IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: A118/2015

In the matter between:

FOEAART WILLIAMS Appellant

and

THE STATE Respondent

JUDGMENT DELIVERED ON 27 NOVEMBER 2015

RILEY, AJ

[1] The appellant was convicted in the Regional Court sitting at Parow on two counts of rape of a girl under the age of sixteen (16) years old in contravention of s3 of the Criminal Law Amendment Act (Sexual Offences and Related Matters) Act 32 of

2007 read together with the provisions of ss 51, 52 and Schedule 2 of the Criminal Law Amendment Act 105 of 1997 as amended.

[2] The appellant who was legally represented during the proceedings in the court a *quo* pleaded not guilty.

[3] On 6 February 2015 the appellant was convicted on both counts of rape and on 12 February 2015 he was sentenced to life imprisonment, counts 1 and 2 being treated as one for the purpose of sentence.

[4] The appellant now appeals against both the conviction and sentence in terms of s309(1)(a) of the Criminal Procedure Act 51 of 1977.

[5] The accepted facts are that the complainant who was fourteen (14) years old lived her parents, grandparents and other family members on the same property as the appellant at the time of the incident. The appellant is the complainant's grandmothers' brother. On the day of the incident the complainant accompanied the appellant to Bellville as he intended to buy her clothes. They left for Bellville at about 07h00. When they arrived at Bellville, the clothing shops were closed and the appellant told her that he needed to take something to one of his friends. They then left Bellville and walked through a bush behind Karl Bremer Hospital. When they reached a particular point the appellant stopped and told her that the place he was going to was dangerous and that she should wait there until he returned. The appellant did however not leave immediately. He sat down, lit up a cigarette and smoked. He told her that he would

leave after he had finished smoking and that she should sit. When she did not want to sit, he told her not to be '*hardegat*' (stubborn) and insisted that she sit down. As she did not know the area and as she had nowhere to go, she sat down next to appellant on a towel provided by him.

[6] After appellant was finished smoking, he took a folded newspaper from his bag, unfolded the newspaper, produced a knife and then ordered her to take off her clothes. When she refused, he pushed the knife against her throat and told her that if she did not do so he would kill her. She then took off her clothes. Appellant then lowered his trouser and then inserted his penis in her vagina and had sexual intercourse with her. When she shouted for help, appellant told her to keep her mouth shut as the passing motorist would hear her. When he was done, he took a black plastic round cylindric shaped object which was about 15cm in length with a round front end from his bag. He then inserted this object into her vagina and moved it in and out of her vagina in a thrusting motion simulating the act of intercourse. After he was done doing this, he told her to dress.

[7] They then went to Bellville where he bought her clothes. On their way home, he told her that she should tell no one. When they arrived home, her family was there but she did not say anything. One of the chief reasons she did not tell her grandmother what had happened, was because when she had previously reported to her grandmother that the latter's brother had raped her, the grandmother did not believe her and accused her of lying. Later when she and her niece went to the library, she told

her what appellant had done to her. Her niece told her to tell her grandmother. On their return from the library she told her grandmother. By then the appellant had already packed his bags and left the premises. He did not return.

[8] [Z…….] [W…….], the niece of the complainant, confirmed that they were on their way to the library when the complainant became emotional, started crying and then reported to her that the appellant had raped her and that he had inserted an object in her vagina. Although the complainant had asked them not to tell anyone, she nevertheless told her grandmother.

[9] [D……] [J…….], the complainant's father, testified that he arrived home from night shift at 06h00 and then went to sleep. During the course of the morning his wife woke him and told him that the complainant and appellant were gone. He was concerned about the complainant's well-being and tried to find money to go to Bellville in search of them, but was unsuccessful and returned home. He then went to sleep. He did see the complainant briefly on her return from Bellville but observed nothing untoward and went to sleep again. He was awoken by screaming in the house. His wife and his mother- in-law then reported to him that the complainant had been raped by the appellant. He was very upset and searched for the appellant but could not find him. According to him the issue relating to the appellant taking complainant to buy clothes, was discussed a few days before the incident occurred. Although he did not have any objection to the complainant accompanying appellant to Bellville to buy

clothes, he was only prepared to allow the complainant to go on condition that he or his wife accompanied them as he did not trust the appellant.

