

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: A182/20

In the matter between:

M[...] T[...] S[...]

Appellant

and

THE STATE

Respondent

J U D G M E N T

*The judgment and order are accordingly published and distributed electronically.
The date and time of hand down is deemed to be 10:00 on 29 June 2021.*

TEFFO, J:

[1] The appellant was arraigned in the Regional Court, Benoni where he faced two counts of rape in contravention of section 3 of the Sexual Offences and Related Matters Act, 32 of 2007.

[2] He pleaded not guilty but was eventually convicted on both counts and sentenced to life imprisonment on each of the two counts in terms of section 51(1) and Part 1 of Schedule 2 of the Criminal Law Amendment Act, 105 of 1997 (*"the CLAA"*). The appellant has an automatic right of appeal in terms of

section 10 of the Judicial Matters Amendment Act, 42 of 2013. He now appeals against his conviction and sentence .

[3] In respect of the first count, he admitted that he had consensual sexual intercourse with the complainant, Ms N[...] H[...] (N[...]) and in respect of the second count, the appellant denied that he raped or had sexual intercourse with the complainant,. Ms N[...] M[...] (N[...]). He gave a plea explanation that he fought with the complainant.

[4] The issue that had to be decided in the court below in respect of the first count was whether the complainant consented to have sexual intercourse with the appellant or not. In respect of the second count, the issue was whether the appellant raped the complainant or not.

[5] In respect of the first count, the court a quo found that the appellant raped the complainant more than once and in respect of the second count, it found that during the rape serious bodily injuries were inflicted on the complainant which attracted the application of the provisions of section 51(1) read with Part I of Schedule 2 of the CLAA.

[6] The questions to be answered in this appeal are whether or not the court a quo misdirected itself when it found the appellant guilty of rape on both counts. In the event that this Court finds that the convictions of rape on both counts were correct, it has to determine whether or not in respect of the first count, the evidence presented in the court a quo established that the complainant was raped more than once. Mr J L Kgokane for the appellant raised the following issues in his heads of argument:

(a) Whether or not the court a quo misdirected itself by finding that the complainant was raped multiple times.

(b) Whether or not the State presented evidence to prove that the appellant had the intention to rape the complainant multiple times.

(c) Whether the trial court misdirected itself by finding that the minimum sentence applicable in respect of the first count of rape was life imprisonment, and not 10 years' imprisonment.

With regard to the second count, the following issues were raised:

(a) Whether the rape involved the infliction of grievous bodily harm.

(b) Whether the trial court misdirected itself by finding that the minimum sentence applicable in respect of the second count was life imprisonment, and not 10 years' imprisonment.

The salient facts

The first count

[7] N[...] testified that on 11 June 2018 at approximately 15:00 she was in the company of the appellant and J[...] at the place of residence of B[...]. B[...] later arrived. However, B[...] and J[...] left and the complainant remained with the appellant in the house. The appellant informed her about the problems he had with his girlfriend and then invited her to go with him to the kitchen to warm up a plate of food. As the food was warming up, she and the appellant waited in the bedroom next to kitchen. The appellant told her that he would be better off if he had someone like her in his life. She informed him that she could not as she knew his girlfriend.

[8] The appellant became angry and she could see it in his face. She decided to leave and when she stood up, the appellant grabbed her hand and forced her onto the bed. She asked him what he was doing, and he said "*what do you think I am doing*". He eventually overpowered her, undressed her pants, pulled them down her knees and legs and when she screamed, he closed her mouth and pushed his hand into her mouth. As a result, she sustained a small tear or a bruise on her upper and lower lip.

[9] He started to have sexual intercourse with her without a condom. He became more aggressive and said he would bite her if he wanted to. He also mentioned that she was not the first one. Further, that if she kept quiet, he would give her money. She tried to close her thighs but he kept on opening them.

[10] She told him she needed to pee. He withdrew his penis and said she can pee on the bed or in a bucket that was in the room close to the door. When she stood up, he accompanied her. She held the door and he asked what did she think she was doing. She peed a bit. He then dragged her back to the bed. As she was resisting, he held her head and continued to penetrate her. She then lied to him and told him that she was HIV positive. He stood up, got a condom and put it on and penetrated her again for the third time. On these three occasions he did not ejaculate, instead, he urinated inside the condom. He took that condom out and put another one on. As he was still busy having sexual intercourse with her, she heard B[...] coming back through the kitchen door to the dining room.

