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

Case No: A188/2022
District Case No: MSH 201/2018

REPORTABLE

In the matter between:

JASON ABRAHAMS Appellant

And

THE STATE Respondent

Coram: Kusevitsky, J et Francis, J et Bremridge, AJ
Heard: 08 September 2023
Delivered: 20 May 2024

JUDGMENT

KUSEVITSKY, J

[1] The Appellant was arraigned in the Mossel Bay Regional Court on one count of rape of a minor child aged 13 years old.[1] He was legally represented at all material times and pleaded not guilty on 22 October 2019. He was subsequently convicted and sentenced to fifteen years' imprisonment. He was also declared unfit to possess a firearm and his name entered into the National Register for Sex Offenders in terms

[1] Contravening Section 3 of the Sexual Offences and Related Matters Act 32 of 2007 as amended read with the provisions of section 51(1) of the Criminal Law Amendment Act, No. 105 of 1997, as amended.

of section s 50(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

[2] When reading the transcript, it is evident that the presiding officer, Ms Yono passed away shortly after the Appellant's conviction but prior to his sentencing. The record had to be transcribed in order for another presiding officer to complete the sentencing part for the trial. That was duly done and the matter proceeded to sentencing in terms of section 275 of the Criminal Proceedings Act after the pre-sentencing and victim impact reports were obtained. He comes before this court on appeal in respect of conviction only, with leave having been granted in that respect by the lower court on 22 July 2021.

[3] I do not propose to rehash the entire evidence as contained in the record; a summary of the evidence as it pertains to the appeal will suffice. I may add that both the heads of argument made reference to an incomplete record insofar as the cross-examination of the medical officer was concerned. However, the record was duly supplemented by the hearing of the matter and the parties satisfied that the record was in order.

[4] The state relied on three witnesses; the Complainant, the first report Ms Dumat and the medical doctor. The Appellant testified and relied on an alibi witness as his defence.

[5] The Complainant testified *via* an intermediary. She was 15 years old at the time of her evidence. The Appellant is her mother's ex-boyfriend and a daughter was born from that relationship. She testified that her mother ended the relationship with the Appellant but he would always come to their house on weekends and threaten her mother for ending the relationship. She could not recall the year that they had ended the relationship. She could also not recall the date when the incident occurred. When pressed and prompted by the prosecutor about a possible time period, she stated that it was towards the end of June 2017.

[6] On the night in question, she and her sister, who was three years old at the time, were alone at home one Saturday night whilst her mother was drinking at a tavern. At around midnight, the Appellant knocked on the door. The Complainant initially refused him entry saying that her mother did not want him there. She later agreed to let him in when he said that he wanted to see his daughter. The Complainant opened the door and went back to watching TV. The Appellant went to lay next to his sleeping daughter. After an hour, the Appellant told the Complainant to lay on the bed where he was. He then proceeded to touch her. When she asked what he was doing, he answered that he was not going to hurt her. When she continuously tried to push his hands off of her, he slapped her in the face. It was evident that during this evidence, the proceedings had to be paused by the presiding officer because the witness was crying and emotional.

[7] After slapping her, the Appellant proceeded to pull down her jeans and underwear. She tried to fight him off by kicking him. He then took out a knife and held it against her stomach, telling her to lay still. He then removed his pants and

raped her by putting his penis into her vagina. When he was done, he took her panties and put it in his pocket. The sheet was stained in blood. He then told her to hide the sheet before her mother returned. She did as she was told and hid the sheet in a cupboard between some clothes. She said that she did this because he told her that if she were to tell anyone about what had happened, then he would kill her. He also took her pair of jeans. When he left, she lay on the bed crying. Her mother returned later from the tavern inebriated. She did not tell her mother what had happened as she was scared of the threat made against her by the Appellant. After that incident, she no longer slept at home during weekends. Instead, she took her sister and they went to sleep at her grandmother's house. Her mother enquired as to why she did this and she answered that it was because she (her mother) left them alone on their own during weekends.

