THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 532/2022

In the matter between:

MICHAEL JANTJIES **APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation: *Michael Jantjies v The State* (Case no 532/2022) [2023] ZASCA 3 (15 January 2024)

Coram: NICHOLLS, CARELSE and MATOJANE JJA and MUSI and TOKOTA AJJA

Heard: Matter disposed of without oral hearing in terms of s 19*(a)* of the Superior Courts Act 10 of 2013

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and release to SAFLII. The date for hand down is deemed to be 15 January 2024 at 11h00.

Summary: Criminal appeal – courts must take all the evidence into account – a court cannot convict the accused unless it finds that the accused's version is so improbable that it cannot be reasonably possibly true.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Boqwana J and Mayosi AJ sitting as court of appeal):

1 The appeal is upheld.

2 The order of the court below is set aside and replaced with the following order:

'The appeal is upheld, and the convictions and the resultant sentences are set aside.'

JUDGMENT

Matojane JA (Nicholls, Carelse JJA and Musi and Tokota AJJA concurring):

[1] This is an appeal against the judgment of the Western Cape Division of the High Court, Cape Town, per Mayosi AJ with Boqwana J concurring (the high court), in respect of which they dismissed an appeal by Mr Michael Jantjies (the appellant) against his conviction on three counts of rape by the regional magistrate in the Regional Division of Western Cape (the trial court).

[2] On 5 June 2019, the trial court convicted the appellant on three counts of rape and sentenced him to an effective term of 16 years imprisonment. On 17 July 2019, the trial court granted the appellant leave to appeal against his conviction only in terms of s 309C of the Criminal Procedure Act 51 of 1977 (the CPA). The

high court dismissed the appeal on the rape convictions. This is a further appeal against conviction, with the special leave of this Court.

[3] In the trial court, the State led the evidence of the complainant and a retired police officer, Warrant Officer Johan Tobias Grobbelaar (Grobbelaar), to whom the complainant reported the incident. The appellant testified in his defence without calling any further witnesses. In summary, the evidence can be broadly set out as follows.

[4] The complainant, a 48-year-old schoolteacher, met the appellant on a social media dating site in August 2014. The appellant held himself out as a private investigator and police officer. They communicated daily with each other through Facebook and WhatsApp. They met in person on 24 December 2014 and started seeing each other almost daily, including weekends and after school. They went away most weekends and would stay in one room together. The complainant testified that they went on weekend trips to Vredenburg on three occasions, always staying at St Helena Bay Hotel (the hotel) in St Helena Bay. She stated that, despite sharing a room and being alone with the appellant, he never made any sexual advances towards her.

[5] Regarding the actual incident, the complainant testified that on 6 March 2015, she and the appellant booked themselves a room at the hotel. They shared a room but slept in separate beds. On 7 March 2015, she was awakened by the appellant climbing onto her bed. According to her, the appellant placed his arm under her neck, held her wrist, and prevented her from getting up. Despite her attempts, he pinned her down, turned her on her stomach, and proceeded to penetrate her anus with his penis, she testified that she experienced excruciating pain. After that, the appellant went to the bathroom, took a shower, returned to the bedroom, turned her on her back and inserted his penis into her vagina, and,

after that, placed his penis into her mouth. None of these acts by the appellant were with the complainant's consent.

[6] The following Monday, the appellant went to the complainant's house to inform her of a housing opportunity available for her children following an alleged cancellation on the council's waiting list. The appellant asked for R50 000 to cover the deposit and transfer costs by Thursday. In response, the complainant and her children secured loans and provided the funds to the appellant. On Friday, as per the appellant's request, the complainant drove him to town to facilitate the payment. However, upon exiting the car with the cash, the appellant disappeared and never returned.

[7] During cross-examination, the complainant stated that she did not resist the alleged assault because the appellant had positioned a firearm between their beds. Significantly, in her evidence-in-chief and her statement to the police, there was no mention of a firearm or her efforts to engage in a conversation with the appellant before the alleged incident.

[8] Grobbelaar was called to demonstrate the consistency of the complainant's account of being raped by the appellant. Grobbelaar met the complainant at Kenilworth Clinic during psychiatric treatment in April 2015, where she told him that she had been raped by her ex-boyfriend (the appellant) at a hotel in March 2015. Despite Grobbelaar advising her to file a rape case, the complainant delayed doing so until 19 September 2015. This delay coincided with the appellant's release on bail for a theft case previously filed by the complainant. Grobbelaar's testimony, therefore, not only contradicted the complainant's description of her relationship with the appellant but also raised questions about the timing of her decision to report the rape.

[9] The complainant testified that she was advised by the South African Police Directorate for Priority Crime Investigation (the Hawks) to maintain contact with the appellant after the incident to facilitate his arrest and get her money back. This was her explanation for her continued expressions of love in text messages and emails she sent to the appellant after the alleged incident. Despite describing the appellant as merely a friend, the complainant was unable to explain under cross-examination why she allowed the appellant to engage in physical intimacy if their relationship was purely platonic.