[11] She asked the appellant that they should go and buy food as she was hungry. He agreed. Immediately the appellant opened the bedroom door, she ran to the dining room where B[...] was sitting. She asked B[...] to take her out of the house. As they went out of the kitchen door, she told him that the appellant raped her and immediately ran down the street to a certain house where she found an old lady and asked her to call her mother. Her mother arrived and they went to Daveyton police station. She was eventually taken to the Far East hospital where she was examined and a J88 medical report was completed.

[12] She denied that the sexual intercourse with the appellant was with her consent.

[13] B[...] T[...] (B[...]) corroborated N[...]’s evidence regarding the fact that they were together on the day of the incident at his house, J[...] and him left

and N[...] remained with the appellant in the house. He returned to the house and the complainant reported the rape to him.

The second count

[14] N[...] testified that she is a lesbian. She knew the appellant and they resided in the same street. On 16 July 2018 at approximately 06:00 she was in the company of the appellant on their way home from the tavern. They reached her home and she entered the house. The appellant left. A couple of minutes later, the appellant came to her house and knocked. She was alone in the house. Her sister had left for work while her brother was sleeping in the backrooms.

[15] She let the appellant inside the house. He wanted to light a cigarette. The heater was on and she lit the cigarette and gave it to him. Her brother went out.

[16] The appellant told her that he was going to have sexual intercourse with her. She did not take him seriously. He stood up and they started fighting. He grabbed her by her clothes. She tried to push him away. He punched her around her face and kicked her on her legs. Eventually he overpowered her and bit her around her face and on her stomach. She fell. She was wearing a pair of jeans. The appellant pulled off her pair of jeans. He also took off her boxes that she wore inside her jeans. He opened her legs and came on top of her. He inserted his penis inside her vagina without a condom. He ejaculated. After that he stood up. Her neighbour, Mr M[...], heard her screaming, came to the house and kicked the door open.

[17] At that time the appellant was still inside the house and he fought verbally with Mr M[...]. Eventually the appellant left. This was the first time he saw the appellant naked. She observed a scar on his body. It was confirmed in court that the appellant had a scar on the left-hand side of his body on the lower stomach area.

[18] Her neighbour found her naked. Her brother came back and police were called . Her sister took her to the police station and she also went to the clinic where she was examined.

[19] She denied the appellant's version under cross examination that she smoked drugs with him, he proposed love to her, she refused and he decided to leave with the drugs they were smoking together. That she and the appellant fought over the drugs he had. Further that she was the person who invited him to her residence, proposed to him that she loved him and wanted to have sexual intercourse with him.

[20] Mr T[...] R[...] M[...] (R[...]) corroborated the evidence of N[...] that he was her neighbour . He testified that on the day of the incident at approximately 08:00 he heard N[...] screaming that she was being raped. He called his son, S[...] and asked him to accompany him to N[...] 's house.

[21] He went to N[...] 's house together with S[...] and another colleague of his. The kitchen door was open and the dining room door was locked. They pushed it open and N[...] stormed out of the dining room and jumped on them. She was completely naked and her eye was swollen. The appellant was already dressed. They took the appellant out of the yard and he was busy swearing at them. He told them that N[...] invited him over her place the previous day and that she was drunk as she had been smoking drugs.

[22] Mr S[...] M[...] (S[...]) corroborated his father, R[...] 's evidence that he called him from the house and alerted him of the noise at N[...] 's house. He came out of the house and heard people arguing.

They went to N[...] 's house. They found the kitchen door opened and the door inside the house leading to the dining room was closed. He forcefully pushed that door open and it opened. He got inside and saw N[...] and the appellant inside the dining room. He corroborated his father's evidence that N[...] was naked and the appellant was dressed. N[...] and the appellant were arguing.

He corroborated his father's evidence that N[...] 's right eye was swollen . N[...] was crying and saying to the appellant " *You are raping me and I told you I will scream and call people.*" The appellant said he did not do it and he left. N[...] 's eye was also bleeding.

[23] Under cross-examination S[...] testified that the appellant showed him a white powder in a plastic bag in his hands and said he was there to smoke drugs. He denied that he told him that he and the complainant were fighting over the drugs.

[24] The J88 medical report completed in respect of the complainant in the first count was handed in by agreement.

