] also had access to that PC. He denied that he has ever downloaded pornographic material on his PC, nor that he had exposed his children to pornography.

[26] He denied that he has ever instructed his stepson to perform sexual acts with his daughter and that he took photographs of such acts.

[27] He admitted that he was aware of the report that his stepson had raped his daughter, but he did not report same. His defence to that was that, he called the prosecutor Vicky Rossouw for an advice and on the basis of the information from her, he explained the pros and cons to his daughter of reporting such incident and his daughter elected not to open case against her half-brother.

[28] He also denied that he had instructed his stepson on the voice note that the latter must have sex with his daughter. The allegation that he had sex with his dog was also denied. He admitted that [B...] stayed at his house, but he denied that she was exposed to pornographic material.

[29] He was aware that [B....] was mentally disabled, but he admitted that he had put on the program 'sex in Afrikaans' for his partner and [B...] to watch.

[30] He also denied that he had locked up his daughter and his stepson in a room. His evidence was that there were no keys to lock the rooms. He also mentioned an extra-marital relationship that his partner had and that he had informed her to stop it or otherwise he would evict her from his house.

[31] He mentioned that he was a good father to his children and a disciplinarian. His evidence was that his daughter was influenced by her home schoolteacher, Odette to lay criminal charges against him. In support of his suspicion, he testified that soon after his arrest his daughter had tattoos and piercing, something that she had aspired but he would not allow her to do.

[32] In cross examination, the prosecutor had no difficulty in exposing inconsistencies on his version. Furthermore, some of his evidence was never put to the State witnesses. He also testified that his stepson after he was kicked out of his house he threatened him that he will ruin his future.

[33] He testified that he spoke to B[...] and mentioned to her that he suspects that his stepson is sexually abusing his daughter.

Discussion

[34] It is trite that in a criminal trial the onus is upon the State to prove the guilt of an accused person beyond reasonable doubt.¹ Equally trite is the principle that an accused person should be acquitted if his evidence is reasonably possibly true.

[35] Although the onus is on the State, but in *R v Mlambo*², Malan JA said the following in respect of the standard of prove required;

¹ *S v V* 2000 (1) SACR 453 (A).

² 1957 (4) SA 727 (A) at 738 B.

'there is no ligation on the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged'.

[36] In the analysis of the evidence, the court is required to evaluate the evidence before it in its totality and judge the probabilities in the light of all the evidence, and should not consider evidence in a compartmentalised manner.³

[37] Furthermore, in *S v S*,⁴ the Supreme Court of Appeal held:

'A court does not look at the evidence implicating the accused in isolation to the determine whether there is proof beyond reasonable doubt, nor does it look at the exculpatory evidence in isolation to determine whether it is reasonably possible that it might be true. The correct approach is set out in the following passage from *Mosephi and Others v R* LAC (1990/1984) 57 at 59F/H: *The question for determination is whether in the light of all evidence adduced at the trial, the guilt of the [accused] has been established beyond reasonable doubt. The breaking down of a body of evidence into component parts is obviously a useful guide 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 a 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 for the trees.'*

³ *S v van der Meyden* 1999 (1) SACR 447 (W).

⁴ [2012] ZASCA 85.

[38] It will be prudent for me to quickly dispose of the less contentious count, i.e. Count 727, relating to the alleged rape of the accused's daughter. Counsel for the State conceded that accused's daughter gave no evidence about this incident and accordingly the accused stands to be acquitted on this count. In light of such concession, I will say no more about this count.

[39] In respect of the charges of production, possession, procuring, facilitating and distribution of child pornography and exposing of children to pornography, the State's evidence of the forensic expert Mr Classen is vital. It was Classen's evidence that large amount of pornographic material was extracted from various devices that were handed over to him by Const Azehna. Those devices were confiscated from the accused's house during the search by the police as per the evidence of both W/O Opperman and Const Azehna. The cellphone device was confiscated from the accused at the time of his arrest. The chain evidence in respect of the collection, handling and submission of all the devices that were confiscated was not challenged. The accused's defence was that he had no knowledge of the presence of such pornographic material on his PC because it had no password and it was accessible and also used by his son [J....] and his stepson. He made mention of an incident where he saw his stepson and his friends at his house, and they were on his computer the entire time. This crucial version was, however, not put to his stepson during his cross-examination.

