

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: A165/2019

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
G. Y SIDWELL	

In the matter of:

MOYO, WITNESS

Appellant

and

THE STATE

Respondent

JUDGMENT

SIDWELL AJ

INTRODUCTION

1. The Appellant was tried before the Regional Magistrate sitting at Johannesburg on two counts of contravening section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act no 32 of 2007 read with section 51(1) of the Criminal Law Amendment Act no 105 Of 1997. It was alleged in each count that the Appellant had unlawfully and intentionally committed an act of sexual penetration, of N[...] M[...] in Count 1, on a number of occasions, and of L[...] M[...] in Count 2, on one occasion. In Count 2 it was alleged that on 22 January 2016 and at

Yeoville, the Appellant had inserted his finger and or his penis in the vagina of the complainant without her consent.

2. The Appellant pleaded not guilty to both counts and, in respect of Count 2, he made a plea explanation stating that on 22 January 2016 he looked after the complainant during the day until 3 o'clock in the afternoon. That evening the mother of the complainant called him and accused him of raping the complainant. He said that he never did it.

3. The Appellant was acquitted on Count 1 and convicted on Count 2, as charged. The Magistrate found that he was guilty of unlawful and intentional penile penetration of the vagina of L[...] on 22 January 2016 at Yeoville. For this offence he was sentenced to life imprisonment which was the prescribed sentence in terms of section 51(1) of the minimum sentencing legislation, the Criminal Law Amendment Act no 105 of 1997.

4. The Appellant has appealed against conviction and sentence in terms of section 309(1) of the Criminal Procedure Act no 51 of 1977 ('the CPA'). This section affords him an automatic right of appeal.

THE STATE CASE

5. The State led the evidence of six witnesses.

6. N[...] M[...], the complainant in Count 1, testified that she and her two brothers and her sister, L[...], all knew the Appellant well. He had lived with her family for eight years, and, when he found a home of his own, the close relationship was maintained. The four siblings visited him at his new home. She agreed in cross-examination that they would visit him on weekends, he would play with them on those occasions and buy them sweets and give them food. The last time she herself saw him before 22 January 2016, was in November 2015.

7. P[...] N[...] M[...] ('P[...]') testified that she was the biological mother of four children, two boys who were aged thirteen and ten years, and two girls, N[...] aged

seven years and L[...] aged four years. She gave evidence in this case in October 2016. She said that the Appellant was close to all her children but particularly to her older daughter, N[...]. He spoilt her with gifts and treats. She told the Appellant that she did not like this preferential treatment of one of her children and he thereafter started to give food and money to L[...] as well, and sometimes he would buy for all the children.

8. P[...] said that the Appellant had been close to her and her husband, from the time they lived in Zimbabwe. When they all came to South Africa she offered him a home with them and he lived with them for years. When N[...] was almost three years old the Appellant obtained employment and his own accommodation, through her good offices. His new home was less than five minutes from the family home and they still saw him on a daily basis. He lived alone.

9. P[...] described how the children loved the Appellant. They grew up in front of him. When the two boys were schooling and L[...] was still a baby the Appellant would fetch N[...] to spend time alone with her. Then when N[...] started Grade R and then Grade 1 he spent minimal time with her. She thought that the last time he took N[...] to his home was in December 2015. It was on the weekends that he would spend time with all the children.

10. On Friday 22 January 2016 she was alone at home with her two daughters, the two complainants, in the evening. Her two sons had gone to the Appellant's home to sleep over there that night and her husband was still at work. She gave L[...] a bath as the child felt discomfort in her private part. L[...] made a disclosure to her and P[...] looked at her genitals. She did not put her fingers into the genitals. She then contacted her husband and her mother and they came to the home. Before they arrived she called the Appellant and repeatedly asked him what he did to L[...]. His consistent response was to ask what L[...] accused him of doing. According to P[...], he also said that if L[...] alleged that he had raped her they should do a DNA test.

11. The two boys were then collected from the Appellant's home and L[...] was taken to Hillbrow Hospital; however, she could only be examined by a doctor the following day. P[...] was present at the medical examination the next day. She saw

that a forensic crime kit was used during the examination. The police officer who brought the kit to the examination was also present.