[10] Dr Immanuel Mensah testified that on 28 November 2013 he examined the complainant at Karl Bremer Hospital. With reference to the form J88, which he completed at the time of examining the complainant, he testified that he found fresh bruises in the fossa navicularis of the complainant's vagina which in his view supported his conclusion that penetration of the vagina had taken place beyond the labia with a hard object. When he was questioned about whether the fresh bruises could have been caused by the complainant inserting her finger into her vagina, he testified that it would depend on how violently the finger was inserted in the vagina and that it would be very unpleasant for someone to want to inflict such injuries to themselves. He testified that it was possible that the bruises could be caused by a person inserting her finger if the person could withstand the pain that such activity would cause.

[11] I pause to mention here that Dr Mensah had found old tears of the complainant's hymen. It is not in dispute that the complainant testified that she was previously raped by her grandfather when she was much younger and it is accepted that the old tears were caused on that occasion.

[12] In his testimony the appellant denied that he had raped the complainant. According to him, he agreed to take the complainant to Bellville with him as he knew she wanted him to buy her clothes. She had suggested she could help him as he

walked with difficulty and was on crutches. According to him she had been bothering him for weeks to buy her clothes. He testified that as he did not have money to buy the clothes, he decided to go to Durbanville to buy cellular telephones which he would resell to enable him to buy the clothes. En route whilst they were walking in the bush near Karl Bremer Hospital, the complainant suddenly grabbed hold of him; kissed him; pulled down her pants and inserted her finger in her vagina while she was seated in front of him. He testified that he was shocked and astounded by the complainants conduct and had words with her. Even though he was angered by her conduct, he nevertheless decided to take her to Bellville to buy the clothes so that, as he put it, '… *ek wil haar so eenkeer van my - met my rug afkry'.* The appellant denied that he had left the place where he lived as a result of what he had done to the complainant and testified that he had decided to go to a friend at Brooklyn as he had argued with his sister about the rent he had to pay for living there. According to him the complainant was lying and that his family must have told the complainant to make up this story against him.

[13] It was contended on behalf of the appellant that the trial magistrate had erred in placing reliance on the evidence of the complainant as she was a single witness and her evidence was not satisfactory in all respects as she contradicted herself materially and that there were contradictions between her evidence and that of the witnesses.

[14] Ms De Jongh who appeared on behalf of the appellant, also criticised the complainant because she did not run away at the time that the rape incident occurred and because she willingly went with the appellant after the rape and allowed him to buy

her clothes in circumstances where she had ample opportunity to ask for help. She also criticised the fact that the complainant did not tell her parents of the incident. She submitted that Dr Mensah did not exclude the possibility that the injuries to the complainant's vagina could have been caused by the complainant inserting her finger into her vagina as averred by the appellant.

[15] After summarising the evidence of the state witnesses and referring to the relevant legal principles, the trial magistrate found that the complainant had given a '*sinvolle, kronologiese weergawe …van die gebeure*' and that '… *ten spyte van deurdringende kruisondervraging nooit haarself weerspreek nie*'.

[16] It is common cause that the complainant is a child and a single witness who testified in respect of a sexual offence. It is trite law that an accused may be convicted of any offence on the single evidence of any competent witness. It is now accepted law that when considering the credibility of a single witness that a trial court should weigh the evidence of the single witness and should consider its merits and demerits and, having done so, should decide whether it is satisfied that the truth has been told despite shortcomings, defects or contradictions in the evidence. See **S v Sauls** 1981 (3) SA 172(A) 180. In **R v Manda** 1951 (3) SA 158(A) 163 the then AD held that imaginativeness and suggestibility are only two of a number of reasons why the evidence of children should be scrutinised with care amounting perhaps to suspicion'. In **S v V** 2000 (1) SACR 453 (SCA) at para [2] Zulman J expressed the view that "… *although there is no statutory requirement that a child's evidence must be corroborated, it has long been accepted that the evidence of young children should be treated with*

caution …" Although our law no longer recognises a cautionary rule in sexual offences matters, it is accepted that the evidence in a particular case may call for a cautionary approach. See **S v Jackson** 1998 (1) SACR 470 (SCA) 476f. It is also generally accepted that when courts scrutinise and weigh the evidence of young children, complainants in sexual cases and the evidence of a single witness, that the court should not allow the exercise of caution to displace the exercise of common sense. See **S v Snyman** 1968 (2) SA 582(A) 585 G – H and **S v Artman** 1968 (3) SA 339(A) 340.

