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

CASE NO. CC82/2014

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES

DATE

SIGNATURE

In the matter between:

DATE: 21/7/2014

THE STATE

And

[S.....] [V.....]

Accused 1

[F...] [H.....]

Accused 2

JUDGEMENT

DE VOS J:

[1] This is the judgment on conviction where accused 1, a 26-year old female, and Accused 2, a 31-year old male, are charged with rape and the creation, production or contribution to, or assistance in, the creation and production of child pornography or the sexual exploitation of a child. Counts 1 and 3 both pertain to the charges of rape committed with a minor aged 2 – 3 at the time of the commission of the crimes. Both these crimes were committed during December 2012. Count 11 refers to the

charge of intentionally and unlawfully creating or producing video footage which contains scenes of child pornography as set out in the indictment. At the start of the trial the State informed the Court that Counts 2, 4, 5, 6, 7, 8, 9 and 10 as set out in the indictment has been withdrawn. Therefore only counts 1, 3 and 11 remained relevant.

[2] Accused 1 is represented by Advocate Sibuyi and Accused 2 by Advocate Kruger. The State is represented by Advocate Wilsenach. Both accused were warned that the provisions of the Minimum Sentences Act are applicable on counts 1 and 3 before they pleaded, and they both confirmed that they are aware of the contents of the Act and that they were warned about the effects of this Act. This was also confirmed by what is set out in the plea explanations that the Court will refer to. Both the accused pleaded guilty to counts 1, 3 and 11 as set out in the indictment. On count 1, accused 1 pleaded guilty as the main perpetrator of the offence while accused 2 pleaded guilty as an accomplice to the offence. On count 3 the reverse is applicable where accused 2 pleaded guilty as the main perpetrator and accused 1 pleaded guilty as an accomplice to that charge. Thereafter the respective plea explanations of the accused, which were prepared in terms of the provisions of Section 112(2) of the Criminal Procedure Act, Act 51 of 1977, were read out. I am not going to repeat the contents of those documents as this was already fully read into the record by the legal representatives of the accused. Both the accused confirmed that they have signed the plea explanation documents, that they are satisfied with the contents thereof and that they are prepared to admit same in terms of the provisions of Section 220 of the Criminal Procedure Act as far as it contains any admissions.

[3] Their statements can briefly be summarised as follows. The complainant in counts 1 and 3, who is also the subject of the complaint in count 11, is a minor child, [R.....] [V.....]. She was born on the 18th June 2010. Accused 1 is the biological mother of the minor child, while accused 2 stood in the position of a parent to the minor child. It is common cause that during the commission of the offences set out in the indictment, Accused 1 was separated from the biological father of the minor child. She was friends with Accused 2 and had a sexual relationship with him. Apparently accused 1 and 2 lived together and the biological children of accused 1, including the complainant and her minor brother, stayed with the two accused.

[4] As set out in the indictment as well as the respective plea explanations, both accused acted with a common purpose in the commission of the offences referred to in counts 1, 3 and 11. They were not only actively participating, encouraging and aiding one another in the commission of the offences, but were also acting in the capacity as the parents and/or guardian and/or person in loco parentis of the complainant. As such they failed to protect the child victim and prevent the sexual offences from occurring. The evidence further discloses that accused 1, at a certain stage during her relationship with accused 2, borrowed a video camera from her brother in law. The two accused filmed their sexual interaction with each other and also included the complainant in their actions. The deeds performed with the minor child are set out in the plea explanation. The Court does not find it necessary to deal with these acts in detail, save to say that the minor child was raped as set out in counts 1 and 3 respectively and that the rape of the complainant was filmed by the two accused. The two accused created video footage of their sexual interactions with the minor child on at least two separate occasions. These

recordings were later discovered when the video camera was returned to accused 1's brother in law (from whom the video camera was initially borrowed), who then discovered the footage and informed the South African Police Service thereof. The SAPS subsequently arrested the two accused.

- [5] The Court is satisfied on the admissions and the facts as set out in both plea explanations marked Exhibit A and B respectively, that both accused understand the contents of the charges against them, that they are fully aware of the allegations put to them, that they intended to plead guilty and that they admit all the relevant facts and elements of the crimes as set out in the indictment. In their respective plea explanations both the accused elaborated on their acts to substantiate their individual pleas. I am satisfied that both accused are guilty as pleaded. Accused 1 and 2 both are found guilty on counts 1, 2 and 11 as set out in the indictment.

DE VOS J
JUDGE OF THE GAUTENG
DIVISION OF THE HIGH COURT

Date of Judgement:

21 July 2014

Appearance for the State:

Adv A Wilsenach

Instructed by:

Director of Public Prosecutions
Pretoria

Appearance for Accused 1:

Adv E Sibuyi

Instructed by:

Baloyi Attorneys
Brakpan

Appearance for Accused 2:

Adv CH Kruger

Riaan Louw Attorneys
Kempton Park