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

**Case No: A111/2020**

In the matter between:

**CEDRIC KONSTABEL**

Appellant

and

**THE STATE**

Respondent

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**JUDGMENT DELIVERED: 11 AUGUST 2020**

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**SALDANHAJ:**

[1] The appellant, Mr Cedric Konstabel was convicted in the regional court, Oudtshoorn of the repeated rape and sexual abuse over a period of two years of an 8 year old child, the daughter of his partner with whom he lived. In application of the minimum sentence legislation and having found no substantial and compelling circumstances to deviate therefrom, "the regional magistrate sentenced the appellant to life imprisonment. He comes before this court by virtue of an automatic right of appeal in the light of the sentence of life imprisonment.

[2] Two charges were preferred against the appellant relating to the contravention of Section 3 read with Sections 1 to 55, 56 (1), 56A, 57, 58, 59, 60 and 61 of the Criminal Law Amendment Act of Sexual Offences 32 of 2007 read together with various provisions of the Criminal Procedure Act. The appellant was alleged to have committed the offences during 2018 where at or near Oudtshoorn he wrongfully and unlawfully sexually penetrated a minor child D- AW by penetrating her vagina with his penis without her consent. The State alleged that the appellant had done so on several occasions and in respect of the second count that he had likewise contravened provisions of the Sexual Offences Act 32 of 2007 in that he had forced his penis into the mouth of the minor child for her to suck and did so without her consent.

[3] The appellant was legally represented at the trial, pleaded not guilty and put the state to the proof of all of the elements of the offences. He admitted though the identity of the complainant, her age as nine years and that she was the daughter of his partner .The state tendered the evidence of the complainant D-A.W who testified with the assistance of an intermediary in terms of Section 170A of the Criminal Procedure Act. Ms. A J the complainant's aunt and Dr Herman Kruger, medical practitioner who was present during the medical examination of the complainant also testified on behalf of the State. The birth certificate of the complainant was handed into evidence with the consent of the defense and so too was a set of photographs where the incidents were alleged to have occurred. The appellant testified in his own defense and tendered the evidence the mother of the complainant, Ms. V. W.

[4] At the time of her testimony the complainant was 9 years old and was in Grade 3.

[5] Briefly stated, the facts relevant to the charges are that the complainant and her younger three year old sister lived with the appellant and her mother. While her mother was at work the complainant would be cared for by the appellant upon her return from school. The appellant was unemployed at the time. The complainant testified that while she was in Grade 2, upon her return

from school one afternoon, the appellant placed her on the bed in her mother's bedroom, removed her panty, undressed himself and thereupon inserted his penis (which she referred to as "tottermannetjie" and "worsie") into her vagina (which she referred to as her "koekie"). While doing so, the appellant made a "wip" like motion on top of her. She demonstrated in the court a *quo* the motion with the use of anatomical dolls and also pointed out the penis of the appellant on the male doll. She claimed that the appellant had pushed her face away when she cried and that she was scared "bang" and suffered pain in her genitals as a result of what the assault did. She also claimed that at times he had also forced his penis into her mouth and demanded that she suck it.

[6] She reported the first incident to her mother who she claimed used the light on a cellphone to look at her private parts and that she promised to take action against the complainant by throwing boiling water over him. Her mother did nothing about the abuse and the appellant unabatedly repeated his sexual assaults on her. She subsequently reported it to her aunt Ms J, who was the head of a creche where she spent time after school playing with her cousin. The police were notified and was she was subsequently examined by a doctor.

[7] Ms J testified that one afternoon she noticed that the complainant was reluctant to go home after playing with her cousin. She noted what she described as a rather 'lelik' expression on the face of the complainant. Upon enquiry the complainant reported her fear of going home because of the repeated sexual abuse at the hands of the appellant. The complainant cried when doing so and claimed that despite her mother using the light on her cellular phone to inspect her vagina she did absolutely nothing about the abuse. In utter shock, Ms January immediately reported the matter to the police and the complainant was taken the following day to the hospital at Oudtshoorn. There, she was examined by Doctor Herman Kruger. He testified in some detail about the injuries observed in the genital area of the complainant with reference to the Medical Examination form (J88) filled in by a Dr. van Eden. The complainant was in such a state that they had to place her under local anesthetic to conduct the examination. He described injuries in the area of the vagina that appeared to have already healed

and that her hymen was no longer intact. He was of the view that the injuries were consistent with the complaint by the child of sexual penetration. There appeared to be no fresh injuries but he described bumps, clefts and scarring in the vagina area as indicative of injuries that were incurred months ago and that were already healed.