12. On the following Wednesday, 27 January 2016, the Appellant was arrested for this case.

13. P[...] explained further that on the Tuesday before Friday 22 January 2016 the Appellant called her in the evening and offered to babysit L[...] the next day, Wednesday, as he was on leave and as he was not going to Zimbabwe as he originally planned to do. He offered to help P[...]’s mother who usually looked after L[...] in the day when her parents were at work, together with another grandchild, a baby. P[...] agreed and the following morning L[...] was taken by her father to the Appellant’s home. He then took the other three children to school. This would be the first time that the Appellant babysat L[...]. This evidence was not disputed by the Appellant when he testified.

14. The Appellant further told P[...] that he could not look after L[...] on Thursday 21 January 2016 as he would be working but that he could do so on the Friday the 22nd. Accordingly, on Friday morning L[...] was taken to the Appellant by her father who then took the other three children to school. P[...] fetched L[...] from the Appellant in the afternoon when she returned from work. He came out with L[...], carrying foodstuffs, including juice, chips, sweets, biscuits and a six pack of yoghurt, which he had bought for her. He told P[...] that they went to the shops and that he could not help but buy this for the child. P[...] then took all the children home.

15. At home L[...] was playing with the other children in the corridor and going inside and outside the apartment where they lived. P[...] said that she kept an eye on her all the time. She was not asked what she herself was occupied with, or how long the two boys were present before departing for the Appellant’s home to sleep over, or what her opportunity for observation of L[...] was. Her assertion that L[...] was not left unattended in this time was not challenged. There is nothing inherently questionable in her evidence on this and nothing to indicate that this evidence is improbable or impossible, or that there is any reason to reject it.

16. Warrant Officer Mokwele ('Mokwele') told the Magistrate that she was a forensic analyst in the service of the South African Police Service at the Forensic Science Laboratory in Pretoria. She confirmed her statement in this case in terms of section 212 of the CPA, which was admitted as Exhibit A. From this it appeared that she had established that insufficient male DNA could be obtained from the two vaginal swabs taken from the complainant by the doctor who examined L[...] on 23 January 2016. She testified that the only DNA found on the swabs was mixed DNA and that there was 'a' male but that that male DNA could not be extracted. There was not enough semen to extract the DNA of a male person.

17. Mokwele received the files in this case and deposed to her affidavit in terms of the said section 212 on 16 August 2016, almost seven months after the doctor examined L[...] and took the swabs on 23 January 2016. There was no evidence regarding the packaging, storage, transportation, handling or preservation of the exhibits in that time, and no evidence that the packages containing the exhibits were received intact by the Laboratory. Absent evidence that the integrity of the exhibits was maintained until Mokwele received the files on 16 August 2016 it cannot be said that her evidence that there was DNA of only one male was reliable and that it assisted the State.

18. Mokwele explained that swabs in rape cases are routinely subjected by the Laboratory to preliminary chemical testing to determine the presence of semen. In this case this test was done and the result was positive; however, Mokwele did not state that she herself had carried out this test. She said that 'we test those swabs for the presence of semen' and 'we first test for semen.' Her affidavit, Exhibit A, does not deal with this. Consequently, her evidence that the presence of semen had been detected was hearsay.

19. P[...] M[...] M[...] ('Mrs M[...]'), the maternal grandmother of N[...] and L [...], testified that she used to look after L[...] during the day when her parents were at work. This was the position in January 2016 when L[...] was three years old. The daily routine was that L[...]’s father would drop her off at her grandmother’s flat in the morning and her mother would fetch her in the afternoon. If her father did not bring her it would be her mother. During the day while L[...] was with her no one else was

present except her other grandchild. While she was with her grandmother L[...] would remain inside. The entrance door to the flat would be locked.

20. On Friday 22 January 2016 L[...] had not arrived at her flat by eight o'clock in the morning. She established from L[...]’s father that she was spending the day with the Appellant. Later that day at about 9 p.m. P[...] called her and related to her all that had happened at the time that L[...] was being bathed that evening, including that L[...] had said that the Appellant had hurt her on her private part. Mrs M[...] herself received a report from L[...] that night, to the effect that the Appellant had injured her on her private part with his private part. This evidence was elicited by the State without objection from the defence.