[8] Approximately three months later, her mother and sister tragically perished when their bungalow caught fire and burnt down. After her mother and sister passed away, she went to stay with her aunt. During the following year, she eventually confided in her father's girlfriend, Ms Dumat, that she had been molested and threatened. A week later, her aunt took her to the police station. When asked why she did not confide in her mother, she stated that there were many times that she wanted to, but she was afraid that the Appellant would do something to her, knowing how he mistreated her mother.

[9] During cross-examination, she maintained that the Appellant would often threaten her mother over week-ends. She also agreed that there were no problems between her and the Appellant. According to the Appellant, the Complainant's family

blamed him for the death of her mother and sister. She agreed, saying that according to the community, he was the last person that was seen in the vicinity of their home. The Appellant, however, was ostensibly in prison at the time of the death of her mother. This evidence was later refuted. When asked if she was angry at the Appellant for the death of her mother, she said that she was because the community had led her to believe that he was responsible for their deaths.

[10] She confirmed that the bloodied sheet had burnt and been destroyed when the bungalow that her mother and sister had perished in had gone up in flames. When it was put to her that the Appellant denied that he had assaulted her mother, the Complainant insisted that he was lying saying 'Hy het…*my ma se broers het al gesien hoe het hy my ma abuse in die huis*'. She also reiterated that '*Dit is Jason se eie broer wat dit gesien het*.'"

[11] After the death of her mother she went to live with her aunt. She admitted that she started to be become 'difficult' after the anxiety that she felt after the rape and her mother and sister's subsequent deaths. She stated that she found it difficult to cope. A decision was made for her to move to her father. She acknowledged that she was a problem at that time and did not listen. She started to drink alcohol and smoke and started skipping school. She acknowledged that her father was angry at her behaviour. When her step-mother sat her down one day after repeatedly asking her what the matter was and why she was behaving in that manner, she decided to confide in her and told her about what the Appellant had done. She did not go into detail about the rape. She said that she did not mention anything before because the Appellant had threatened her. Ms Dumat then told her father and he wanted to go to

the police station immediately. The Complainant refused to go with and her father said that he could not go to the police station without her. In that same week she also told her cousin about the rape and asked her not to tell anyone. Her aunt found out a week later after she confided in her cousin. After speaking to her aunt, they had a family meeting and that is how her aunt came to be the one to take her to the police station and hospital the following day.

[12] The Complainant testified that she saw the Appellant a few days after the funeral where he sympathised with her. This was denied by the Appellant despite the insistence by the Complainant that this occurred in the presence of a friend in the neighbourhood of Asla. It was also put to the Complainant that she was present when the Complainant's family went to the Appellant's home where they assaulted him, and she too assaulted him by throwing a brick and hitting him with a broomstick. The Complainant however explained that she had not been present when her family went to the home of the Appellant. She stated that when she and her aunt were on their way to the police station to report the rape, her aunt received a call from the family to say that the Appellant was at the house and they decided to return to the house. She denied that she had thrown a brick at him but had indeed hit him with a broomstick.

[13] The Appellant denied the rape accusations alleging that the Complainant and her family had fabricated the rape charge in response to their belief that he was responsible for the death of her mother. The Complainant was adamant, saying "*maar hy het dit aan my gedoen. Ek sal nooit oor sulke goete lieg nie*." She confirmed that her mother wanted to take out an interdict against the Appellant

because of all the threats. She was also criticized for allowing the Appellant into her home when her mother chased him away instead. She was consistent in saying that she allowed him in because he had asked to see his child. She also testified that she was afraid to tell her mother because she thought her mother would not believe her and because of his threats.

