

SOUTH AFRICA / JUDGMENT

Zwengu v S (CA345/2014) [2015] ZAECHGC 116 (25 March 2015)

[2015] ZAECHGC 116

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Chetty, Smith, Malusi

CASE / FILE NUMBER

CA345/2014

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IN

THE HIGH

COURT OF

SOUTH

AFRICA

(EASTERN

CAPE,

GRAHAMSTOWN)

Case

No: CA 345/2014

In

the matter

between:

MBUYISELI

ZWENGU

Appellant

And

THE

STATE

Respondent

Coram:	Chetty J, Smith J and Malusi AJ
Heard:	23 March 2015
Delivered:	25 March 2015
Summary:	Criminal Law - Appeal - Murder - Evidence - Assessment of - Single witness - Trial Court's factual findings - Correctness - Appeal dismissed

JUDGMENT

CHETTY J:-

- [1] This appeal, with leave granted by the trial court, is directed against the appellant's conviction on two (2) counts of rape in contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act [1] . The victims of these dastardly offences were the appellant's partner (the complainant) and their infantile son (the infant), aged one (1) year and nine (9) months. The medical evidence adduced at the trial conclusively established that the victims had indeed been raped and on appeal before us, counsel for the appellant fairly conceded that the trial court's finding hereanent was unimpeachable. Consequently , the only issue which falls for decision is the correctness of the trial court's finding that the appellant was the perpetrator.
- [2] It is evident from the judgment that the trial court was conscious of the fact that the evidence implicating the appellant in the commission of the offences rested exclusively upon the testimony of the complainant, his live in partner. It is furthermore apparent , both from the questions directed at the complainant and the appellant during their viva voce

testimony , and the judgment itself , that the trial judge recognized that their relationship was an acrimonious one punctuated by repeated assaults perpetrated upon the complainant by the appellant. Given their fractured co- habitation, the trial court assiduously analysed the evidence to determine whether the complainant's incriminatory evidence was perhaps not actuated thereby. In a thorough appraisal and evaluation of the entire body of the testimony tendered, the court concluded that the complainant was an honest and reliable witness whose evidence it could safely rely upon. The trial court was undoubtedly correct in its assessment of the evidence adduced.

- [3] It is common cause that both complainants were examined by a district surgeon, Dr Tony Yeginathan Moodley shortly after midday on 22 December 2011. Clinical examination of the infant revealed bruising of the abdomen and back. The district surgeon recorded that the injuries were consistent with the application of blunt force to the body. Clinical examination of the complainant revealed bruising of the right thigh, right arm and back which, he opined, was consistent with the application of blunt force. During his viva voce testimony the doctor stated that the blunt force injuries to the complainant could have been inflicted with a pick axe handle whilst the blunt force injury to the infant's hips could have been inflicted by the appellant holding the infant in the manner testified to by the complainant. The medical evidence corroborates the complainant's testimony hereanent in all material respects and vouchsafes her reliability.
- [4] The trial court had more than sufficient reason to reject the appellant's testimony . Mrs M's unchallenged evidence was that the complainant arrived at her home at approximately 12 noon, was sober but highly agitated and incensed at what had befallen her child and immediately pronounced her intention to report the appellant to the police. That tittle of evidence is entirely incompatible with the appellant's testimony that the complainant and the infant had overnighted at Mrs M's home and had in all probability been raped there. Mrs M's testimony establishes the falsity of the appellant's evidence that the complainant and the infant were not at the common home when the offences were committed.
- [4] It is furthermore inconceivable that, given the heinousness of the crime perpetrated upon the infant, the complainant would have falsely implicated the appellant and shielded the real perpetrator. The trial court's factual findings are in my

judgment

immutable and the appeal is devoid of all merit. In the result the following order will issue: -

The appeal is dismissed.

D. CHETTY

JUDGE OF THE HIGH COURT

Smith J

I agree.

J. E SMITH

Malusi AJ

I agree

T. MALUSI

ACTING JUDGE OF THE HIGH COURT

On behalf of the Appellant:

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[1] Act No, 32 of 2007

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