

Nell v State (Unreported) Case no. A591/2014. 22 October 2015. Gauteng Division of High Court (Pretoria)

KEY CONCEPTS	
Rape of 6-year-old female	Rape by father
Complainant recants in court	Reasons for recantation

The appellant had been convicted of various charges of rape and indecent assault of his 6 year old daughter. The child disclosed the abuse to an older step-sister, who reported the matter to the police. There was medical evidence of anal and vaginal penetration and the mother of the child had found the appellant and the child in bed under the blankets. The child testified to the assault, was consistent with the other evidence and the accused was convicted.

In the course of the trial, it became clear that the child loved her father although she was afraid that he would hurt her. Her mother knew about the abuse but remained silent, and as the mother was an alcoholic, the father was the primary carer and provider. When she was confronted during cross-examination with various statements to the effect that her father would deny that he had ever raped her and would state that she was lying, she suddenly stated that he had never raped her. The cross-examination was described by the High Court as “lengthy and haphazard.” Thereafter a forensic social worker, who had assessed the complainant, testified that she was a “prime example of a sexually abused, neglected child with no back-up system who would retract any confession the moment it was suggested to her that her father, who had molested her, would testify in a court that she was lying.” The appellant was convicted and the matter referred to the High Court for sentencing.

In the course of the sentencing process, the probation officer submitted a report which contained a statement made by the complainant to the foster mother that it had not been her father who had raped her but another man. As a result of this report, the High Court set aside the convictions and the matter was referred back to the regional magistrate.

The child gave evidence again and she testified that her mother had told her to tell the foster mother that her father had not abused her sexually but that it had actually been another uncle. However, when she was asked in court who the actual perpetrator was, she said it was her father and not the uncle. Her evidence was supported by another forensic social worker, who explained the reasons why children recant. After the new evidence, the regional court magistrate found the appellant guilty on all counts.

In regard to the appeal on this decision, the High Court dismissed the appeal both against the conviction and sentence.