

IN THE HIGH COURT OF SOUTH AFRICA**(WESTERN CAPE HIGH COURT, CAPE TOWN)****CASE NUMBER:**

SS39/2010

5 **DATE:**

23 MAY 2011

In the matter between:

DENZIL RUITERS

Applicant

and

10 **THE STATE**

Respondent

J U D G M E N T**Application for Leave to Appeal**

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BOZALEK, J:

Accused 2 seeks leave to appeal against his convictions on 3 May 2011 for abduction, rape, in effect that is contravening section 3 of Act 32 of 2007, and murder and the sentences imposed, namely the two sentences of life imprisonment and a concurrent term of definite imprisonment.

A full judgment was given in which the court's reasoning was fully set out. The grounds of appeal are set out in the /bw

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accused's notice dated 17 May 2011 and I shall not repeat them in the light of the existence of the full judgment which I gave. It is sufficient to state that their central thrust is that, given that the state's case was based on circumstantial
5 evidence, this court erred in holding that the proven facts warrant the finding that the only reasonable inference to be drawn therefrom was that accused 2 abducted, raped and murdered the deceased. Put from a different perspective, it is argued that the proven facts did not exclude every reasonable
10 inference, save for the one which was drawn against accused 2.

It is so that the case against accused 2 was based on circumstantial evidence. Whilst the principles of inferential
15 reasoning may be simple, their application is by no means always a straightforward or uncomplicated exercise. In my view, this was, for various reasons, such a case and I consider that there are reasonable prospects that another court may come to a different conclusion on one or more of the
20 convictions.

As regards sentence, I am less persuaded that accused 2 has reasonable prospects of another court taking a different view on the sentences imposed should the murder and rape
25 convictions be confirmed. However, since that court will

already be seized with the matter and although a marginal case, I am minded to grant leave to appeal on sentence as well. Counsel were in agreement that any appeal should appropriately be heard by a Full Bench of this Division.

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In the result, accused 2 is granted leave to appeal to a Full Bench of this court, both against his convictions and the sentences imposed upon him.

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BOZALEK, J