[14] Ms Dumat confirmed the evidence of the Complainant. She did not really know the Appellant. She was in a relationship with the Complainant's father for five years. She confirmed that the Complainant became difficult after moving in with them after the death of her mother. The Complainant's father also accused her of not being a virgin. She repeatedly told the Complainant that if she had problems, then she could talk to her. After a while, the Complainant informed her that the Appellant had raped her and that she was too afraid to go to the police station because the Appellant had told that that he would hurt her.

[15] The Complainant was 13 years old when the rape occurred, 14 years old when the J88 was completed, and 15 years old when she testified. The J88 was completed[2] by Dr Nzima who had performed her examination almost a year and a half after the alleged incident in June 2017. Under the history of the alleged assault, Dr Nzima noted the following: "In June 2017 the patient was allegedly sexually assaulted by her late mother's ex-boyfriend. There were no other adults at home, only her and the baby." The Complainant's hymen was not in tact which was suggestive of prior penetration. The rest of the gynaecological examination did not suggest that the Complainant was currently sexually active. During cross-examination, much was made of the fact that the Complainant was not questioned as to whether she had a history of being

[2] Completed on 5 October 2018

sexually active. The doctor explained that there is no provision for such questions, but in any event the Complainant indicated to her that she was allegedly sexually assaulted by her late mother's ex-boyfriend and she pertinently said that she was raped.

[16] The Appellant testified in his own defence and his version was based on a bare denial of the charges as he states that he was in prison at the time that the alleged offence was committed. He averred that the rape charge was a fabrication by the Complainant and her family as he was suspected of causing the fire that resulted in the death of the Complainant's mother. He testified that he was 'outside' in June 2017 and residing at his mother's house at 7th Avenue. He confirmed that he and the Complainant's mother's relationship was not good by the time that they ended their relationship. However, he had a good relationship with the Complainant even after the break-up with her mother.

[17] He denied that he raped the Complainant as she alleged in late June 2017 as he was in prison. A letter from Correctional Serves obtained by the defence indicates that the Appellant was incarcerated at George Prison from 7 June 2017 until 28 August 2017. It is unknown when he was released but the letter indicates that he was again incarcerated on 10 November 2017 until 23 January 2018. He did not see the Complainant after he was released from prison nor when the Complainant's mother died. The only time that he saw the Complainant again was when the family came to his house to confront him and allegedly assaulted him after the family had found out about the rape. This was in 2018. He denied ever going to the Complainant's house after the break-up at the end of 2016 saying that his daughter

was always brought to his mother's house. He confirmed that he was placed in custody on 7 June 2017, the death of the mother occurred in October 2017 and he was again taken into custody on 10 November 2017. He denied the Complainant's evidence that she saw him after the death of her mother in the street and that he sympathised with her.

[18] According to the Appellant, he ended the relationship with the Complainant's mother and not the other way around. He says that the Complainant's mother was the one that wanted him to continue visiting her; had said that she still loved him and still wanted him to come to the house. The relationship ostensibly ended because the family put pressure on her to end it, but at the end of the day, he insists that he is the one that ended the relationship with her. It was incorrectly put to the Complainant that the Appellant's version was that he was incarcerated at the time of the death of the mother. He conceded that he was 'outside' when the bungalow burned down.

Evaluation

[19] It is settled law that in a matter such as the present, this court's powers to interfere on appeal with the findings of fact of the trial court are limited in the absence of demonstrable and material misdirection. Where there is no misdirection on fact, the presumption is that its findings are correct, and the appellate court will only interfere with them if it is convinced that they are wrong.

[20] The Appellant alleges that the court misdirected itself when it held that the Complainant had no motive to falsely incriminate the Appellant. It was also argued

the Complainant being a single witness, the court erred in finding that her evidence was clear and satisfactory in all material respects and should not have accepted her evidence as being reliable and trustworthy. Furthermore, given that the State did not dispute that he was in custody at the end of June 2017, it could not be said that the State had proved its case beyond a reasonable doubt. The Complainant was also criticized for the delay in which the incident was reported, and argued that the court erred in finding that the evidence of the doctor had corroborated the Complainant's version. It was further argued that the Complainant could have reported the incident to her grandmother and failed to do so.