[17] On a consideration of the record of the proceedings I am satisfied that the trial magistrate was very much alive to the fact that she was dealing with the evidence of a child who was a single witness in a sexual offence and that the court was required to find certain safeguards or guarantees for the reliability of the evidence of the complainant. See **S v Pistorius** 2014 (2) SACR 314 (SCA). I am further satisfied that the magistrate was mindful that due to the nature of the charges that the evidence of the complainant had to be approached with caution. The trial magistrate found guarantees for the reliability in the complainant's version in the fact that she reported the rape to her niece and in the medical evidence which corroborated a finding of forced sexual intercourse. See **S v Gentle** 2005 (1) SACR 420 (SCA) and **S v S** 1990 (1) SACR 5(A). The trial magistrate further found that even though there are discrepancies and or contradictions in the evidence between the complainant and the other witnesses that the discrepancies or contradictions are not of such a nature so as to result in the rejection of the whole of the complainant's or the evidence of the witnesses. See **S v Oosthuizen** 1982 (3) SA 571(T) 19 576.

[18] There is no merit in the criticism levelled against the complainant that she did not cry for help and or that she did not run away at the time that the rape occurred. On the evidence, the complainant did scream for help. She further testified that she could not flee as appellant was next to her. He had produced a knife, threatened her with it and told her to undress. When she refused, he held the knife against her throat and told her he would kill her. During the time that he raped her, he had the knife in his hand and held it next to her head. Considering the situation that she found herself in, she can hardly be criticised for not running away.

[19] She further gave a plausible explanation as to why she went with the appellant to Bellville. She testified that she was scared and that although she wanted to get away, she did not have money and did not know which way to go. It is not unreasonable to conclude that she was still shocked and traumatised by the events that she had been subjected to and had resigned herself to the situation she found herself in. No adverse inference can accordingly be made from her conduct. She testified that when they at arrived home, she was reluctant to report the incident as she was scared that the appellant, who was still there, would cause harm to the people at home as he had the knife. It is further clear that she left the house to go to the library so that she could use this as an opportunity to report the rape to her niece, which she then did. I pause to mention at this stage that there is no rule of law that the complainant was obliged to report the rape immediately to her father, mother or even her grandmother

when she arrived home. The fact of the matter is that she reported the rape to her niece on the day that it happened and within a short period after she arrived home.

[20] On evidence the complainant and the appellant had a good relationship at the time that the rape occurred. Appellant described the complainant as a lovely child who respected him. According to him they had a fantastic relationship. There is no evidence that the complainant held a grudge against the appellant and or that she had a motive to falsely implicate him. Nor is there evidence that the complainant had conspired with any of her family members against the appellant. The conspiracy argument must therefore be dismissed.

[21] The appellant was a poor witness who did not make a favourable impression at all. His version that he was completely shocked and taken aback by the complainant's behaviour when she allegedly attempted to solicit him with, or into a sexual act to convince him to buy her clothes does not make sense. On the evidence, the decision to buy the complainant the clothes was made some time before the incident occurred. There was therefor no need for the complainant to perform the sexual acts to get him to buy her clothing. Appellant gives no reasonable explanation why, considering her shocking behaviour, he still proceeded to take her to Bellville and buy her the clothes. Nor is he able to properly explain why he did not report the complainant's behaviour to her parents particularly if he was so shocked by her behaviour. In my view the appellant fabricated the version of the alleged solicitation in a pathetic attempt to place the complainant in a bad light in circumstances where the overwhelming evidence

pointed to his guilt. I am accordingly satisfied that the trial magistrate correctly rejected the appellant's version as highly improbable and false. **S v Jochems** 1991 (1) SACR 208(A) at 211 E – G.

[22] On a consideration of the complainant's evidence as a whole, I am satisfied that her evidence was satisfactory in material respects and that she was a credible and reliable witness. I cannot find that the trial magistrate misdirected herself with regard to the evaluation of the evidence of the complainant bearing in mind that the trial magistrate had the advantage of seeing, hearing and appraising the complainant when she testified. There is accordingly no basis to interfere with the trial magistrate's evaluation of the complainant's evidence. See **S v Robinson and Others** 1968 (1) SA 666(A) at 675 F – H, S v Pistorius (*supra*) at para [28].

