IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A166/2010

DATE: 20 AUGUST 2010

In the matter between:

DANIEL KEET Appellant

and

THE STATE Respondent

J U D G M E N T

STEENKAMP, AJ:

The appellant was convicted in the Paarl Regional Court of two counts of rape and one of indecent assault and sentenced to life imprisonment on a count of rape of Bernadine Heyns (count 1) to two years imprisonment for the count of indecent assault on Gurt Alkaster (count 2) and ten years imprisonment on the count of rape of Lorraine Alkaster (count 3). This appeal is in respect of conviction and sentence. The main grounds of appeal raised in respect of conviction in the appellant's heads of argument are the following:

1. That the court *a quo* failed properly to take into account that the complainants were single witnesses and should have exercised caution when evaluating their evidence.

2. That Bernadine Heyns was not properly sworn in and that her evidence should be disregarded, but that in any event Bernadine was not a competent witness.

3. That the learned magistrate erred in various other respects by rejecting the appellant's evidence in favour of accepting the evidence of the complainants.

We have carefully considered each of these grounds and have come to the conclusion that the learned magistrate's convictions cannot be faulted for certain reasons. Firstly, the magistrate was careful to consider that the complainants were single witnesses of the events to which they testified as and of themselves, however she did correctly have regard to the fact that in respect of all three charges, there were strong cross-corroborating evidence. Such corroborating evidence was to be found in the evidence of the complainant's mother, the pastor and the complainant's younger brother, that is in respect of the first charge; in the complainant's mother and the appellant's own evidence under cross-examination in respect of the second charge and in the complainant's emotional state and circumstances in respect of the third charge.

In our view there was, in the circumstances, no reason to disbelieve or detract from the reliability of the three

complainants in respect of their evidence.

The evidence of the appellant on the other hand cannot reasonably possibly be true in our view. Besides that, none of the complainants were challenged or really tested under cross-examination. The appellant's version was never properly or coherently put to any one of them, besides for which the appellant, on his own evidence, made an inconsistent and unreliable witness. He conceded in his evidence that he may have touched the complainant, Gurt Alkaster, near his penis and that he admitted to the pastor that he had sex with Bernadine Heyns, albeit once, and his explanation for that was properly rejected by the magistrate.

We find that the appellant's evidence falls to be rejected and pursuant to which we are satisfied that it was established beyond a reasonable doubt that the accused had committed the offences of which he had been charged. We also agree with the submission made on behalf of the respondent in respect of section 164 of the Criminal Procedure Act 51 of 1977 and in respect of the case of S v B 2003(1) SACR 52 (SCA) that insofar as this may be relevant, a formal inquiry into Bernadine's ability to understand an oath or affirmation was unnecessary.

Upon a perusal of the record it is quite clear that the learned magistrate went to some length to establish and confirm that the social worker who assisted Bernadine in her evidence, Janine Hundemark, was properly sworn in, as well as Bernadine herself. (See record page 130, lines 9 to 11 and page 135, lines 3 to 6.) Besides for the aforegoing, the evidence of Bernadine in and of itself was of sufficient consistency and coherence, both verbally as well as demonstratively by way of the anatomically correct dolls that were utilised to confirm the charge of rape against the appellant in respect of her. For these reasons the conviction stands.

In respect of sentence on the other hand, we are of the view that the learned magistrate erred in finding that there were no substantial and compelling reasons for warranting a lesser sentence than life imprisonment. It is so that the appellant was in a position of trust *vis-à-vis* the complainants and that the offences are serious, particularly the rape which carried the life sentence. However, in view of the personal circumstances of the appellant and the fact that life imprisonment is the most serious sentence that can be imposed, we are of the view that a lesser sentence would have been more appropriate and that we are entitled, in the circumstances, to interfere with that sentence.

The appellant did not indicate in his heads of argument what an appropriate alternative sentence to life imprisonment would be. Before us it was suggested in argument that it would be between 15 years optimistically and 20 years pessimistically. We are of the view that in light of the seriousness of the charge, a sentence of 25 years would be appropriate. We do not believe that the sentences made in respect of the second and third charges ought to be interfered with, even bearing in mind that the appellant was in custody for almost two years.

In the circumstances we find that the appeal succeeds in respect of count 1 and that the sentence falls to be reduced to one of 25 years. The sentence in respect of charges 2 and 3, however, falls to be confirmed and we direct that all three sentences run concurrently. We also direct that the appellant be compelled to undergo counselling in respect of all of the offences before being considered for parole. It is so ordered.

STEENKAMP, AJ

SALDANHA, J: I agree. It is so ordered.

SALDANHA, J

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