[21] As a starting point, the court in *Maila v S* [3] reaffirmed the principles to be considered in the evidence of a single witness. In that case, the complainant was a girl child, aged 9 years at the time of the incident. Mocumie JA stated that for many years, the evidence of a child witness, particularly as a single witness, was treated with caution. This was because cases prior to the advent of the Constitution (which provides in s 9 for equality of all before the law) stated *inter alia* that a child witness could be manipulated to falsely implicate a particular person as the perpetrator (thereby substituting the accused person for the real perpetrator). To ensure that the evidence of a child witness can be relied upon as provided in s 208 of the Criminal Procedure Act[4], this Court stated in *Woji v Santam Insurance Co Ltd*,[5] that a court must be satisfied that their evidence is trustworthy. It noted factors which courts must take into account to come to the conclusion that the evidence is trustworthy, without creating a closed list. In this regard, the court held:

> "'*Trustworthiness* . . . depends on factors such as *the child's power of observation*, his power of recollection, and his power of narration on the specific matter to be testified…

[3] (429/2022) [2023] ZASCA 3 (23 January 2023) at para 17

[4] Section 208 of the Criminal Procedure Act provides that "An accused may be convicted of any offence on the single evidence of any competent witness.'

[5] 1981 (1) SA 1020 (A) at 1028B-D

> His capacity of observation will depend on whether he appears "intelligent enough to observe". Whether he has the *capacity of recollection* will depend again on whether he has *sufficient years of discretion "to remember what occurs"* while the *capacity of narration or communication* raises the question whether the child has the "*capacity to understand the questions put, and to frame and express intelligent answers*."' (Emphasis added.)

[22] In para 18 of *Maila*[6], the court further stated that since *Woji* , the court of appeal has cautioned against what is now commonly known as the double cautionary rule. It has stated that the double cautionary rule should not be used to disadvantage a child witness on that basis alone. The evidence of a child witness must be considered as a whole, taking into account all the evidence. This means that, at the end of the case, the single child witness's evidence, tested through (in most cases, rigorous) cross-examination, should be 'trustworthy'. This is dependent on whether the child witness could narrate their story and communicate appropriately, could answer questions posed and then frame and express intelligent answers. Furthermore, the child witness's evidence must not have changed dramatically; the essence of the allegations should still stand. Once this is the case, a court is bound to accept the evidence as satisfactory in all respects; having considered it against that of an accused person. 'Satisfactory in all respects' should not mean the evidence line-by-line. But, in the overall scheme of things, accepting the discrepancies that may have crept in, the evidence can be relied upon to decide upon the guilt of an accused person. What the court in *S v Hadebe*[6] calls the necessity to step back a pace (after a detailed and critical examination of each and every component in the body of evidence), lest one may fail to see the wood for the trees. This position has been crystallized by the Legislature in s 60 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which provides that:

[6] footnotes omitted

> 'Notwithstanding any other law, a court may not treat the evidence of a complainant in criminal proceedings involving the alleged commission of a sexual offence pending before that court, with caution, on account of the nature of the offence.'

[23] It is quite correct that the evidence of the Complainant should be approached with caution for the reason that she is a single child witness. The Appellant in this regard relied on *S v Hanekom* 2011 (1) SACR 430 (WCC). In this matter, an appeal court found that the court *a quo* did not take heed of the cautionary principles relating to a child witness in that there was a lapse of time from the time of the incident to the reporting thereof of three years. It bears mention that the complainant in that case was five years old at the time of the incident and eight years old at the time of testifying. Secondly, that court found her to be evasive and had a motive to incriminate. This was ostensibly based on the fact that there was a discrepancy in the chronological order of how and when the complainant was sexually abused.[7] I am not convinced that this is such a case. I say this because there the court criticised a complainant for not reporting the abuse when she was five years old; she was being evasive because she could not remember three years down the line if the incident had occurred on a Tuesday or Wednesday; that five year olds have the emotional capacity to have 'motives' to incriminate, and the fact that chronology of the incident[8], warranted a finding against the eight year old that she was evasive and therefore unreliable.