[23] In deciding whether the state has proved its case beyond a reasonable doubt a court does not look at the evidence implicating the accused in isolation in order to determine whether there is proof beyond a reasonable doubt and so too does it not look at the exculpatory evidence in isolation in order to determine whether it is reasonable possible that it might be true. See **S v Van der Meyden** 1999 (1) SACR 447 (W) at 448(i). I am on the whole satisfied that if one weighs up all the evidence which point towards the guilt of the appellant against those which are indicative of his innocence and taking proper account of the inherent strengths and weaknesses, probabilities and improbabilities on both sides, that the balance weighs so heavily in favour of the state as to exclude any reasonable doubt about the appellants guilt.

[24] The appeal against the conviction must therefore be dismissed.

[25] I now turn to deal with the appeal on sentence. It is trite law that sentencing is primarily in the discretion of the trial court and the power of a court of appeal to interfere with a sentence properly imposed by the trial court are strictly circumscribed. Ms De Jongh essentially contended that the trial court had misdirected itself in that the sentence imposed is shockingly inappropriate considering the appellants personal circumstances.

[26] In the present matter the life sentence is prescribed as the complainant was under the age of sixteen (16) when the rapes occurred. The trial magistrate had regard to the appellant's personal circumstances, the crime and the interest of society but found that substantial and compelling circumstances did not exist which justified a departure from the prescribed minimum sentence.

[27] The crime of rape is repulsive and has been described as an invasion of the most private and intimate zone of a woman and strikes at the core of her personhood and dignity. See **S v Vilakazi** 2009 (1) SACR 552 (SCA) at 555. In **S v Chapman** 1997 (2) SACR 3 (SCA) the SCA called it a '*humiliating, degrading and brutal invasion of the privacy and the person of the victim*'. In **Bailey v The State** (454/11) [22012] ZASCA 154 (01 October 2012) Bosielo JA described the rape of young girls by their fathers as not only scandalous but morally repugnant to all right thinking people. He

expressed concern about the fact that rape of young girls by their fathers have '*emerged insidiously in recent times as a malignant cancer seriously threatening the well-being and proper growth and development of young girls. It is an understatement to say that it qualifies to be described as a most serious threat to our social and moral fabric*'. In **S v SMM** 2013 (2) SACR 292 (SCA) at 297 Majiedt JA expressed concern that our country is facing a crisis of epidemic proportions in respect of rape of particularly young children and that there was increasing pressure on our courts to impose harsher sentences to exact retribution and to further deter criminal conduct. In **S v Abrahams** 2002 (1) SACR 116 SCA at para [[17] Cameron JA in dealing with the rape of a minor by her father was of the view that '*of all the grievous violations of the family bond the case manifests, this is the most complex, since a parent, including a father, is indeed in a position of authority and command over a daughter. But it is a position to be exercised with reverence in the daughter's best interest, and for her flowering as a human being. For a father to abuse the position to obtain forced sexual access to his daughter's body, constitutes deflowering in the most grievous and brutal sense*'. The learned judge emphasises later in his judgment that rape within the family has its own peculiarly reprehensible features, none of which subordinate it in the scale of abhorrence of other crimes. Although the appellant was the uncle of the complainant, the above sentiments find equal application in the present case. Violent crimes like rape and abuse of women and children in various guises still occur unabated. See **Mashigo and Another v The State** (20108/2014) [2015] ZASCA 65 (14 May 2015).

[28] It is now accepted law that where there are no substantial and compelling circumstances in crimes like the present, which fall under s51(1), courts must not hesitate to impose the ultimate sentence prescribed. In **S v Malgas** 2001 (1) SACR 469 (SCA) the SCA made it clear that a court should not permit itself to be influenced by flimsy reasons, undue or maudlin sympathy with an accused or personal doubt regarding the effectiveness of the sentence that has to be imposed as the legislature has decreed that these crimes warrant a '*severe, standardised and consistent response from the courts*'. It is however important to emphasise that '*If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the need of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence*'. See Malgas supra at par [25]. The crucial issue to decide is whether the sentence of life imprisonment imposed by the trial court was proportional to the offence.

[29] In the present matter the trial court took into account that the appellant was sixty-one (61) years old and therefore of advanced age and that he was unmarried. Appellant had advanced to standard 3 at school and left school to work to supplement his family's income. He has never had fixed employment and was reliant on income from casual work. The trial magistrate further took into account that the appellant had suffered a stroke and he had problems with epilepsy, ashma and arthritis.