[25] The doctor who completed the J88 medical report in respect of the complainant in the second count also testified. His evidence is on record. Where necessary, it will be referred to later in the judgment.

[26] Warrant Officer Mbele, the Investigating Officer in the matter also testified. His evidence related to the chain of evidence of buccal samples that he collected from the appellant, and swabs collected from the second complainant which were eventually sent to the Forensic Science Laboratory.

[27] The appellant testified that he was in the company of N[...], J[...] and B[...] at [...] 's residence on the day of the incident. They were sitting in the lounge and smoking drugs. He and N[...] left the others and went to the bedroom where they seduced each other and eventually had sexual intercourse. Subsequently , N[...] went and told his friends about it. He does not know why she told them.

[28] In respect of the second count, the appellant corroborated the complainant, N[...] 's evidence that the two walked together home from the tavern on the morning of the incident. Contrary to her evidence , he testified that at the tavern N[...] told him she loved him and has always loved him.

Her problem was that she knew he has a girlfriend with whom he has a child. He saw that as an opportunity because his girlfriend was not there at the time and said to her, *"Baby, come, let us be together."* He started buying her beers. They kissed. He also bought her more beers and drugs in the morning. Eventually they left the tavern together to her place of residence.

[29] They arrived at her place of residence and went to the lounge where she put the TV on. He sat on the couch, they continued drinking and smoked drugs. N[...] undressed herself and remained with her panties. He also took off his jeans. They kissed and went to the bedroom. They seduced each other and when he was about to penetrate her, she pushed him away. She was no longer interested. He became angry and started taking the drugs and alcohol they were drinking. N[...] then said he cannot take the drugs. He told her she did not contribute any money to buy them. She started fighting with him. He told her to open the door. At that time, he had the drugs in his hands. She did not want to open the door. He tried to open it but N[...] bit him and he bit her back. There was a commotion in the house and they were making noise. He kept on telling her to open the door for him. Eventually she pulled the door open. He went out and met her two neighbours. He did not have sexual intercourse with N[...].

[30] Under cross-examination he could not explain why his DNA was found inside N[...] 's vagina.

Applicable legal principles

[31] A court of appeal is not at liberty to depart from the trial court's findings of fact and credibility, unless they are vitiated by irregularity, or unless an examination of the record of the evidence reveals that those findings are patently wrong. The trial court's findings of fact and credibility are presumed to be correct, because the trial court, and not the court of appeal, has had the advantage of seeing and

hearing the witnesses, and is in the best position to determine where the truth lies¹.

[32] Section 208 of Act 51 of 1977 (*"the Criminal Procedure Act"*) provides that an accused person may be convicted of any offence on the single evidence of a competent witness. It is, however, a well-established judicial principle that the evidence of a single witness should be approached with caution, his or her merits as a witness being weighed against factors which militate against his or her credibility².

[33] The correct approach to the application of the so-called "*cautionary rule*" was set out by Diemont JA in *S v Sauls and Another* 1981 (3) SA 172 (A) at 180E-G where he said the following:

" There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness ... The trial judge will weigh his evidence, will consider its merits and demerits and having done so will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth had been told. The cautionary rule referred to by De Villiers JP in R v Mokoena 1932 OPD 79 to 80 may be guide to a right decision but it does not mean that the 'appeal must succeed if any criticism, however slender, of the witnesses' evidence were well founded ...' It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense."

The convictions of rape on both counts

[34] The evidence about the two counts of rape is that of a single witness. In respect of the first count, the trial court found that the complainant, N[...] gave a

¹ *S v Francis* 1991 (1) SACR 198 (A) at 198J-199A, *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645E-F

² *S v Stevens* 2005 (1) All SA 1 (SCA)

detailed and coherent version of events. Further, that if she wanted to be penetrated as the appellant wanted the court to believe, she would have cooperated. She would have lifted herself to receive the penis, and that even if she did not, that would not explain the multiple abrasions she sustained in the fossa navicularis. The court a quo found corroboration of N[...]’s evidence about the rape in the J88 medico-legal report. Sight should also not be lost that the complainant also had a bruise on the muscle of her upper lip which she testified she sustained when the appellant forced his hand into her mouth to stop her screaming when he was busy raping her. The injuries noted on the J88 medical report are not consistent with a sexual intercourse by consent.

