

SOUTH AFRICA / JUDGMENT

Salmani v S (CA & R 342/2011)

[2012] ZAECGHC 57 (25 June 2012)

[2012] ZAECGHC 57**COURT**

Eastern Cape High Court, Grahamstown

BEFORE

Chetty, Goosen

CASE / FILE NUMBER

CA & R 342/2011

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Source record**NOT****REPORTABLE****IN THE HIGH COURT OF SOUTH AFRICA****(EASTERN CAPE, GRAHAMSTOWN)****Case No: CA & R 342/2011**

In the matter between:

ZILINDILE SALMANI

.....Appellant

And

THE STATE

.....Respondent

Coram: Chetty and Goosen JJ

Date Heard: 6 June 2012

Date Delivered: 25 June 2012

Summary: Criminal

Law – Rape – Evidence

– Identity – Appellant identified by young boys –

Cautionary rule – Appellant properly

identified –

Conviction confirmed

JUDGMENT

Chetty, J

- [1] This appeal, with leave granted on petition, is directed against the appellant's conviction on a charge of having raped a seven year old boy on 20 July 2009. The rape itself is common cause. The dispute, both in the appeal and in the court below, was concerned solely with the identity of the perpetrator. It is not in issue that the appellant, who lived across the road from the complainant's dwelling, was not only acquainted with him and his family but was known to all and sundry as Ghetto. They had been living in close proximity for several years. The possibility of an honest but mistaken identification on the part of the two boys can thus readily be discounted. The complainant's evidence that he entered the appellant's premises to retrieve a ball which he had inadvertently kicked there was corroborated by his friend Thobela Mduduma. However the latter's evidence that he witnessed what happened in the appellant's home whilst the complainant was inside is far from satisfactory and falls to be rejected for it clearly amounts to a reconstruction of events relayed to him by the complainant. It is clear however that he saw the complainant entering the appellant's home.
- [2] The complainant however, notwithstanding his youthfulness, was a particularly good witness. He remained unshaken in cross-examination and the transcript attests to a maturity beyond his tender age. The trial court was moreover cognisant of the dangers inherent in the testimony of young children. It analysed the shortcomings in their testimony, considered it against the entire conspectus of evidence, including that of the appellant, and concluded that it could safely rely on the complainant's evidence to find that the appellant was the perpetrator.
- [3] On appeal before us, Ms McCallum was unable to point to any shortcomings in the trial court's evaluation and assessment of the evidence. There is accordingly no basis warranting interference with either the magistrate's factual findings or his conclusion. In the circumstances the

following order will issue –

The appeal is dismissed.

D. CHETTY

JUDGE OF THE HIGH COURT

Goosen J,

I agree.

G. GOOSEN

On behalf of the Appellant: Adv McCallum, Grahamstown Justice Centre, Tel: (046) 622 9350

On behalf of the State: Adv Zantsi, Director of Public Prosecutions, Grahamstown, Tel: (046) 602 3000

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