[24] The court in *Hanekom* stated that the court should be 'alert' when there is the lapse of significant period of time between the incident complained of and the trial.

[7] Para 17 of that judgment

[8] whether the appellant there had first masturbated himself then cleaned the carpet and went to the bathroom to clean up before inserting his finger into her vagina or whether he first inserted his finger into her vagina and then masturbated himself and then went to the bathroom to clean up

As I mentioned before, the complainant in *Hanekom* was a mere 5-year-old girl child when the alleged incident had occurred. However, the court in *Hanekom* disregarded what the Appellate Court held regarding delays in matters such as this. In *Monageng v the State*[9] Maya JA (as she then was), articulated the following regarding the delay in reporting:

> "[23] Much was made by the appellant's counsel of the complainant's apparent ability to act normally after the rape and her delay in reporting it. It has been firmly established in a number of studies on the impact of violence, including rape, against women that victims display individualised emotional responses to the assault.[10] Some of the immediate effects are frozen fright or cognitive dissociation, shock, numbness and disbelief.[11] It is therefore not unusual for a victim to present a façade of normality.
>
> [24] It is further widely accepted that there are many factors which may inhibit a rape victim from disclosing the assault immediately. <u>Children who have been sexually abused, especially by a family member, often do not disclose their abuse and those who ultimately do may wait for long periods and even until adulthood for fear of retribution, feelings of complicity, embarrassment, guilt, shame and other social and familial consequences of disclosure</u>.[12] *Significantly, the newly passed Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 provides, in s 59, that 'in criminal proceedings involving the alleged commission of a sexual offence<u>, the court may not draw any inference only from the length of any delay between the alleged commission of such offence and the reporting thereof</u>'*. Raising a hue and cry and collapsing in a trembling and sobbing heap is not the benchmark for determining whether or not a woman has been raped. There was thus nothing unusual about the complainant's behaviour and her explanation for not immediately reporting the appellant is plausible. " (Own emphasis)

[25] The court *a quo* was satisfied with the evidence of the Complainant, adding that it was straightforward with no contradictions. Whilst she was emotional while testifying, she did not deviate from her evidence whilst subjected to a lengthy cross-examination. The court dealt with the 'alibi' defence of the Appellant fully in her

---

[9] (590/06) [2008] ZASCA 129 (1 October 2008)

[10] S Bollen et al '*Violence Against Women in Metropolitan South Africa: A study on impact and service delivery*' Institute for Security Studies (1999) Monograph No 41.

[11] S Ullman & R A Knight 'Women's Resistance Strategies to Different Rapist Types' (1995) 22 No 3 *Criminal Justice & Behaviour* 263, 280; S Katz & M A Mazur *Understanding the Rape Victim: A Synthesis of Research Findings* (1979) 172, 173. M Symonds 'Victims of Violence: Psychological effects and after-effects' (1975) 35 (1) *American Journal of Psychoanalysis* 19 - 726, 22.

[12] T B Goodman-Brown et al 'Why Children Tell: A Model of Children's Disclosure of Sexual Abuse' *Child Abuse & Neglect* 27 (2003) 525-540.

judgment. In the judgment of the court *a quo*, the incorrect date is cited for the occurrence of the alleged incident. This seems to be a feature of this matter.[13] At line 20[14] the court incorrectly states that the Complainant's evidence was that she was home on *8 August 2004* when the alleged incident occurred. That was not the Complainant's evidence and neither is it the year that the alleged incident is purported to have occurred, which was in 2017. This date is in fact the date of birth of the Complainant. It can therefore be safely accepted that it was a genuine error by the Magistrate in that regard.

