

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

C and K v The State

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

In January 1983 the appellants, then 18, participated in a gang rape of a 14 year old girl, B. B, who was staying with her elderly and conservative grandparents in Kenwyn, Cape Town, at the time, had gone to spend the night with a friend, L. There three youths including the appellants had raped her despite the presence in the room of L and three other teenagers. One of the youths had also threatened her with a knife. L had encouraged the youths, and lied to her mother, who came to find out why B was crying hysterically, about what was happening. B had not told her parents or her grandparents about the gang rape: she had not appreciated what had actually happened to her and felt ashamed and humiliated. She also felt complicit as she had been warned by another friend, Z, not to go to L's house, and B's mother had asked her to end her friendship with L. Indeed when she told Z about what had happened, Z's reaction had been one of anger with B for going to L's home when she had warned her against it.

B also did not tell her husband, when she married years later, about the rape. She remained silent until she fortuitously encountered C at the home of his sister 19 years later. The encounter revived memories of her ordeal and she became hysterical on her return home. After telling her husband what had happened years previously, she broke down and had to be hospitalized. On her discharge she laid charges against the two appellants.

C and K both pleaded not guilty to the two charges of rape laid against each of them. They testified in the regional court, Wynberg, that although they had spent an evening with B at L's home about 20 years previously, nothing had happened. The regional magistrate rejected their evidence. She found that B's detailed, consistent account of what had happened was entirely credible. She also accepted the explanations of B as to why she had told no one but a friend, and she accepted that B had been naïve and ignorant of sexual matters such that she had not appreciated that she had been raped until she was in her mid-twenties.

C, who was convicted on two counts of rape, was sentenced to five years' imprisonment. K, who was convicted on one count, was sentenced to four years' imprisonment. The trial court considered that correctional supervision was not an appropriate sentence for either of them, given the cruelty of their behaviour, and the impact that it had had on B's life.

An appeal to the Cape High Court failed. The court considered that the appellants had been rightly convicted and that the trial court had not misdirected itself in the imposition of sentences.

The SCA today dismissed the further appeal against both convictions and sentences. It found (per Lewis JA, Ponnann JA and Theron AJA concurring) that B's evidence in the trial had been consistent and credible, and was corroborated in various respects. She had provided plausible explanations for her failure to tell her family about the rapes, and for remaining silent for so many years. The court accepted her explanation that she had not appreciated exactly what had happened to her, and that she had felt complicit because she had disregarded warnings against L. It considered that the conflicting evidence of the appellants could not be believed in the light of the compelling State case. The SCA also regarded the sentences as appropriate and held that it could not in any event interfere in the absence of a misdirection on the part of the trial court.

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