IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: ~~YES~~ / NO.	
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.	
(3) REVISED.	
30/5/2014	
DATE	SIGNATURE

30/5/14

CASE NO: A1040/2013

In the matter between:

TSHABALALA Appellant

and

THE STATE Respondent

Date of Hearing: 19 May 2014

Date of Judgment: 30 May 2014

JUDGMENT

MOTHLE J

1. The appellant appeals against conviction and sentence imposed by the Regional Court Magistrate, Brakpan (*the Court a quo*) on 20th September 2013. He was convicted of rape of a minor of 8 years at the time. The Court a quo then sentenced him to 15 years imprisonment.

2. The State's case is succinctly that on 8 May 2012, the appellant called the minor to his house, whereafter he took her to his bedroom and raped her. The minor knew the appellant very well as they were neighbours and she used to visit his house. Her version is that after the rape she exited the bedroom, with appellant following behind her. The minor later reported the incident to her mother who took her to hospital. The medical examination concluded that the minor was penetrated sexually.

3. The appellant denied having had any sexual act with the minor and further denied having been seen exiting the bedroom with her.

4. The state presented the evidence of the minor as a complainant, her mother and the Medical Practitioner who examined her at the hospital. Appellant testified and called the neighbour, who

corroborated the minor's version that she saw her exiting the bedroom with appellant following her.

5. The Court a quo found, on the evidence, that the accused is guilty as charged. In analysing and evaluating the evidence, the Court a quo, referring to the relevant authorities, dealt thoroughly with the principles and approach relating to the evidence of single witnesses and in particular in this case, of a child witness. The Court also analysed the cautionary rules relating to evidence in sexual assault cases.

6. The Court a quo come to the conclusion that:

(1) the evidence of the minor and her mother was credible and reliable;

(2) the Medical Examiner's report and her evidence found that the minor was sexually penetrated, consistent with rape and;

(3) the version on Appellant that he was not in the house but sitting outside when the neighbour arrived is contradicted by his own witnesses' evidence that she saw the minor exiting the bedroom with appellant following behind her. The appellant's version was found not be reasonably possibly true.

7. In *R v Dhlumayo and Another 1948(2) SA 677 (A)* the Court established the principle that the powers of an appeal court to intervene in a finding of the Court a quo on demeanour of witnesses are limited. The Court a quo found the evidence of the state witnesses to be credible and reliable, a finding which this Court, in the absence of any contrary evidence, cannot interfere with.

8. This Court in particular agrees with the finding of the Court a quo on the medical report and evidence of the examining doctor. The medical examination of the minor took place on the same day she was raped. After she reported the incident to her mother on the same day, she there and then took her to the hospital. The probability that she may have been raped by someone else as contended by counsel for appellant has no merit.

9. The appellant's alibi that he was sitting outside the door when she saw a neighbour coming from the house with the minor is contradicted by his own witness. His version that he went shopping with his spouse is also contradicted by the same

witness. The Court a quo was therefore correct in finding that the appellant's version was not reasonably possibly true.

10. The appeal on conviction must therefore fail.

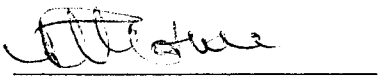
11. In regard to sentence, the Court a quo took into account the fact that the appellant was 60 years old, had two previous convictions of theft, and had spent 14 months in prison awaiting trial. These mitigating factors were weighed against the aggravating factors inherent in the crime of rape. The court found, in appellants favour, that there are substantial and compelling circumstances which would justify a departure from the imposing prescribed minimum sentence of life imprisonment. Appellant was sentenced to 15 years imprisonment.

12. The rape of a minor is a serious offence, a scourge for which a person convicted should not be punished leniently. In *S v Chapman 1997(2) SACR 3 (SCA)* the Court held that rape is regarded as a serious offence constituting a humiliating, degrading and brutal invasion of the privacy, dignity and the person of the individual. Appellant, who in terms of the prescribed minimum sentence on this offence could have had a sentence of life imprisonment imposed on him, was handed a prison term of 15 years which under the circumstances is in my

view fair and reasonable. There is thus no need for this Court to tamper with this sentence.

13. In the premises I proposed the following order:

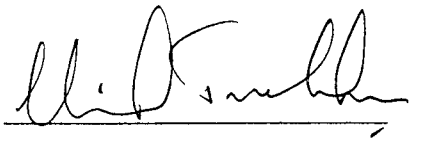
The appeal against both conviction and sentence on the charge of rape is dismissed.



S P Mothle

Judge of the High Court

I concur and it is so ordered



N B Tuchten

Judge of the High Court