[35] The appellant was not a truthful witness. After N[...] and B[...] had testified that he was left in the house with N[...] after B[...] and J[...] had left, which evidence was not challenged under cross-examination, the appellant created a picture that when he and N[...] went to the bedroom where they had sexual intercourse, B[...] and J[...] were in the house. They left them in the lounge and suddenly he did not know why N[...] would tell B[...] that he raped her. In my view the trial court correctly rejected his evidence as not reasonably possibly true, and found that the State had proved beyond a reasonable doubt that he raped N[...].

[36] Regarding the second count, there was overwhelming evidence against the appellant. The evidence of R[...] and S[...] corroborated N[...]’s evidence that she was raped. After her screaming raised the alarm, they went to her residence and found her completely naked and crying. Her eye was swollen and bleeding. If the appellant and N[...] only fought over the drugs they were smoking, why was she found naked. How would N[...] have been able to observe a scar on his body which she was able to mention and confirm in court. The appellant could not explain this evidence and the fact that his DNA was found in the complainant’s vagina. It does not make sense as to why if N[...] had invited him to her residence because she loved him, she would suddenly become disinterested in what they had intended doing after they had kissed and seduced each other. The findings of the trial court are correct. There is just no reason to fault them. The appellant was clearly guilty of rape.

The first count - Whether or not the complainant was raped more than once

[37] The enquiry whether the accused raped the complainant more than once is a factual matter. Each case has to be decided on its own facts. In *S v Blaauw*³, Borchers J set out the approach in the following manner:

"Mere and repeated acts of penetration cannot without more, in my view, be equated with repeated and separate acts of rape. A rapist who in the course of raping his victim withdraws his penis, positions the victim's body differently and then again penetrates her, will not, in my view, have committed rape twice. This is what I believe occurred when the accused became dissatisfied with the position he had adopted when he stood the complainant against the tree. By causing her to lie on the ground and penetrating her again after she had done so, the accused was completing the act of rape he had commenced when they both stood against the tree. He was not committing another separate act of rape."

Each case must be determined on its own facts. As a general rule the more closely connected the separate acts of penetration are in terms of time (i.e. the intervals between them) and place, the less likely a court will be to find that a series of separate rapes has occurred. But where the accused has ejaculated and withdrawn his penis from the victim, if he again penetrates her thereafter, it should, in my view, be inferred that he has formed the intent to rape her again, even if the second rape takes place soon after the first and at the same place."

[38] In *S v Mavundla*⁴, the accused penetrated the complainant on the bed, then off the bed and then on the bed again. He ejaculated on each of the acts three times. There was no rest or interruption between the acts. Southwood J, and Preller J concurring held that this was one prolonged act of intercourse. The

³ 1999 (2) SACR 295 C'JV) at 300a-g

⁴ 2012 (1) SACR 548 (GNP)

court found that while ejaculation could determine the end of intercourse, that did not happen in that case. There was no suggestion that the intercourse ended and that the appellant withdrew his penis twice and formed the intention to rape the complainant on two further occasions .

[39] In *S v Tladi*⁵ the appellant had been convicted of two counts of rape in the regional court and sentenced to life imprisonment. The trial court had concluded from the evidence of a witness that as there were two screaming bouts, the complainant had been raped twice. On appeal, it was held that there was no justification for this conclusion as the complainant herself did not indicate that there was an interruption in the sexual intercourse sufficient to constitute two separate acts of sexual intercourse. The complainant's evidence suggested that the sexual acts were closely linked and amounted to a single continuing course of conduct.

[40] In *S v Maxabaniso*⁶ the evidence showed that the appellant had raped the complainant twice during the course of one encounter with her. The two incidents of rape were separated by an interruption when the appellant went to the toilet. It was held that the rape was not one continuous course of conduct.

[41] In *S v Molaza*⁷ relying on *S v Maxabaniso*⁸ the court per Opperman J and Ishmael J concurring, held that the evidence proved that the complainant was raped twice in that it was common cause that there was a lapse of between 20 to 25 minutes between the two acts. The first intercourse was with a condom . The appellant went to the bathroom, he asked his friends to boil water for the complainant to drink and then had intercourse again with the complainant without a condom.

⁵ 2013 (2) SACR 287 (SCA)

⁶ 2015 (2) SACR 553 (ECP)

⁷ 2020 JDR 1489 (GJ)

⁸ *Supra*

[42] Having considered the above cases, and taking into account that there are many more cases that deal with the issue, I find that the facts in *S v Maxabaniso* and *S v Molaza* are distinguishable to the matter before us. There is evidence that there was an interruption which was significant between the two acts of rape. Further that the interruptions were initiated by the accused himself.