[26] The argument persisted with in this court is that court erred in accepting that the State had proved its case beyond a reasonable doubt especially in light of the fact that the charge against the Appellant was that the offence was committed in June 2017, whilst the Complainant had indicated that the offence took place towards the middle to end of June 2017 and the Appellant had handed in a document indicating that he had been incarcerated at the George Department of Correctional Services. The Respondent rightly argued that section 3 of the Criminal Law (Sexual Offences and Related matters) Amendment Act 32 of 2007 does not require a specific date as an essential to the charge. Section 84 of the Criminal Procedure Act 51 of 1977 *inter alia* provides that a charge shall set forth the relevant offence in such a manner and with such particulars as to the time and place at which the offence is alleged to have been committed and the person against whom the offence is alleged to have been committed. Where those particulars are unknown to the prosecutor, it shall be sufficient to state that fact in the charge.

---

[13] The Victim Impact report at para 6 p3 indicates the alleged incident to have occurred during July 2017.

[14] page 196 of the Record

[27] In *casu*, the charge sheet reads "IN THAT upon or *about* / *during* June 2017…". The court *a quo* found that it was conceivable that the thirteen-year-old child had made a mistake by saying that the incident had occurred towards the end of June 2017 when the Appellant was in custody. The court noted that the Complainant indicated when asked when the incident occurred, that she answered that she could not recall the date although she knew that it occurred on a Saturday after midnight and that it occurred in the year 2017. The court also noted that the Complainant had indicated that the incident occurred in June but she could not recall when in June it had occurred. She only said that it was towards the end of June when the prosecutor asked her whether it was in the beginning, the middle or end of June, that she answered that it the latter, i.e. the end of June. The court indicated that this was an honest mistake by the child given the fact that she had initially indicated that she could not recall when the incident occurred. I am in agreement with the court *a quo's* assessment in this regard. It is common cause that the incident occurred in 2017 when the Complainant was thirteen years old; the matter only reported a year later in 2018 and she testified two years after the incident. It is conceivable and more than probable that she would not have been able to recall exactly when the incident occurred. The court, correctly, took into account the totality of the evidence and could find no reason why the Complainant would have wanted to falsely implicate the Appellant when she was steadfast in initially not reporting the incident.

[28] The court also dealt with the allegation of the fabrication. I am in agreement with the Magistrate that had there been an intention to falsely implicate the Appellant, then it is curious why the family ostensibly waited more than a year after

the alleged rape to falsely implicate the Appellant. Secondly, there were various opportunities after she had confided in Ms Dumat to falsely incriminate the Appellant. However, the evidence shows that on at least three occasions, she refused to go the police station. These are hardly the actions of a manipulated person wanting to falsely incriminate someone. It is also clear that the Complainant was still fearful of the threats made by the Appellant against her, that he would kill her, if she reported the matter. One can hardly imagine what kind of impact such a threat would have on a thirteen- year-old child, who herself had witnessed the abuse of the mother at the hands of the Appellant according to her evidence. And, in my view, had the Complainant the motive, this charge would have been brought at the time of her mother's death, which occurred the previous year.

[29] The final aspect is the Appellant's contention that the Complainant's second supposed motive to falsely implicate the Appellant is because of the problematic behaviour that she exhibited at her aunt's and thereafter at her father's home and the latter's accusations as to her celibacy. This is sadly not a new feature which presents itself in matters such as these. Research and studies have concluded that in incidents of rape, the rape survivor in some cases experience a form of what is known as 'Rape Trauma Syndrome', which is the psychological trauma experienced by the survivor that includes disruptions to normal physical, emotional, cognitive and interpersonal behaviour.[15] In a research paper[16], studies found that among survivors of childhood sexual abuse, the most common coping strategies are avoidance and denial in response to the abuse. Rape survivors are also the largest group with Post Traumatic Stress Disorder. Furthermore, the psychological consequences of rape

[15] Burgess, Ann Wolbert; Lynda Lytle Holmstrom (1974), "Rape Trauma Syndrome". Am J Psychiatry.