[40] All the State factual witnesses testified that, the accused would spend most of his time on his PC watching pornography. The evidence of his daughter was that the accused would watch the pornography with her in his bedroom and sometimes in the presence of her other siblings. Her evidence in this regard was corroborated by her mother and her half-brother.

[41] His daughter gave a clear and consistent evidence not only about the pornography on the accused's computer, but also her exposure to it from a young age. Despite a lengthy and strenuous cross examination, she maintained her version with calmness. She also gave clear evidence about the rape incidents by her half-brother and also the accused. She also explained herself the reasons for not

implicating the accused in her report to Louisa. Her explanation to me was understandable in the circumstances. The accused was her father and her mother had instilled a culture to her from a very young age to remain mute and not disclose what was happening at their house. [D...] was also informed by her brother [J...] that the accused was also selling pornography to his clients in exchange for payment with money. Her evidence on this point was corroborated by her brother [J]. Her mother also confirmed that the accused was selling porn on his sites.

[42] What also convinces me that the accused had knowledge of the pornography on his hard drives, was his instruction to his son [J] that, the latter must hide some of the devices when the accused was alerted by his partner that the police were investigating him. An innocent person, oblivious of pornographic material on his devices would not have given such instructions to his son. It is common cause that, when the accused's house was searched on 01 December 2022, some of the devices were found hidden and pornographic material was also found in some of those devices. His son also testified that the websites he would often hack were mostly pornography. He mentioned that the users would view the sites on the accused's shop and would click on the sites that they wanted to buy and payment for that would be then made into the accused's PayPal account.

[43] Even the witness [B...] testified that the accused would often watch 'sex movies' (pornography) on his computer. This also negates the accused's defence that he had no knowledge of the pornography on his devices.

[44] His stepson also testified that they were shown pornography by the accused on his computer of men and women being intimate and also of female persons having sex with animals.

[45] Counsel for the accused submitted that I should approach [R...]'s evidence with caution because he is an accomplice and he had struck a deal with the prosecution regarding sentence on the charges against him related to this matter. Indeed [R...] was an accused in this matter, but his trial was separated and he pleaded guilty.

[46] In *S v Hlaphezulu & Others*⁵, Holmes JA, said the following about the reasons of approaching the testimony of an accomplice with care that:

'First, he is a self-confessed criminal. Second, various considerations may lead him falsely to implicate the accused, for example, a desire to shield a culprit or, particularly where has not been sentenced the hope of clemency. Third, by reasons of his inside knowledge, he has a deceptive facility for convincing description - his only fiction being the substitute of the accused for the culprit.'

[47] Before convicting an accused person on the evidence of an accomplice, the court must satisfy itself of the merits of the accomplice and the demerits of the accused as a witness. [R...] has already been sentenced and as such there is no hope of clemency for him. His evidence was also corroborated by the other State witnesses, namely, his mother, his half-brother [J...] and his half-sister in relation to the accused's knowledge that there was pornography on his computer. In his evidence he also touched to the fact that the accused exposed them to pornography from young age and that the accused was also involved in selling porn on his sites. [R...] was an impressive witness and I'm satisfied that his evidence is reliable and was corroborated by other State witnesses.

[48] In respect of the charges for rape, sexual assault, sexual grooming and sexual exploitation, the accused's daughter gave clear and detailed evidence of the various incidents when the accused raped, sexually assaulted and exploited her. There was also evidence that the accused arranged for her to meet with her half-brother so that the latter would perform lewd sexual acts with her. She testified about an incident whereby the accused licked her vagina. She also testified about the incidents that the accused instructed her and her half-brother to perform certain sexual positions while he was either taking videos or photographs of such incidents. [R...] also corroborated most of her evidence including the incident where [D...] was forced to commit fellatio on the accused. Insofar as there were contradictions between their evidence on this point, such contradictions were minor and immaterial

⁵ 1965(4) SA 439 (A) at 440D-E.

in the broader context of the evidence before me. Col Clark, the psychologist from the SAPS also confirmed her findings that [D...] was sexually groomed and abused over a long period of time. The content and correctness of the reports of Col Clark, exhibits '02' and 'Q' were admitted by the accused in terms of section 220.