21. On the way to Hillbrow Hospital that night they stopped at the Appellant’s home and Mrs M[...] spoke to the Appellant about what had happened. She asked him what he did to L[...]. He said that he did not do anything to the child.

22. P[...] N[...], the biological father of N[...] and L[...] and their two brothers, testified that during the week N[...] and the two boys would go to school and L[...] would go to her grandmother. On Friday 22 January 2016 he took L[...] to the Appellant and left her there at about 7.30 a.m. He then took the other three children to school. The normal routine was that L[...] would go to her grandmother’s flat for the day but the Appellant had called and said that he was available to look after L[...] on the Friday and this was why he took her to the Appellant. He saw L[...] again that day when he received a message from P[...] that L[...] alleged that the Appellant hurt her in her private part.

23. No questions directed at ascertaining if any male member of L[...]’s household or any other male person could have raped her in the time that she would have returned from her grandmother on the afternoon of Thursday 21 January 2016 until she left to go to the Appellant on the morning of Friday 22 January 2016, were put to this witness or to L[...]’s mother, P[...].

24. Dr Dwane was the medical doctor who examined L[...] on Saturday 23 January 2016 at Hillbrow Help Centre. She told the Magistrate that at the time of the

examination she completed a J88 form in which she recorded her observations and findings. The report was admitted as Exhibit B. She confirmed the content of her report, in particular her finding that there was conclusive evidence of vaginal penetration of the complainant which was consistent with penile penetration. There was bruising of the hymen but the hymen was still intact. The bruises were red and they had been sustained in the twenty four hours prior to the examination. The examination was at 13h30 on 23 January 2016.

25. Dr Dwane said that the bruising of the hymen indicated that something was forced against the hymen. In general, it was very difficult to bruise the hymen without penetration. In this case the bruising at two points on the hymen indicated direct contact of something against the hymen. It was possible that a penis was only pushed against the hymen without going further. The doctor rejected the proposition that the bruising may have been caused by the mother of the child using her fingers to examine the genitalia.

26. The doctor found a white discharge on the genitalia which she said could have been debris or semen. On the assumption that the swabs taken by her using the crime kit were proved to have tested positive for semen, her view was that the discharge was most likely semen. The effect of all the relevant evidence was that nothing more was proved than that semen may have been present in the vagina.

27. Dr Dwane also said that a child of three years would commonly continue with normal activities such as playing, after sustaining injuries such as had been sustained by L[...]. If she experienced pain at some point such as when she visited the bathroom she might then complain but children tended not to complain immediately about pain. It would usually be an adult who would become aware of something amiss.

THE DEFENCE CASE

28. The State then closed its case and the Appellant testified in his defence. He did not call any witnesses.

29. The Appellant told the Magistrate that L[...] spent the day of Friday 22 January 2016 from 7.30 a.m. until about 3 p.m. with him. From 7.30 a.m. until about 9 a.m. that day he was busy cleaning at home. In this time L[...] was playing with her dolls on the sofa. They then went to the shops to buy Simba chips for the Appellant and yoghurt for L[...]. They returned to his room at about 11 a.m. From that time until about 2 p.m. L[...] was playing inside the room. From about 2 p.m. until about 3 p.m, when her mother fetched her, she was playing outside.

30. L[...] played alone that day at the Appellant's home. The Appellant did not play with her and no others persons were present at his home while the two of them were there. The Appellant watched her play and chatted to her. He did not say what L[...] took home with her that afternoon. In his evidence he did not dispute that he took a variety of foodstuffs to her mother's car or that he told her mother that he had bought this for her.

31. The Appellant testified that he knew L[...] and her family for a long time and that he had always had a good relationship with them. The children were very attached to him. They would come and visit him, now and again, on Sundays. It would be the four of them. They would follow him home when he returned from work on Sunday and they would stay for 30 minutes to one hour, watching their favourite video. In this time he would be sitting with the people next door. His employers would give him things like Simba crisps and sweets which the children would find in his room and eat. P[...] had mistakenly gained the impression that he singled out N[...] for preferential treatment. If he had R1 and one of the children saw it and asked for a sweet he would give the child the money. He once bought a pair of plimsolls ('tekkies') for N[...] on her birthday, as he happened to have money then.