[10] The appellant vehemently denied all allegations against him, particularly that he was with the complainant at the hotel in March 2015. He insisted that all intimate encounters he had with the complainant were consensual. According to the appellant, their love relationship began in December 2014 and ended in March 2015. He stated that the sole purpose of his pursuing an affair with the complainant was in order to obtain money from her. He contended that the rape accusation was fabricated, attributing it to the complainant's sense of betrayal after he stole R50 000 from her and terminated their relationship. The appellant portrayed the complainant as vengeful, asserting that she opened numerous police dockets against him and orchestrated media accusations of rape. He stated that their last weekend together was on 18 January 2015, during which he booked a bungalow in Lanesville to celebrate his birthday.

[11] The trial court adopted an incorrect judicial approach to the evaluation of evidence and failed to exercise caution when it evaluated the evidence of a single witness. The trial court expressed itself as follows:

'If indeed sexual intercourse was a regular occurrence between the two parties as alleged by the accused, the question would be, why would the complainant choose a particular venue and particular date to the exclusion of other dates.'

[12] The high court was satisfied with the findings of the trial court and, in paragraph 39 of its judgment, reasoned that:

'The complainant's account of the events of 7 March 2015 was consistent throughout and she did not veer from this account even under thorough cross examination by two different representatives of the Appellant. The events she described are reflected in the statement of Ms Coetzee to whom she reported the rape, nine days after it occurred. The complainant's account of what occurred is further consistent when viewed against the manner she described it to Mr Grobbelaar in April 2015. The only discrepancy between the complainant and Mr Grobbelaar is his reference to an 'ex-boy-friend' having committed the rape, in circumstances where the complainant was adamant that the Appellant was never her boyfriend. This discrepancy is not material. Mr Grobbelaar attributes his use of the term 'boyfriend' as opposed to 'man' to a difference of understanding of the terms or their interpretation depending on whether one speaks Afrikaans (his mother tongue) or English. His use of the term was not based on the complainant having told him that she had been in a relationship with the Appellant.'

[13] The high court materially misdirected itself by not taking into account the entirety of the evidence[1] and neglecting the fundamental principle in criminal proceedings that the State must prove its case beyond a reasonable doubt. The high court failed to recognise that the accused is not obligated to prove the truth of any explanation he provides; rather, the burden lies with the State. If there is a reasonable possibility that the accused's evidence might be true, the accused should be acquitted.[2]

[14] The high court also neglected to evaluate the appellant's countervailing evidence that the complainant had a motive to falsely accuse him of the alleged rapes. The appellant highlighted the social media campaign initiated by the

[1] In *S v Shilakwe* [2011] ZASCA 104; 2012 (1) SACR 16 (SCA) para 11, this Court underscored the importance of a detailed and critical examination of each component of the evidence and stressed the necessity of stepping back to consider the evidence as a cohesive whole to avoid missing the broader perspective; see also *S v Hadebe & Others* 1998 (1) SACR 422 (SCA) at 426F-H and *S v Mbuli* 2003 (1) SACR 97 (SCA) at 110C-E.
[2] See *R v Difford* 1937 AD 370 at 373; and *S v Kubeka* 1982 (1) SA 534 WLD at 537 F-G.

complainant following his refusal to return her stolen money. Importantly, the high court misdirected itself in overlooking significant email correspondence, text messages and newspaper articles that portrayed the complainant's unwavering love for the appellant and her sense of betrayal after the appellant defrauded her and absconded with her money. This evidence could redound to the appellant's favour. Furthermore, the court failed to address the inconsistencies in the complainant's testimony and did not provide reasons for giving preference to her evidence over that of the appellant. The court is enjoined to consider the evidence in its totality.[3]

[15] At issue in the appeal before us is whether the State has proved the appellant's guilt beyond reasonable doubt on the evidence presented before the trial court. There is conflicting evidence as to whether the appellant was with the complainant at the hotel when the incident occurred. The State's case is wholly dependent upon the testimony of the complainant. Section 208 of the CPA provides that an accused may be convicted of any offence on the evidence of a single competent witness.[4] When assessing the credibility of a single witness, it is crucial to understand that there is no one-size-fits-all approach. The evidence presented by such a witness must undergo the same rigorous scrutiny as any other evidence. The trial court is tasked with meticulously evaluating the evidence, taking into account both its strong points and shortcomings. After this thorough examination, the court must then determine whether, despite potential flaws or inconsistencies in the testimony, it is convinced of the truthfulness of the witness's account [5]. This careful and balanced evaluation is fundamental to ensuring a fair and just legal process.

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[3] *S v Van der Meyden* 1999 (1) SACR 447 (W) at 450A-B.
[4] See *R v Mokoena* 1956 (3) SA 81 (A); *S v Webber* 1971 (3) SA 754 (A) at 758G; *S v Sauls and Others* 1981 (3) SA 172 (A) at 179G-180G; *S v Stevens* [2004] ZASCA 70; [2005] 1 All SA 1 (SCA) para 17 and *S v Gentle* [2005] ZASCA 26; 2005 (1) SACR 420 (SCA) para 17.
[5] *S v Sauls and Others* 1981 (3) SA 172 (A) 180E-G.

