



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Haarhoff & another v Director of Public Prosecutions, Eastern Cape ZASCA 184 (11 December 2018)

From: The Registrar, Supreme Court of Appeal

Date: 11 December 2018

Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today, the Supreme Court of Appeal dismissed appeals brought by Mr Haarhoff and Mr Baartman against their convictions and sentences, imposed by the Eastern Cape Division of the High Court sitting at Graaff Reinet (trial court). This appeal is with leave of this court.

The two appellants and a third person (C) were arraigned on a charge of rape in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (Sexual Offences Act). The incident that led to their prosecution occurred in the small town of Pearston, situated in the Eastern Cape, where the parties, together with the complainant, all lived in the same neighbourhood. The two appellants pleaded not guilty and gave a plea explanation in terms of which they acknowledged having had sexual intercourse with the complainant on separate and distinct occasions but claimed that it was consensual. C denied having had sexual intercourse with the complainant and that he had knowledge of the fact that the appellants had had sexual intercourse with her. The trial court, accepted the unchallenged evidence of a clinical psychologist who had assessed the complainant and opined that although the complainant was mentally challenged with a mental age of a 10 year old, the complainant was competent to testify, as she was able to understand what it meant to tell the truth, what it meant to lie, and could be admonished. The trial court considered the evidence given by the complainant, who was a single witness to the rape, to be clear and satisfactory in material respects. At the end of the proceedings, C was acquitted, while the two appellants were convicted and sentenced to 20 years imprisonment, respectively.

The appellants applied for and were granted leave to appeal against both their convictions and sentences to the full court of the Eastern Cape Division of the High Court, Grahamstown. In a split decision, the majority judgment dismissed their appeal against both convictions and sentences. The minority judgment indicated that it would have upheld the appeal and gave its reasons for holding that view. After unsuccessfully applying for leave to appeal against the majority decision, the appellants directed an application for leave to appeal against their convictions and sentences to this court and were successful. The issues raised on appeal pertained to whether the complainant had been properly admonished to tell the truth as contemplated in s 164 of the Criminal Procedure Act 51 of 1977, whether her evidence was sufficiently reliable to sustain the appellants' convictions and whether the sentences imposed on them by the trial court were appropriate.

In a unanimous judgment, the Supreme Court of Appeal pointed out that the enquiry into a witness' competence to testify in court and his or her ability to understand the nature and import of the oath or affirmation are two discrete enquiries. With regards to the facts of this case, it emphasized that the questioning of the complainant by the trial court, in the process of establishing whether the complainant understood the difference between the truth and falsehood as well as the obligation to tell the truth, ought to be considered in the context of the unchallenged expert testimony of the clinical psychologist. It found that the evidence that preceded the complainant's admonition established that the complainant was indeed able to understand the difference between truth and lies and that she also understood the duty to speak the truth. It accordingly found that the complainant had been properly admonished. It also found that the court a quo had correctly found that even though the complainant was not an intelligent witness, she was a demonstrably honest, credible and reliable witness. All the improbabilities, inconsistencies, and contradictions in the appellants' evidence pointed to extreme mendacity that warranted the rejection of their evidence as false beyond reasonable doubt.

The Supreme Court of Appeal was satisfied that the trial court had correctly applied the principles applicable to sentencing. It considered the fact that the appellants had known about the complainant's mental challenges and taken advantage of her vulnerability to be a serious aggravating factor. It remarked that the courts must demonstrate that the vulnerable members of society enjoy equal protection of the law. It accordingly dismissed the appeals.