[30] It is so that certain decisions of our courts hold the view that the life sentence ordained by the legislature should be reserved for cases devoid of substantial factors compelling the conclusion that such a sentence is inappropriate and unjust. See S v Abrahams (*supra*), **S v Mahomotsa** 2002 (2) SACR 435 (SCA), **S v Nkomo** 2007 (2) SACR 198 SACR, **S v GN** 2010 (1) SACR 93 (TPD), S v SMM (*supra*), **S v Sikhipha** 2006 (2) SACR 439 (SCA). All the cases referred to above involved rapes that fall under s51(1) of the Act. In those cases the court, having considered the facts, came to the conclusion that a sentence of life imprisonment was disturbingly disproportionate to the offence to a point where it could be described as unjust. The court then imposed various terms of imprisonment in respect of each of the cases in place of the prescribed life imprisonment. It is however necessary to emphasise that the cases referred to above '*provide guidelines not straightjackets*'. See **S v D** 1995 (1) SACR 259(A) at 260e. It is further important to bear in mind that no two cases present exactly the same factual matrix and it is hard to imagine two accused persons who have exactly the same personal circumstances. As stated by Bosielo JA in Bailey v The State (*supra*) that in cases involving rape '…*it is unthinkable that two different complainants in two different cases would manifest the same physical, emotional or behavioural problems after the rape. Evidently, these are important matters which must be considered in the determination of an appropriate sentence as they have direct bearing on what an appropriate sentence should be. It follows in my view that the sentence in such matters will be different because of the variation in personal circumstances of the accused, the nature and gravity of the offences and all other factors germaine to sentencing*'.

[31] When the aforesaid principles are applied to the facts of this case then the following aggravating features stand out. The complainant was fourteen (14) years old at the time of the rapes. The appellant was her uncle and occupied a position of trust with both herself and her parents. He flagrantly abused his position of trust. The indications are that he planned the rape. He had left the house with the complainant at 07h00. He must have known that the shops would not be open to buy the clothing by the time they reached Bellville. On the pretext of going to a friend, he lured her into the bush behind the Karl Bremer Hospital. He had a knife and the plastic object in his backpack. He threatened her with death and brutally raped her. I have no doubt that the complainant was severely traumatised by the incident. The complainant suffered bruises to her vagina. Although no expert evidence was presented about the emotional and psychological impact of the rapes on the complainant, there can be no doubt that she was not left unscathed by the brutal rape that she suffered at the hands of the appellant.

[32] What is undoubtedly aggravating is that the appellant has several previous convictions. Due to the fact that he committed diverse offences habitually over the years from 1972 onwards, he was declared a habitual criminal in terms of s286 of the Criminal Procedure Act, Act 51 of 1977 on 13 December 1984. Of greater concern is the fact that he has three previous convictions for rape and one for attempted rape for which he was respectively sentenced on 19 October 1977, 11 December 1979 and 5 June 2000. In addition the appellant has been convicted and sentenced for sodomy committed on 31 August 1984 and indecent assault on 5 June 2000. In regard to the

rape and indecent assault which he was convicted and sentenced for, the appellant was sentenced to fifteen (15) years and ten (10) years imprisonment respectively. According to the form SAP69's which contains his list of previous convictions, the sentencing court recommended at the time that appellant not be considered for release on parole until he served at least twenty (20) years of the effective twenty-five (25) years imprisonment imposed upon him. The appellant was released on parole supervision on 14 August 2012 until 8 September 2014. The rapes in this matter was committed on 28 November 2013 whilst appellant was on parole supervision. On a consideration of his previous convictions, it is clear that the appellant has a tendency to commit rape and other serious sexually related offences.

[33] The appellant's previous convictions indicate that he poses a serious threat to women and children in society. He has further shown that he is not deterred by the lengthy terms of imprisonment that courts have imposed on him in the past. According to the form SAP69 the appellant was readmitted to prison due to parole violations on four occasions since 10 July 1984. All the indications are that he is unable to rehabilitate himself within society. If consideration is given to the serious aggravating factors and the need to protect women and children in society, I must agree with the trial magistrate that notwithstanding the appellants advanced age and his various illnesses, that those circumstances do not qualify as substantial and compelling as envisaged by s51(3) of the Act. In the circumstances I am satisfied that the sentence imposed is not shockingly inappropriate nor is it so disproportionate as to be constitutionally offensive. It follows that I am unable to find any misdirection on the part of the trial magistrate in

regard to the life sentence imposed on the appellant. In the result there is no basis to interfere with the sentence.

