

Tuesday, June 20, 2000 - Web posted at 7:48:54 GMT

Teenager arrested for false rape allegations

WERNER MENGES

THE double-edged perils of false rape complaints were demonstrated in the High Court on Friday when a teenage girl, who retracted previous claims of having been raped, was arrested and charged with perjury.

The girl returned to the witness stand in the court room of Acting Judge Peter Shivute on Friday to tell the court that her previous testimony in the trial of Hans Swartbooi (24) had been false.

She said she had accused him of raping her at the farm Sonderwater in the Rehoboth district on April 10 last year because her sister and brother-in-law had put pressure on her to do so.

Swartbooi pleaded not guilty when his trial started before Acting Judge Shivute in mid-May. The girl then testified that he had raped her.

About two weeks later, she approached Public Prosecutor Marinus Scholtz with a confession that her testimony in court had been false.

As a result, she was returned to the witness stand. After repeating that her previous testimony under oath had been false, Swartbooi was acquitted.

She was then arrested and charged with perjury and defeating or obstructing the course of justice.

In a case heard in the High Court the week before, the other side of the danger posed by falsely making rape complaints - this time the possibility that innocent people can be convicted and sent to prison - was on display.

Having heard arguments in an application for new evidence to be led after a rape conviction, Judge President Pio Teek and Judge Sylvester Mainga ordered that the Windhoek Regional Court hear fresh evidence which could bring freedom to Andries Glaeser, who has been in prison for over four years.

Glaeser was convicted in the Windhoek Regional Court of rape and given a 10-year prison sentence on May 31 1996.

His first attempt to appeal failed because he filed his application late. Thereafter, at the end of September 1998, he petitioned the Supreme Court.

Attached to his petition was a letter which the complainant had written to him in February 1998.

In the letter, she told Glaeser she had been bothered by what happened to

him since he was sent to prison because she knew he was innocently incarcerated.

She indicated that she had been pressurised to say he had raped her when she in fact had not wanted to do so.

As a result, the Chief Justice referred the matter to the High Court.

Judge President Teek afterwards remarked in the judgement that it seemed "on the face of it that a gross injustice occurred and that an innocent man is serving an imprisonment because of the possible perjury committed by the complainant in falsely incriminating (Glaeser)".

Glaeser's appeal will now return to the High Court.

In an appeal heard in April, the Supreme Court dealt with a similar situation where a rape complainant later made a complete about-turn.

In that case, immediately after hearing arguments the court ordered that Vernon Rittmann, who had been in prison for more than 18 months, be released. Reasons for the court's decision are still to follow.

Claims that rape complainants could get away with making false charges more easily than complainants in other crimes was for centuries supported by a legal rule that alleged rape victims' testimony had to be treated with special caution, akin to that of an accomplice to a crime.

This since-discredited cautionary rule was however abolished by the Combating of Rape Act. Last year, a Supreme Court judgement already ruled that it could not be used anymore when alleged rape victims' testimony had to be considered by a court in Namibia.

When the rule had to be justified, a statement by an English judge from the 17th century was often quoted - that it was easy to bring a charge of rape but difficult to refute it.

Recent studies have, however, found no evidence that complainants in sexual cases are more untruthful than complainants in other cases.

In one study referred to in the South African Supreme Court of Appeal judgement which scrapped the cautionary rule in South Africa in 1998, it was found that about two per cent of the claims of rape or other sexual offences in New York were false.

That rate of unfounded complaints was the same as that of other offences.

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