[16] The court must assess the credibility and reliability of the complainant's evidence in light of all other evidence presented. It must weigh the potential risks associated with relying exclusively on the complainant's account as a single witness and seek corroborative evidence from other sources when available. In this instance, no supporting evidence from other sources was available to validate any aspect of the complainant's evidence.

[17] First, the State could but did not provide evidence to support the claim that the appellant was at the hotel when the incident happened. When the complainant was shown a hotel register for bookings on March 6, 7 and 8 March 2015 on which their names did not appear, she alleged that their names were "tippexed off" by an employee who took their bookings and kept the money for herself. Additionally, the complainant claimed that Sergeant Vosloo was there when other workers confirmed that the employee had taken the money. No explanation was proffered for the State's failure to call the necessary witnesses.

[18] Second, the complainant testified that she saw a doctor two days after the incident due to abdominal pains and anal bleeding. However, the doctor was not called to testify. This prevented the court from hearing about the doctor's observations and conclusions, which could have provided corroboration for the complainant's version.[6]

[19] The timing of the initial report of rape is just one aspect to consider. There is no strict guideline governing the behaviour of sexual assault victims, and a court may not draw inference only from the length of any delay between the alleged commission of such offence and the reporting thereof[7]. In this instance, the complainant's explanation for not immediately disclosing the incident to the

[6] *MM v S* [2012] ZASCA 5; 2012 (2) SACR 18 (SCA); [2012] 2 All SA 401 (SCA) para 24.
[7] Section 59 of The Criminal Law (Sexual offences and related matters) Amendment Act 32 of 2007

doctor who treated her is that she underwent a complete mental shutdown, which, according to her, was later diagnosed by her psychiatrist as a dissociative disorder where the brain shuts off to protect the body. Again, the State failed to summon the said psychiatrist to offer substantiating evidence for the complainant's alleged mental health challenges.

[20] Sister Ntwana, the medical professional who examined the complainant and completed the J88 medical form six months after the incident, was not called as a witness to discuss her findings or the information provided to her by the complainant. The form only noted a two-centimetre scratch mark on the complainant's left wrist area. Without Sister Ntwana's testimony, it is not possible to conclusively link the scratch mark to the complainant's allegation that the appellant cut her wrist during their separation after the incident. This gap in evidence and testimony presents a significant oversight in the case, impacting the interpretation of the medical evidence and its relevance to the complainant's claims.

[21] The complainant made her first report of the alleged incident to her friend, Chantal Coetzee, only after the appellant had repeatedly reneged on his promise to refund her money. This is apparent from an email of 21 March 2015, about 13 days after the alleged incident, that the complainant wrote to the appellant showing her intense emotional distress at being defrauded and abandoned. There is no suggestion of the alleged rape. The email reads:

‘I have been isolating the past week…at work and at home. I even changed my email address and cell no so no one can contact me.
I have been crying non stop the past week… at work and at home. I have been crying because I was disappointed, felt betrayed, used, confused abandoned, discarded.
Then you made contact with me, and my heart hurt so much. I appreciated hearing from you but long to hear your voice, to see you.’

[22] I am unable to find anything in the evidence presented in this case that could be viewed as independent support for the complainant's allegations. There is only the complainant's word against that of the appellant that the appellant was at the hotel on 8 March 2015, where the incident allegedly occurred. When the evidence is weighed in its totality, it supports the conclusion that the appellant's version of events could reasonably possibly be true and that the evidence of the complainant, when viewed with the appropriate caution called for, raises doubt about the appellant's guilt. Accordingly, the State has failed to prove the appellant's guilt beyond reasonable.

[23] The court must express its concern about the poor quality of the investigation and evidence presented. This impacts the administration of justice and the public confidence in the legal system. Crucial steps, such as interviewing potential witnesses at the crime scene and scrutinising the appellant's alibi, were apparently neglected. Material witnesses were not called to testify with no explanation advanced for their absence. The absence of evidence from the investigating officer further suggests that a comprehensive investigation may not have been conducted at all. Not only is the legal process jeopardised, but the broader societal understanding and response to sexual assault cases is impacted[8].

[8] See *S v Sebofi* 2015 (2) SACR 179 (GJ) at [65] – [67]

[24] In the premises, the following order issues:

1 The appeal is upheld.

2 The order of the court below is set aside and replaced with the following:
'The appeal is upheld and the convictions and the resultant sentences are set aside.'

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K E MATOJANE

JUDGE OF APPEAL

Appearances

For the Appellant:	Instructed by S Kruger
Instructed by:	Legal Aid South Africa, Cape Town
	Legal Aid South Africa, Bloemfontein
For the respondent:	Instructed by P Thaiteng
Instructed by:	The Director of Public Prosecutions, Cape Town
	The Director of Public Prosecutions, Bloemfontein.