

Media Statement



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TO: ALL MEDIA

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RE: NPA SUCCESSFULLY APPEALS CASE AGAINST ALLEGED CHILD RAPIST

The Gauteng High Court in Johannesburg upheld an appeal by the NPA against a judgement by the Regional Court Magistrate, Johannesburg that acquitted Harold Ngwako Ndebele of child rape.

In terms of the law, the grounds for the state to appeal are only limited to a question of law which can either be misinterpreted or misapplied. The NPA brought an application for appeal relating to a question of law in terms of section 310(1) of the Criminal Procedure Act 51 of 1977. This after Ndebele was acquitted on charges of raping a 6 year old minor.

The minor was a learner at a school in Alexandra where Ndebele was working as a cleaner. The grandmother of the child came to pick up the child from school and when the child was not at the normal pick up spot, the grandmother started searching for her in the entire school premises. She later found the child inside a closed classroom with Ndebele and when she asked what he was doing with the child, he could not answer. On their way home, the grandmother noticed the child's movements were uneasy and on arrival, she asked a relative to have a look at the child. A whitish substance coming from the child's private parts prompted the relatives to take the child to Hillbrow hospital where it was later confirmed that the child had been raped.

The trial court found that the victim was a single witness and applied the cautionary rule. The learned magistrate further made the finding that the victim never reported the fact that "Uncle Harold" as he is known to the learners, put his penis into her vagina. This finding, and subsequent conclusions, is in direct contrast with section 59 of Act 32 of 2007 that states that the court may not draw any inference from the length of any delay between the alleged commission of the offence and the reporting thereof. The magistrate concluded that there was no medical corroboration for what the child/victim alleges and

that there were contradictions between the grandmother and the victim. In light of these factors, the accused was acquitted.

In its application, The state, represented by Advocate Geo Wassermann, submitted that the Magistrate erred in using the cautionary rule in a sexual offence matter. He submitted that the cautionary rule regarding sexually related matters and that of children have been abolished as late as 1998 in the matter of **S v Jackson** 1998(1) SACR 470 (SCA) wherein it was stated that *in our system of law, the burden is on the state to prove the guilt of an accused beyond reasonable doubt - no more and no less. The evidence in a particular case may call for a cautionary approach, but is a far cry from the application of a general cautionary rule.*

The state's submissions were that evidence of a specific case can be approached with caution and there is no scope to differentiate between the reasons why the evidence should be approached with caution, or to apply a certain degree of caution. He reminded the court to keep in mind that section 60 of the Sexual Offences Related Matters Amendment Act, No 32 of 2007 specifically states that no court may treat the evidence of a complainant with caution on account of the nature of the offence.

On the issue of uncorroborated evidence, Adv. Wassermann submitted that, in order to determine whether the state's evidence should be accepted, the issue of corroboration has to be considered simultaneously. The lack of corroboration is not fatal. In **R v Manda** 1951(3)158 (A) the court found that there is no requirement of law or practise that a child's evidence has to be corroborated. Furthermore, corroboration may usually be found in independent evidence which confirms the evidence of a complainant, such as medical evidence confirming injuries. "In this instance, the evidence of the child is corroborated by the grandmother of the child, her mother and Dr Babar and it is therefore my submission that the learned Magistrate erred in his finding that the child was a single witness and her evidence was not corroborated" he said.

The high court found the trial court's judgement erroneous in that the learned Magistrate adopted the wrong test that resulted in an erroneous judgement. The trial court was found to have committed a serious misdirection in evaluating the evidence before it, resulting in an error in law. The high court therefore upheld the state's appeal and replaced the trial's judgement as per DPP v Pistorius SA 317 (SCA) by giving an order that found the respondent, Ndebele guilty of rape and he was ordered to appear for sentencing proceedings on Monday 9 July 2018 at the Johannesburg Magistrate's Court 13 at 09h00.

Kind Regards,

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