[43] In the present matter the appellant threw the complainant on the bed, penetrated her and while still on top of her, she told him she wanted to pee. He withdrew the penis after telling her to pee either on the bed or inside a bucket which was in the room. She opted to pee in the bucket which was next to the bedroom door in an attempt to escape. Unfortunately, the appellant followed her, stood next to her as she peed and immediately she was done, he threw her again on the bed and continued to penetrate her. While he was still busy, she told him that she was HIV positive. He then looked for a condom which was not far away according to the evidence, put in on and continued the act. He did not ejaculate but peed inside the condom and then changed it and put another one.

[44] Each case has to be decided on its own facts. The interruption was caused by the complainant. There is no evidence of the duration of the sexual intercourse nor of any significant interruptions between the different acts. The evidence is clear that there were some interruptions. However, this took place within a short space of time. There is no evidence to prove that the interruptions in the sexual intercourse were sufficient to constitute multiple acts of sexual intercourse. The appellant was just completing the act of rape that he had commenced. I cannot therefore conclude that the appellant formed separate intentions to rape the complainant multiple times. The evidence proves that this was one prolonged and continuous act of rape.

[45] Under the circumstances the trial court misdirected itself by convicting the appellant of raping the complainant multiple times. It should have convicted him of rape under section 51(2) read with Part III of Schedule 2 of the CLAA.

The second count – Whether the rape committed involved the infliction of grievous bodily harm

[46] The test for ascertaining whether grievous bodily harm has been inflicted is factual and objective. The correct approach to that enquiry necessitates a holistic consideration of all objective factors pertaining to the incident, with a view to ascertaining whether bodily injuries were inflicted and whether they are of a serious nature⁹.

[47] For harm to constitute grievous bodily harm, it must be such as seriously to interfere with comfort or health¹⁰.

[48] The court in *S v Ferreira*¹¹ set the approach as follows:

"One must assess the question whether the injuries are serious or not, directly with reference to the particular victim who has suffered them and not some arbitrarily defined average human being."

[49] The word "*grievous*" is defined in the Cambridge English Dictionary as "*serious, severe, grave, bad, critical, dreadful, terrible, awful*". The English Oxford Dictionary defines the word as "*having very serious effects or causing pain*". In my view "*grievous bodily harm*" is more serious as it is anything of severe detriment to the victim's health. The level of injuries varies significantly.

[50] The J88 medical report describes the injuries suffered by N[...] as follows: A periorbital hematoma, laceration on both eyelids, a 2 cm x 1 cm laceration on the right jaw, a circular bruise on the right jaw, laceration on the upper chest, a 5 cm x 5 cm bruise on the upper shoulder, a bruise on the right breast and 2 cm x 3 cm of

⁹ *Director of Public Prosecutions Gauteng Division, Pretoria v Moabi* 2017 (2) SACR 384 (SCA)

¹⁰ *Rex v Ashman* [1858] 1 F & F 88, [1858] Eng R 88 (C)

¹¹ 1961 (3) SA 724 (E) at 725F-G

two bleeding hematomas on her head, and a 2 cm x 2 cm laceration on the right index finger. The doctor concluded that the above injuries were consistent with physical abuse. The following further injuries were noted upon gynaecological examination: fresh abrasions on the labia minora, posterior fourchette and the fossa navicularis. With regard to these injuries the doctor concluded that they were consistent with sexual abuse.

[51] From the doctor's evidence and the J88 medical report, the trial court found that there was some kind of fight between the appellant and the complainant in the second count, and this caused her a lot of injuries. It then convicted the appellant of rape involving the infliction of grievous bodily harm.

[52] Mr Kgokane submitted that the injuries sustained by N[...] are not that serious as can be categorised as those falling under section 51(1) read with Part 1(c) of Schedule 2 of the CLAA.

[53] In this instance, the complainant in the second count suffered multiple bodily injuries which are superficial. These injuries cannot, in my view, be regarded as grievous. It follows that the trial court misdirected itself by concluding that the rape committed involved the infliction of grievous bodily harm. The court a quo should have convicted the appellant on a count of rape read with the provisions of section 51(2) read with Part III of Schedule 2 of the CLAA.