[8] The appellant testified in his own defence and flatly denied having sexually assaulted the complainant. He confirmed her evidence that she had a good relationship with him and that he had often intervened on her behalf when her mother physically chastised her. He referred to an incident which the complainant had been asked about in cross-examination that while in grade three she was sexually abused by a young boy by the name of A. She claimed that he had placed his penis on top of her vagina and that it was painful. She had also told her mother about it. The appellant claimed that the complainant was inclined to make up stories and that several people had also come to their house and claimed that other boys had played with the complainant's private parts. The complainant emphatically denied such claims.

[9] In her testimony the mother of the complainant denied that the complainant had ever reported to her the sexual assault on her by the appellant. She claimed that if the complainant had done so she would have taken action against him. She also denied having examined the complainant's private parts with the use of the light of a cell phone. She claimed that the appellant had made reports to her of claims that other boys in the community had sexually abused the complainant but that she had never reported it to the police for investigation. All she did was rather to chastise the complainant about the allegations. She also confirmed the protective relationship that existed between the appellant and the complainant and that he always intervened on her behalf whenever she chastised the child.

[10] On appeal the appellant challenged the findings of the court *a quo* on the basis that the State had failed to prove beyond reasonable doubt the charges against him and that the court should have accepted his version as reasonably true. The appellant claimed that the court *a quo* had erred in its assessment of

the evidence and in particular claimed that the complainant was an unreliable and poor witness. The appellant also claimed that evidence of any rape by him of the complainant was not supported by the medical evidence.

[11] In respect of the sentence imposed the appellant claimed that the court *a quo* erred in not having sufficiently considered his personal circumstances, not having individualized the sentence and over-emphasised the interests of society.

[12] In my view the regional magistrate had given a detailed and careful assessment of all of the evidence by the witnesses for both the state and the defense. The court *a quo* was particularly mindful of the caution to be applied to the evidence necessitated by the complainant being both a young child and a single witness and whose evidence required corroboration in the testimony of others. The court *a quo* elaborated on the approach to be adopted to the evidence with reference to both the relevant law and the guidance of decided cases. The court *a quo* found that the evidence of the complainant was consistent and indeed supported by that of Dr Kruger and that of her aunt Ms. J. Moreover the evidence of the protective relationship of the appellant over the complainant and was supported by the appellant himself and that of his witness, the mother of the complainant. The court *a quo* was of the view that given the nature of their relationship that there was no reason for the complainant to have falsely implicated the appellant of the sexual abuse on her. The evidence of the complainant's aunt Ms. J was also carefully considered by the court and found to be both reliable and supportive to that of the complainant.

[13] The regional magistrate spent much time in its judgment and with great detail in analyzing the evidence of the appellant himself. He was of the view that the appellant's claim that the complainant made up stories was without merit and was no more than an opportunistic claim. His attempt at dismissing the claims of the sexual assault by him as no more than a made up "storie" by the complainant was considered as contrived. So too, was his deflection of her injuries to her vagina as that caused by other boys that allegedly played with her "onderdele" as blatantly without substance. The appellant also sought to suggest that the

complainant and her aunt had falsely accused him of having stolen the aunts cellphone and that the police had been sent to the house on the day of the arrest to confront him about it. Ms. J and the complaint explained that it was not the appellant who had stolen the cellphone but rather the complainants mother. The cell phone incident was no more than a red herring and entirely irrelevant and separate to the rape charges against the accused.

[14] In her testimony it was both evident and disconcerting that the mother of the complainant had simply abdicated any responsibility towards the complainant, her own child and had literally gone out of her way to protect the appellant. She was the least impressive of any of the witnesses and demonstrated a complete disregard and lack of empathy for the complainant both at the time at which the child reported the sexual assault to her and in her testimony in court.