32. It was about three months before the case that the four children last visited his home on a Sunday but he would still see the children playing at their home when he collected his keys from the security there after work each day. He saw them every two or three days. On his evidence the Appellant did not play an active role in his relationship with the children. Insofar as they featured in his life, this appeared to be fortuitous or of their own initiative.

33. The Appellant also testified that later on Friday 22 January 2016 at about 9 p.m. P[...] called him and repeatedly asked him what he had done to L[...]. He answered by asking what L[...] accused him of doing. He testified that he thought that L[...] may have picked up rat poison and eaten it but he did not ask P[...] what was wrong with L[...] and he did not mention to her that she may have eaten rat poison. P[...] then alleged that he had raped L[...] but he denied this. L[...]’s grandmother also asked him that evening what he had done and he denied doing anything to L[...].

34. The Appellant said that he looked after L[...] that day because her mother requested this. She did not tell him why L[...] would not be spending the day with her grandmother, which he knew to be the usual arrangement. She simply said to him that she had to leave the child with him that day. In his evidence he did not deal with the allegations of P[...] that he had informed her that he was on leave and that he would travel to Zimbabwe while on leave, that he thereafter called her, on the evening of Tuesday 19 January 2016, and told her that he was not going away after all, that he was available to assist with babysitting L[...] on Wednesday 20 January 2016 and that he could help her grandmother in this way.

35. The Appellant did not in his evidence dispute that L[...] also spent the Wednesday prior to Friday 22 January 2016 with him, and that it was arranged that the two boys would sleep over with him on Friday night. There must have been more to his discussion with P[...] regarding L[...] and the Appellant’s availability to have the children with him than the Appellant stated. What P[...] knew of his availability that week she must have heard from the Appellant. L[...]’s parents believed what he said and accepted his considerate offer. They did not say that they had any reason of their own that made the arrangement he proposed regarding L[...] convenient to them. They had not previously deviated from the standing arrangement by approaching him for help.

36. The proposal that L[...] spend the Friday with him must have been put forward by the Appellant. This was not consistent with the passive role he played in his relationship with the children, according to his evidence. The Appellant minimised the extent of his intercourse with them. He speculated that P[...] falsely testified

about matters like the way he spoilt the children because she was envious of his independence and she resented the fact that he was able to provide for his family in Zimbabwe with his earnings. In all the circumstances this was improbable. Both P[...] and the Appellant spoke of the enduring good relationship they enjoyed up to 22 January 2016. The Appellant was distancing himself from a close personal relationship with the children.

THE HEARSAY EVIDENCE

37. The Magistrate found in his judgment on the merits that whatever L[...] said to her mother at the time she was being bathed was hearsay as L[...] did not testify. The question of the admissibility of this report and also of a report she made to her grandmother that same evening as well as a report made by P[...] to L[...]’s father was not dealt with at any stage before the close of the State case. The Magistrate mentioned to Dr Dwane, the last State witness, when she testified that the child was too young to testify, and it appeared from this that she would not be called. Evidence of the content of the reports to her grandmother and to her father had already been led by the State without objection. Nor was objection made after the Magistrate made this remark to the doctor but the failure to object did not make the reports admissible. The fact that the Appellant was led in chief with reference to the identifying reports by L[...] also did not make them admissible.

38. The admissibility of the reports should have been dealt with before the close of the State case so that the Appellant knew what case he had to meet and so that he could make an informed decision as to the conduct of the rest of his defence.

S v Molimi 2008 (3) SA 608 (CC) at [36] and [42]

39. In the unreported judgment of the Western Cape High Court in S v Mini and Others (B325/2013) [2015] ZAWCHC (30 April 2015) at [10] the court on appeal found that a trial within a trial should have been held in the State case to determine the admissibility of admissions and confessions of certain of the accused. This had not been done and no ruling had been made by the magistrate presiding at the trial on the admissibility of the statements in question. The accused testified and some of

the evidence relevant to the question of admissibility only emerged in their evidence. Having regard to all the evidence on this question the court on appeal found that the State had not discharged the onus of proving that the statements were voluntarily made and consequently that they were admissible in terms of sections 217 and 219A of the CPA.

