

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GRAHAMSTOWN**

CASE NO: CA&R 261/2014

DATE HEARD: 15/04/2015

DATE DELIVERED: 17/04/2015

NOT REPORTABLE

In the matter between:

B[...] T[...]

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

PLASKET J

[1] The appellant was convicted in the Regional Court, Port Elizabeth, of rape in contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. He was sentenced to 15 years imprisonment. He appeals against conviction only, leave having been refused by the court below but having been granted by this court on petition.

[2] The appeal is against the factual findings made by the magistrate in the court below. The principles involved are well known. A court of appeal will only interfere

with a factual finding of a trial court in the event of a clear misdirection on the part of the trial court: mere doubt that the trial court was correct will not suffice. The approach was set out thus by Schoeman AJA in *S v Van Willing & another* (109/2014) [2015] ZASCA 52 (27 March 2015), para 4:

‘The court of appeal must keep in mind that the trial court saw the witnesses and could observe and assess their conduct. If there was no misdirection as to the facts, the point of departure is that trial court’s findings were correct. The court of appeal will only reject the finding of the trial court if it is convinced that the finding was erroneous. If there is doubt, the findings of the trial court must stand. However, it is not only the trial court’s findings that are important but also the reasons for adopting those findings which must be set out in the judgment.’

[3] The complainant was 9 years old at the time of the incident that gave rise to the appellant’s trial. She is the daughter of the appellant’s girlfriend.

[4] She testified that, on the day in question, the appellant entered her bedroom, after her mother had gone to work and while she was dressing, and raped her. She reported what had happened to her to her cousin at the first opportunity and this was reported to her aunt who, in turn, reported it to the wider family. The police were called and the complainant was medically examined. She was found to have fresh injuries consistent with her version that she had been raped.

[5] The appellant’s argument, as set out in its heads of argument, amounted to listing a number of contradictions in the evidence of the complainant, followed by an assertion that the trial court ought to have ‘concluded that these contradictions affected her credibility and it misdirected itself by not coming to such conclusion’. (See the appellant’s heads of argument, para 9.)

[6] The mere fact that a witness has contradicted herself is not decisive of anything in and of itself. (See Nicholas ‘The Credibility of Witnesses’ (1985) 102 *SALJ* 32 at 36.) It is still necessary for a trial court to evaluate the evidence as a whole, because it is only then that the significance or otherwise of those contradictions may be properly assessed. See *S v Trainor* 2003 (1) SACR 35 (SCA), para 9.

[7] It was argued too that because the complainant admitted that she disliked the appellant, she had a motive to implicate him falsely, and that the magistrate ought not to have accepted her evidence as a result. The background to this evidence is that the complainant had indeed said that she disliked the appellant and the reason for this was that he assaulted her mother. The argument does not withstand scrutiny for two reasons. First, when she reported the rape to her cousin, she requested her cousin not to tell anyone about what she had said. Secondly, it is extremely improbable that she, having been raped by someone else, would allow the rapist to go free in order to accuse the appellant of something he did not do. It is, in my view, unrealistic to believe that a nine year old child, having been raped, would have the guile to conceive of such a scheme, and to implement it. In any event, the magistrate dealt fully with this issue and cannot be faulted in his conclusion that there was no merit in the argument.

[8] The magistrate was alive to the fact that he had to treat the complainant's evidence with caution, and his judgment reflects this. Having analysed the evidence with some care, he found that the evidence implicating the appellant was overwhelming and he rejected the version of the appellant as a fabrication.

[9] These conclusions are borne out by the record. The complainant was indeed a good witness, and her evidence was satisfactory in all material respects. The other State witnesses were also good witnesses, whose evidence was substantially in harmony with the complainant's evidence. The appellant, on the other hand, was a particularly poor witness and the labelling of his evidence as a fabrication was completely justified.

[10] I can detect no misdirection in so far as the magistrate's factual findings, assessment of the evidence and reasoning are concerned, with the result that the appeal cannot succeed.

[11] The appeal is dismissed.

C PLASKET

JUDGE OF THE HIGH COURT

I agree.

B. SANDI

JUDGE OF THE HIGH COURT

Appearances:

For the appellant: Mr M T Solani, instructed by the Grahamstown Justice Centre, Grahamstown.

For the respondent: Mr D Els, instructed by the Director of Public Prosecutions, Grahamstown.