[34] There is an aspect of this matter which in my view warrants some comment. It is now accepted law that a sentencing court must be proactive and ensure that he or she is fully informed of all the facts which impact on the accused, for example his family history, upbringing, career, his psycho emotional well-being, his moral and ethical standards and any other factors which may have had an influence on him or her committing the crime for which he or she is convicted. See Mashigo and Another v The State (*supra*) para 35. It is however also necessary for the sentencing officer to have a complete and balanced picture about the impact of the crime upon the victim and his/her family. For this reason a sentencing officer must as a matter of course, in matters such as this, request a victim impact report, to inform him or her of the victim, her family history, upbringing, career and crucially, the impact and effect of the offence on his or her family. There can be no doubt that such reports enable a sentencing officer to give proper consideration to a whole range of sentencing options to enable him/her to decide on a sentence which is balanced, fair to both the accused and the victim, whilst taking into account the moral indignation of the community.

[35] In matters of this nature the victim is the focal point and the goal must be to give proper consideration to the physical, emotional, psychological impact of the crime on the victim. On a consideration of the record it is disturbing that notwithstanding the seriousness of the offence and particularly considering that life imprisonment is

prescribed by the legislature, that no victim impact report was prepared for the court, nor was proper evidence presented by an expert on the emotional and psychological impact of the rape on the complainant or her family. It does not appear that the complainant was assessed for trauma arising from the rapes nor was she or her family subjected to therapy by suitably qualified experts. It is with great concern that I have noted that in appeals which have come before me in recent times that prosecutors in the regional courts have adopted the practice of substituting victim impact reports, prepared by experts, with what is known as a victim impact statement, at the sentencing stage. In the present matter, the victim impact statement was signed by the victim on 8 December 2014 even though the offence was committed on 28 November 2013. Of course it is important that the victim is allowed to express his/her personal views of the impact of the rape or sexual assault on him/her and that the sentencing court must give proper consideration to the views of the victim when considering an appropriate sentence. There can however be no doubt that a victim impact statement and a victim impact report prepared by an expert can never be placed on the same footing. In the present matter the prosecution gave no explanation as to why a victim impact report was not prepared or presented to the court nor did the trial magistrate request one. In **S v Ganga** (A345/2015 [2015] ZAWCHC 171 (18 November 2015), an appeal to this court against the imposition of a life sentence by the same regional court, I expressed concern about this worrying trend of relying on victim impact statements instead of properly prepared expert victim impact reports at the sentencing stage. In this matter the complainant should have been assessed by a suitably qualified expert to determine the impact of the psychological, emotional, physical and other trauma that she suffered

on the date the rape was reported or at the least very shortly thereafter. In the event where follow up treatment or therapy was required, it should have been implemented and the complainant and/or victim should have been monitored so that whatever reports were prepared could be supplemented or amended so that they could be presented to the court at the sentencing stage. Depending on the circumstances of the case, it may also be necessary that victim impact reports be prepared in respect of the family members of the victims.

[36] Considering the constitutional principle that the best interest of the child is paramount, prosecutors have an obligation to obtain a properly prepared victim impact report in respect of a child victim of rape or sexual assault and they are required to approach matters of this nature with thoughtful preparation, patient and sensitive presentation of all the available evidence with meticulous attention to detail. See S v Vilakazi (*supra*) at para [21]. Failure to do this will result in a disservice to the victims of such crimes and result in a situation where a sentencing court will be unable to make a proper assessment of the psychological and emotional trauma suffered by victims in cases of this nature for the purposes of deciding on an appropriate sentence.

[37] In the result I propose the following order:

1. The appeal against the conviction and the sentence of life imprisonment is dismissed.
2. The Registrar of this court is directed to send a copy of this judgment to the Director of Public Prosecutions, Western Cape.

3. The Director of Public Prosecutions, Western Cape is hereby directed to cause the complainant and her family to be assessed immediately by a suitably qualified expert with the view to preparing a report on the psychological, emotional and other related trauma suffered as a result of the crime and with the involvement of the Department of Social Services and Welfare put in place such program of therapy as may be required by the complainant and or her family.
4. Once effect has been given to the direction contained in paragraph 3 hereinbefore, the Director of Public Prosecutions is requested to provide this court with a report about its implementation.

_____

RILEY, AJ

I agree and it is so ordered.

_____

SALDANHA, J