The appeal against sentence

[54] The following personal circumstances of the appellant were placed on record in mitigation of sentence: He was born on [...] and was 28 years old at the time of sentence. He was single and a father to a two year old girl. The child stays with her mother and receives a grant. He did piece jobs to survive and earned approximately R200,00 per day. He went to school up to grade 11. He spent eight months in custody. He is a first offender.

[55] Mr Kgokane for the appellant submitted the magistrate did not call for sufficient evidence before she concluded that there were no substantial and compelling circumstances. The trial court had a duty to ensure that all the relevant evidence was placed before it prior to sentencing the appellant. There were no pre-sentence and victim impact reports. Mr Marriot for the State disagreed.

[56] In aggravation of sentence the State made the following submissions: The offences committed were serious and prevalent. The appellant committed the second rape when he was on bail for the first rape. He contravened his bail conditions. Both complainants were known to the appellant. He did not respect the sexual preference of the second complainant.

[57] He exposed both complainants to sexually transmitted diseases and HIV and AIDS as he penetrated them without a condom and only put on a condom when the complainant in the first count lied to him that she was HIV positive.

[58] He caused injuries to both complainants during the rape. N[...] sustained a bruise on her upper lip and multiple abrasions in the fossa navicularis. N[...] had multiple injuries all over her body and fresh abrasions in the labia minora, posterior fourchette and fossa navicularis.

[59] In *S v Malgas*¹², it was held that the appeal court can only interfere with the sentence imposed by the trial court where it is vitiated by a material misdirection or where the disparity between the sentence that the trial court and the sentence that the appellate court would have imposed had it been the trial court, is so marked that it can be described as "*shocking*", "*startling*", or "*disturbingly inappropriate*" (see also *Madiba v S*¹³).

¹² 2001(1) SACR 469 (SCA) at 478E-H

¹³ [2015] JOL 33686 (SCA)

[60] The fact that I have found that the trial court should have convicted the appellant on the two counts of rape under the provisions of section 51(2) read with Part III of Schedule 2 of the CLAA entitles this Court to interfere with the sentence that has been imposed. The section provides that a first offender who is convicted of rape is liable to be sentenced to a minimum period of 10 years' imprisonment unless, in terms of section 51(3) thereof, the court is satisfied that "*substantial and compelling circumstances* " exist which justify the imposition of a lesser sentence.

[61] In *S v Malgas*¹⁴ endorsed in *S v Dodo*¹⁵, it was held that it is incumbent upon a court in every case before it imposes a prescribed sentence, to assess upon a consideration of all the circumstances of the particular case, whether the prescribed sentence is indeed proportionate to the particular case.

[62] The sentence imposed by the trial court is disturbingly disproportionate with the offences committed. There is in any event a striking disparity between the sentence imposed in the trial court and that which this Court would have imposed had it sat as a trial court.

[63] Having considered the matter, I conclude that the aggravating circumstances in this matter far outweigh the mitigating factors. The appropriate sentence to be imposed under the circumstances is a sentence of 10 years' imprisonment in each of the counts of rape. Effectively the appellant has to serve a period of 20 years' imprisonment. In the circumstances the sentence falls to be set aside.

[64] In the result I make the following order:

1. The appeal against the conviction of the appellant of rape on each the two counts under the provisions of section 51(1) read with Part 1 of Schedule 2 of the CLAA is upheld and the conviction of the appellant by the regional court of

¹⁴ *Supra*

¹⁵ 2001 (3) SA 382 (CC)

rape on each of the two counts under the provisions of section 51(1) read with Part 1 of Schedule 2 of the CLAA is set aside and the following order is substituted in its stead:

"The accused is convicted of rape on each count that is read with the provisions of s 51(2) read with Part III of Schedule 2 of the CLAA."

2. The appeal against sentence is upheld and the sentence imposed by the regional court is set aside and the following sentence is substituted in its stead:

"On count 1, the accused is sentenced to 10 years' imprisonment. On count 2, the accused is sentenced to 10 years' imprisonment."

M J TEFFO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree:

P D PHAHLANE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the appellant: J L Kgokane
Instructed by: Legal Aid South Africa
Pretoria

For the respondent: M Mariot
Instructed by: The Director of Public Prosecutions

Date Heard: 18 February 2021

Date of judgment: 29 June 2021