[49] The accused denied all these incidents. In his suspicion suspects that her daughter was influenced by her home schoolteacher Odette to open a case against him. He painted a bad picture of both Odette and her boyfriend that, they were using drugs and were shady characters. He also mentioned that he had resisted and refused to let her daughter to have tattoos but as soon as he was arrested, he saw her that she had tattoos. There was so much overwhelming evidence against the accused. On credibility the accused was evasive and would often give long-winded answers even on simply questions by his own counsel. In addition, he had a tendency of shifting blame on others on each occasion he finds himself cornered in cross examination. He was also argumentative and less truthful.

[50] With regards to the charges for failing to report a sexual offence against children, it was clear from the evidence of Louisa that the accused was aware that his stepson had raped his daughter. The accused's partner also corroborated that evidence. [D...] also testified about her report to Louisa. The accused's version was that, he called the prosecutor Vicky Rossouw and spoke to her about this incident as well the sexual molestation of his other children by his stepson. Despite such discussions with the aforementioned prosecutor, he did not report such incidents to the police. On his own evidence there was no valid defence from not reporting such incidents. Act 32 of 2007 creates a duty to report sexual offences committed with or against children.

[51] In relation to the charges of exposing or displaying child pornography to children and also persons who are mentally disabled, the evidence of the accused's daughter painted a graphic picture that, watching pornography was the order of the day at the accused's house. Her evidence on that score was corroborated by her mother and by both her brothers. Further exhibits 'K', 'L', 'M' and 'W' bear testimony to the large amount of pornographic material which was extracted from the accused's devices. Some of the images were classified as child pornography in terms of the

report of Mr Murendeni as I have mentioned earlier on above. The witness [B...] also testified that the accused caused her to watch porn called 'sex in afrikaans'. It is common cause that [B...] is mentally disabled and the accused was also aware of that. The accused confirmed in his evidence that he had put on the program which comprised of sex episodes and it was shown to [B...]. The nature of this program as described by both the accused and [B...] falls within the description of pornography as defined in Act 32 of 2007.⁶

[52] In relation to the human trafficking and the related charges, these are all statutory offences, but the onus remains on the State to prove them.

[53] Section 4 of Act 7 of 2013 states that:

'4 (1). Any person who delivers, recruits, transports, harbors, sells, exchange, leases, or receives another person within or across the borders of the Republic, by means of-

- (a) a threat of harm,
- (b);
- (c) The abuse of vulnerability;
- (d);
- (e);
- (f);
- (g);;
- (h);
- (i); (those left blank are irrelevant herein) or
- (j) The direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons.'

⁶ Section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

[54] Counsel for the defence argued that firstly there was no evidence of trafficking. Secondly the trafficking counts amount to splitting of charges which would result to duplication of convictions. On the other hand, the State submitted that the evidence shows that the accused delivered [D...] to stepson when he allowed her to sleep over at Joshua's house because he had arranged with stepson to sleep over at the same house with the purpose of the latter to sexual exploit his daughter.

[55] The word "deliver" is not defined in Act 7 of 2013, and neither of the counsel referred me to any authority on the meaning of 'deliver' in the context of this Act. The literal meaning of 'deliver' is to give or hand over something to somebody's care or control. The process of human trafficking has several phases, *inter alia*, the act, the means and the purpose. In general, it starts off with the delivery or recruitment of the victim followed by moving the victim to a place where s/he will be exploited. The purpose of moving the victim is to alienate her to ensure that she becomes vulnerable and easier to exploit. The actual exploitation is not required to be present in order for an accused to be convicted of human trafficking.

[56] Abuse of vulnerability for purposes of section 4(1) , means an any abuse that leads to a person to believe that s/he has no reasonable alternative, but to submit to exploitation⁷.

[57] The complaint [D...] was a minor and a female person. Evidence as confirmed by [R...] and the transcribed recordings of the conversation between him and the accused proves that an arrangement was made by the accused to ensure that the victim [D...] sleeps over at Joshua's house for purposes of [R...] to sexually exploit her and to take photos of such acts and to send them to the accused. It means the accused alienated her and delivered her to his stepson in order to ensure that she becomes vulnerable and easier to exploit. [D...] gave evidence that his half-brother raped her on that particular night. The accused and his partner came and fetch her and his half-brother at Joshua's house. The accused denied this incident. However, the objective evidence of the transcribed recordings of his conversation with his stepson negates his defence. In addition, there was evidence that naked photos of

⁷ S v Ayuk & others (46/2019) [2024] ZAWCHC, 2024 (2) SACR 609 (WCC) (24 May 2024).