[16] National Library of Medicine "Psychol Trauma; "A Longitudinal Study of the Aftermath of Rape among Rural South African Women" Gail E Wyatt and Others

are sometimes influenced by the characteristics of the event; the force or severity of the event; the immediate psychological reaction to the assault, for example self-blame, loss of self esteem, shame and fear and the use of denial and avoidance coping. Other research also found that survivors of sexual abuse more often than not, turned to substance abuse as a means of denial, coping or avoidance. Beliefs about rape and experiences of social undermining [17] by the survivor's social resources for support may also increase the likelihood of engaging in self-destructive or risky behaviours, such as heavy drinking following the rape. It is against this backdrop that the behaviour of this Complainant at her aunt and her father is to be evaluated. It is clear that the Complainant suffered from anxiety and was unable to deal with the double trauma of the rape and the loss of her mother and sister in such a short period of time. Her turning to substance abuse such as alcohol would, if one takes into account the research, not be unusual. Furthermore, I believe the attitude of her father compounded and exacerbated her already fragile emotional state, since there is a high prevalence of rape survivors who experience high levels of shame, self-blame and internalised stigma.[18] It is not an unusual feature to encounter criticisms such as this against complainants in matters pertaining to sexual offences. In my view, the time has come for this narrative to be changed, lest it serves to inadvertently reinforce or reaffirm the survivor's already compromised belief that they are to blame for these violations perpetrated against them. The criticism therefore against the Complainant in this regard is meritless.

[30] When one looks at the totality of the evidence, it is evident that the court highlighted that the Complainant and the Appellant had a good relationship and a

[17] Gidycz et al 2006, Chin et al, 2010

[18] South African rape survivors' expressions of shame, self-blame and internalised stigma, Samantha Willan et al,Science Direct, Vol. 5, June 2024

relationship of trust and it was because of this and his request to see his two-year-old daughter that made the thirteen-year-old open the door for the Appellant. The court was alive to the fact that it was dealing with a single child witness and the attendant cautionary principles. The court was similarly alive to the approach that it adopted where courts are faced with two irreconcilable differences, the findings of credibility of a witness, their reliability and the probabilities.[19]

[31] I am also in agreement with the court *a quo's* assessment of the nature of the detail given by the Complainant and that a child victim of sexual assault would not fantasize over things that are beyond their own direct experience.[20] The evidence was that the Complainant had no history of sexual activity other than the rape incident. This was confirmed by the doctor who had stated that apart from the torn hymen, there was no evidence that the child was sexually active. The detail in which she described the assault was overwhelming. She described pushing the Appellant's hands away from her body and then he proceeded to slap her in her face and pulled out a knife to force her into submission. The bloodied sheet was similarly telling - which evidence was subsequently destroyed when the bungalow of the Complainant burnt down. So too was the evidence of her underwear and pants which was removed by the Appellant on the same night. The court accepted the evidence of the Complainant and rejected the evidence of the Appellant, finding that the State had succeeded in discharging its burden of proof beyond a reasonable doubt against the Appellant. I can find no evidence of misdirection in the court a quo's finding in this regard.

---

[19] Stellenbosch Farmer's Winery Group Ltd and Another v Martell & Cie SA and Others (427/01) [2002] ZASCA 98 (6 September 2002)

[20] See the comments of Cameron JA and Nugent JA in S v M 2006 (1) SACR 135

[32] Accordingly, I would make the following order:

A. The appeal against conviction is dismissed.

____

KUSEVITSKY, J

I agree with the judgment of Kusevitsky J.

____

FRANCIS, J

I agree.

____

BREMRIDGE, AJ