[15] I am more than satisfied that the regional magistrate had not committed any irregularity in his findings of fact and the inferences drawn therefrom. There is, in my view, no merit in the appeal on conviction and I have no hesitation in confirming the findings of guilt of the appellant on both counts.

[16] This matter demonstrates the most unconscionable and vile conduct of the appellant who preyed on a young and helpless child over who had been in a position of trust. He abused it and did so with impunity over many months.

[17] The regional magistrate with much care and detail dealt with the circumstances in which the offences were committed and in particularly that of the personal circumstances of the appellant. The state proved no previous convictions of a similar nature against the appellant other than a conviction of housebreaking.

[18] The report prepared by the social worker for the purposes of the section 170A proceedings relating to the use of an intermediary was entered into evidence on sentence. The impact of the offences on the child was highlighted in the report. A probation officer's report for correctional supervision was also

prepared in respect of the appellant with regard to his circumstances and in which a recommendation was made for direct imprisonment.

[19] The complainant reported to the social worker that she had experienced numerous feelings during the incident. She stated that she was confused, angry, sad and scared. She harboured feeling of anger and fear of the appellant. In her testimony Ms. J, the aunt informed the court that the child experienced serious difficulties at school. She had to be moved to the class of a different teacher. She became aggressive towards male children out of a "tipe van wraak," revenge. The children also teased her about having been raped and she developed a sleeping problem and was often found lying awake at 2 am in the morning watching television. Needless to say the incidents of the sexual abuse by the appellant had a profound effect on her.

[20] The appellant testified in mitigation. He was 29 years old at the time of the trial and remained in the relationship with the complainant's mother. He had no children of his own. He claimed to have farmed with pigs but that his brother had since run the business. The business supported his younger brothers. He claimed to have suffered from TB. He went no further than grade 9 at school. His 43 year old mother suffered from a chest condition and his father was deceased. He expressed no remorse about the sexual abuse and maintained his innocence. He failed to demonstrate any insight into the profound and serious damage he inflicted upon the young complainant.

[21] The court *a quo* likewise dealt extensively with the relevant provisions of the legislation relating to sexual offences and comparative case law. He was mindful of the objectives of sentence and the appropriate factors to be taken into account, such as the nature and seriousness of the offence, the interests of the public and the personal circumstances of the appellant. The appellant had placed no substantial or compelling circumstances other than his personal circumstances before the court for it to have deviated from the prescribed sentence of life imprisonment.

[22] The appellant had systematically and over an extended period of almost 2 years abused the complainant by repeatedly raping her and forcing his penis into her mouth. The cold hearted and brutal nature of these offences on this young child is self evident.

[23] I find no irregularity in the sentence imposed by the regional magistrate and likewise have no hesitation in confirming it.

[24] A matter of particular concern in these incidents is the role and the conduct of the complainant's mother Ms. V.W. Her conduct and lack of insight into the actions of the appellant should be thoroughly investigated by a social worker to ensure that the other minor child is not subjected to any risk while in her care.

[25] Ms J testified that the complainant child had also been teased by other children at the school for having been raped. This compounded the trauma suffered by the child. The National Director of Public Prosecutions is kindly requested to engage a social worker in the area the school is situated to arrange appropriate interventions at the school with regard to educating young children about sexual abuse and the trauma experienced by victims.

[26] Moreover, I am equally concerned that the complainant child in this matter had not received any counselling for the trauma that she suffered and continues to exhibit. The Provincial Director of Public Prosecutions is likewise requested to ensure that a social worker is engaged to assist the child and that she receives the necessary therapeutic counselling which may include the expert services of an psychologist in the employ of the state or appropriate trauma institution. Confirmation of such engagement and progress is to be furnished to the office of the Provincial Director of Public Prosecution.

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

1. The appeal against conviction and sentence is dismissed and the sentence of life imprisonment is confirmed. The details of the appellant are to be entered, as ordered by the regional magistrate, in the register of sexual



offenders.

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**VC SALDANHA**  
**Judge of the High Court**

I agree and it is so ordered.

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**ET STEYN**  
**Judge of the High Court**