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**REPUBLIC OF SOUTH AFRICA**



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

CASE NO: A724/2015

DATE: 15/6/2016

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|-----|---------------------------------|
| (1) | REPORTABLE: NO                  |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED.                        |

.....  
SIGNATURE

.....  
DATE

In the matter between:

**BHEKUYISE LUSEN SHONGWE**

Appellant

and

**THE STATE**

Respondent

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**JUDGMENT**

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**AC BASSON, J**

- [1] The appellant was convicted and sentenced in the Mpumalanga Regional Court on one count of rape of a minor child aged eight years. He was sentenced to life imprisonment. He approached this court by virtue of an automatic right of appeal against his conviction and sentence.
- [2] The state relied on the evidence of two witnesses: The complainant and her fourteen year old brother - Mr K. K. ("K").
- [3] The complainant, who was eight years old at the time of the commission of the offense, testified that she was playing outside with a friend when the appellant called her. He took her into her father's house where he undressed her and then raped her. She testified that her brother came inside of the house whilst she was dressing herself. The complainant told K. that the applicant had raped her. He undertook to tell their mother. The complainant also testified that she was raped for a second time but she could not remember when. She told the court that on the second occasion the appellant told her to lie on "his sponge" whereafter he raped her. When he was finished he told her to go and bath herself and wash her panty. She explained that she did not tell anyone because the appellant threatened to assault her. He also gave her some money. The matter was reported to the South African Police Services and she was medically examined.
- [4] K. confirmed that on the day in question he knocked on the door but found that it was locked. He returned later to find his sister (the complainant) busy dressing herself. He also found the appellant outside. He confirmed that the complainant had told him that the applicant had raped her. He reported the incident to his mother on the day of her return from Swaziland whilst they were watching television. The appellant who was present at the time made a sign that K. interpreted as that the appellant was going to slit his throat.

- [5] The appellant denied that he had raped the complainant and testified that it was actually the brothers who had abused her. This version was not put to either of the state witnesses.
- [6] The learned magistrate duly applied the cautionary rule to the evidence of the complainant as she was a single witness in respect of the rape incident. Although there are discrepancies in the evidence of the state witnesses, such discrepancies are not, in my view, in relation to material aspects.
- [7] The presiding magistrate made a credibility finding in favour of the complainant and further also took into account that corroboration for the rape was to be found in the evidence of K. who found the door locked at first. When he later returned the door was opened and the complainant was busy dressing herself. At that stage the complainant informed K. that she was raped.
- [8] I am not persuaded that the trial court's credibility findings can be faulted. Furthermore, it is trite that a Court of Appeal will be hesitant to interfere with the factual findings and evaluation of the evidence by the trial court and that a court will only interfere where the trial court materially misdirected itself insofar as its factual and credibility findings are concerned.<sup>1</sup> See in this regard: *S v Francis*:<sup>2</sup>

“The powers of a Court of appeal to interfere with the findings of fact of a trial Court are limited. In the absence of any misdirection the trial Court's conclusion, including its acceptance of a witness' evidence, is presumed to be correct. In order to succeed on appeal, the appellant must therefore convince the Court of appeal on adequate grounds that the trial Court was wrong in accepting the witness' evidence - a reasonable doubt will not suffice to justify interference with its findings. Bearing in mind the advantage which a trial Court has of seeing, hearing and appraising a

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<sup>1</sup> See *R v Dhlumayo and another* 1948 (2) SA 677 (A).

<sup>2</sup> 1991 (1) SACR 198 (A).

witness, it is only in exceptional cases that the Court of appeal will be entitled to interfere with a trial Court's evaluation of oral testimony.”<sup>3</sup>

[9] The appeal therefore, insofar as the conviction is concerned, cannot succeed.

[10] As far as sentence is concerned I am likewise not persuaded that the court below committed a material misdirection or that the sentence is disturbingly inappropriate. The court duly considered the personal circumstances of the appellant. The court also took into account the seriousness of the offence and the fact that the complainant was a defenceless victim of only eight years of age. I am further also in agreement with the submission that the appellant misused his position of trust and took advantage of a young girl to satisfy his own sexual needs.

[11] In light of the foregoing I propose the following order:

The appeal against conviction and sentence is dismissed.

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**AC BASSON**  
**JUDGE OF THE HIGH COURT**

I agree and it is so ordered

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**W HUGES**

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<sup>3</sup> Ar 198J – 199A.

**JUDGE OF THE HIGH COURT**Appearances:

For the appellant : Adv. RS Moeng

Instructed by : Pretoria Justice Centre

For the respondent : Adv. MJ van Vuuren

Instructed by : The State Attorney