[D...] and other unknown minor children and female persons were extracted from the accused's devices. The evidence of accused's son [J...] was that pornography would be downloaded into the accused sites and buyers would browse and click and buy those sites that they found interesting and then payment would be made to the accused's PayPal account or sometimes to his account, but at the end all that money will go to the accused. [R...] also corroborated that evidence. Even the accused partner, Ms [A..N...] confirmed it. Considering this evidence in totality, the accused must be found to have committed the offences of trafficking in terms of sections 4(1), 7, 8(1)(c) and (d) of Act 7 of 2013.

[58] However, in relation to the charges for contravention of section 10(l)(b) and (c) of Act 7 of 2013, i.e. counts 724 and 725, my careful analysis of the evidence as a whole in the context of this case, it would amount to a duplication of convictions to convict the accused on these charges.

[59] In relation to the charge of bestiality, [B...] was a single witness and in terms of section 208 of Act 51 of 1977, an accused person may be convicted on the evidence of a single witness for as long as the court is satisfied that the evidence is clear and satisfactory in all material respects.⁸ The manner in which she described this alleged incident was not clear to me. Fatally to the State's case, although according to [B...] the alleged incident was reported to the accused's partner, Ms [A... N...], but the latter disavowed any knowledge about it. The fact that pornographic material of female persons having sex with animals were found on the accused's devices, is not corroborating evidence. I still have doubt in my mind that the accused committed this offence and that the benefit of doubt must weigh in favour of the accused.

[60] On credibility, I have already indicated above that the State witnesses impressed me as honest and reliable. They corroborated each other on most issues. The evidence of the factual witnesses was also corroborated by the large amount of pornographic material which was found and extracted from the accused's devices. Where there were contradictions between some of their evidence such

⁸ Rugunanan v S (259/2018) [2020] ZASCA 166 (10 December 2020).

contradictions are not only minor and immaterial, but also understandable considering the time that had passed since these incidents occurred. But at the end, their evidence was remarkably good.

[61] Contrary to the State witnesses, the accused did not impress me as a credible witness. He was evasive and argumentative at times. He was less truthful and always shifted blame to others. His evidence was simply unbelievable and his version is not reasonably possibly true and is rejected as false. Accordingly, that the State has discharged the onus and proved the guilt of the accused beyond a reasonable doubt.

Conclusion

[62] In the circumstances and for the reasons stated above, I find as follows:

1. Counts 4 - 714 (unlawful possession of pornography) - Guilty
2. Count 715 (unlawful creation and production of child pornography) - Guilty
3. Count 716 (unlawful importing or procuring of child pornography) - Guilty
4. Count 718 (unlawful transactions facilitating and distribution of child pornography) - Guilty
5. Counts 719- 723 (human trafficking) - Guilty
6. Counts 724 and 725 (contravention of section 10(1)(b) and (c)- Not Guilty
7. Count 726 (rape) - Guilty
8. Count 727 (rape) - Not Guilty
9. Count 728(rape)- Guilty
10. Counts 730 and 731(sexual assault) - Guilty
11. Counts 736 -738 (sexual exploitation of children) - Guilty
12. Counts 739 and 741(sexual grooming of children) -Guilty
13. Count 742 (displaying or exposing of child pornography or pornography to children) Guilty

14. Count 743(displaying or exposing of child pornography to a mentally disabled person)- Guilty
15. Counts 744 and 745(using children for and benefiting from child pornography)- Guilty
16. Counts 746 -748(failure to immediately report sexual offences against children)- Guilty and
17. Count 756 (bestiality) - Not Guilty.

N GQAMANA
JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the State	:	<i>Adv I Cerfontein</i>
Instructed by	:	Director of Public Prosecutions Gqeberha
Counsel for Accused	:	<i>Mr D Erasms</i>
Instructed by	:	Legal Aid South Africa Gqeberha
Heard on	:	7, 8, 10, 20, 21, 22, 23, May 2024; 27, 28, 29, 30, 31 January 2025; 3, 4, 5, 6, 12, February 2025; 15 April 2025
Judgment delivered on	:	22 April 2025