

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)CASE NO:

A458/2007

DATE:

8 FEBRUARY 2008

5 In the matter between:

WILLIAM BROWN

Appellant

and

THE STATE

Respondent

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J U D G M E N TDESAL, J:

15 [1] The appellant was convicted in the Regional Court at
Strand on a charge of rape and he was sentenced to 15
years' imprisonment. With the leave of the trial Court, he
appeals to this Court both against his conviction and
sentence.

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[2] At the commencement of the trial appellant's attorney
furnished a plea explanation. It was to the following
effect:

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"En op die klagte van die verkragting sal ons toestemming pleit Agbare. Ons gaan vra vir die Staat om al die feite te bewys".

5 The fact that sexual intercourse had taken place as alleged by the State was not in issue. That much is apparent from the plea explanation and also appellant's later testimony. The factual dispute was with regard to whether the sex had taken place consensually.

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[3] In the circumstances, the debate with regard to identity is spurious. Whether the complainant only saw his shoes is largely irrelevant. Moreover, the appellant is the complainant's brother-in-law, he is married to her sister, and they appear to have been in regular contact. The prospects of an incorrect identification are, in any event, unlikely.

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[4] Appellant's defence of consent is equally unconvincing.

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The complainant's version is to some extent corroborated by the medical evidence. Then there is the appellant's version that the sexual act was actually witnessed by two other persons who threatened to expose him but later laughed about the incident. Appellant, without any explanation, failed to call these individuals to confirm his

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version. Furthermore, the appellant's explanation with regard to when the sex had occurred is also open to considerable doubt.

5 [5] The magistrate fairly and properly rejected his version. That conclusion cannot be faulted. Ms L Joubert, who appeared before us on behalf of the appellant, did not direct our attention to any significant misdirection in respect of the magistrate's factual findings relating to the conviction. Looking at the evidence in its totality, I am 10 unpersuaded that there is any real basis for a finding in favor of the appellant.

15 [6] The sentence appears to be harsh, especially in the light of the appellant's personal circumstances and the harm this incident could possibly cause to the family relations amongst the parties. That may not be a proper basis for us to interfere with the sentence imposed by the magistrate.

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[7] The more important misdirection relates to the minimum sentence provisions applicable in such cases. The appellant has a previous conviction for rape. This factor resulted in the sentence of 15 years' imprisonment. Had 25 it not been for the earlier conviction the magistrate

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probably would have imposed a lesser sentence. In my view, the magistrate lost sight of two compelling and substantial factors which have a bearing upon that sentence. The earlier offence was committed almost 20 years ago. Although the appellant has also committed other offences since then, he has not until now been convicted of any sexual offence. Secondly, the appellant was very young, in fact a teenager, when the earlier offence was committed.

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[8] Rape, as the magistrate has correctly pointed out, is a very serious offence, it involves an attack upon the person and dignity of a woman and severe penalties would, in most circumstances, be entirely appropriate. While we are accordingly at liberty to reconsider the sentence for the reasons I have already furnished, a long term of imprisonment is unavoidable.

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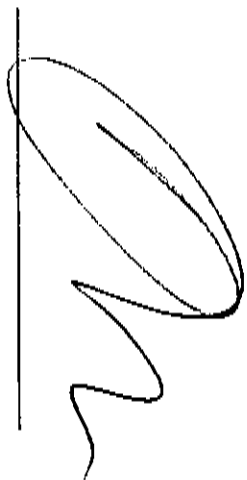
[9] In the result the appellant's conviction is confirmed. His sentence is set aside and substituted with the following:
"10 years' imprisonment".

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DESAI, JMANCA, AJ: I agree.

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MANCA, AJ

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