

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

A405/2006

DATE:

9 MAY 2008

5 In the matter between:

LUBALALO SIMANA

Appellant

and

THE STATE

Respondent

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J U D G M E N T

N C ERASMUS, J:

15 [1] The appellant was convicted in the Regional Court on
one count of rape and sentenced to 10 years'
imprisonment. It was alleged and so found by the trial
Court that he raped a 56 year old woman whilst he at the
time was 18 years old.

20 [2] His defence at the trial was that he placed identity in
dispute. The magistrate gave a well-reasoned judgment
dealing with all the evidence and made credibility
findings. It is noteworthy that at the trial, counsel for the
defence conceded the lack of credibility on the side of
25 the appellant. The victim knew the appellant well, one

could say that he grew up in front of her seeing that she says she knows him for six years and he was 18 at the time so she must have known him from about 12 years old.

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[3] I am satisfied that on the judgment of the magistrate, which is a true reflection of the record, that he did not misdirect himself in any way. In any event, when a court of appeal deals with credibility, the Court will not easily interfere with such findings. On the merits of the conviction, I believe, there is no merit in the appeal.

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[4] On sentence, the magistrate noted all the factors that he should take into account, correctly, in my view, and correctly came to the conclusion that there were compelling and substantial circumstances to deviate from the prescribed sentence of 10 years. For some or other reason which is not clear from the record, the magistrate still imposed the minimum sentence.

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[5] Having regard to all the factors enumerated by the magistrate and the fact that the appellant had spent some time in prison as an awaiting trial prisoner, not being able to raise the R1 000 bail that was set, I am of the view that we are at large to interfere with the


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sentence. Sitting as a Court of first instance I would have imposed a sentence of seven years' imprisonment.

- [6] In the circumstances, I would dismiss the appeal against the conviction, set the sentence aside and replace it with a sentence of seven years' imprisonment.

ZONDI, J.: I concur.


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ZONDI, J

- N C ERASMUS, J.: It is so ordered. The Registrar is requested to immediately write the order and ensure that it is delivered to the appeals clerk downstairs to be transmitted to Drakenstein Prison where the appellant is currently being held as I am sure that his release might be affected by this order almost immediately.

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N C ERASMUS, J

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