40. It was further held that basic fairness and the standards imposed by section 35(3) of the Constitution required that if it were concluded that the confessions and admissions were inadmissible, the position at the end of the State case should be assessed as if those confessions and admissions had already at that stage been found to be inadmissible (as would have occurred had there been a trial within a trial). The accused could not be prejudiced in the presentation of their case where they would have been entitled to a discharge had there been a timeous investigation into and a ruling on the confessions and admissions.

41. The Appellant did not apply for a discharge at the close of the State case. It is appropriate to apply the approach adopted in Mini to this case and to consider if on the evidence led by the State, excluding the evidence of the reports, the Appellant should have been discharged in terms of section 174 of the CPA at the close of the State case. In my view at the end of the State case there was evidence on which a reasonable man acting carefully might convict the Appellant on Count 2 and an application for discharge would not have succeeded.

42. The Magistrate found that although L[...] did not testify she did make a report to her mother, which would have been hearsay. She told her mother who was responsible. It was highly unlikely that a three year old would have the ability to concoct complicated lies. It was extremely unlikely that a child would lie and blame the accused for no apparent reason and exonerate the real culprit. If L[...] had told her mother that it was someone like her father or brother or anyone else her mother would not have immediately have approached the Appellant and accused him of having done this.

43. The rule against admitting a hearsay report applies also to the fact that a report was made. Where the evidence in a rape case is that a report was made by

the victim and the person hearing the report then confronted the accused the inference that the victim said something incriminating about the accused in the report is inescapable. This is just as much hearsay as if the terms of the report had been revealed.

44. The factors indicating the reliability of a report are relevant to an application in terms of section 3 (1) (c) of the Law of Evidence Amendment Act no 45 of 1988, to admit such a report where the maker thereof does not testify about it. Such an application cannot be brought after the close of the State case.

Molimi supra

45. If such an application is not made or not granted, as in the present case, the report remains hearsay no matter how strong the indications of its reliability. In this case L[...]’s reports remained hearsay and as such inadmissible although they were, very probably, reliable, for the reasons stated by the Magistrate. They could not be taken into account in deciding the Appellant’s guilt. It was a material misdirection to rely on L[...]’s report to her mother that it was the Appellant who had hurt her. This court may therefore consider if on all the evidence it was proved beyond reasonable doubt that the Appellant was the perpetrator of the rape of L[...].

46. It was argued before this Court that the Appellant’s defending attorney elicited the terms of L[...]’s report to her mother in cross-examination of the mother. This does not appear from the record and counsel for the Respondent was unable to refer this Court to such a passage in the evidence of any of the State witnesses.

THE CIRCUMSTANTIAL EVIDENCE

47. The case against the Appellant was entirely circumstantial. The main issue in dispute was the identity of the perpetrator of the rape of L[...]. That L[...] had been raped and that she had sustained the injuries described by the doctor were not disputed.

48. The inference that the Appellant was the perpetrator could only be drawn if this inference was consistent with all the proved facts and if the proved facts excluded every reasonable inference from them save the inference that the Appellant was the offender.

R v Blom 1939 AD 188 at 202 - 203

49. The Appellant was regarded as a member of L[...]’s family who loved and trusted him. The children had often been in his company and in his home where he was kind to them and where they were safe. L[...] had already spent a day alone with the Appellant at his home, on the Wednesday before Friday 22 January 2016. There would be nothing inappropriate and no cause for concern in his looking after her another day.

50. The Appellant did not believe that L[...]’s parents would suspect him or accuse him of hurting their daughter. As he said to her mother on the evening of 22 January 2016, how could she say that he had raped L[...] when he was with her children all that time.

51. It was the Appellant who suggested that he look after L[...] on the Wednesday and the Friday. He did not have to convince her parents that he had their best interests at heart.

52. He was alone with a three year old child all day on Friday 22 January 2016. For some three hours, from about 11 a.m. to about 2 p.m, this child was inside the Appellant’s room. For the whole of this time the Appellant was also inside the room.

53. On the doctor’s evidence the rape of L[...] could have been perpetrated by an adult male, by penile penetration.

54. The penetration of L[...] was not perpetrated by a person who was a stranger to her, or by means of threats or violence. Dr Dwane testified that there were no signs of physical harm to her body and no external injuries. There were no injuries to any of the structures of the genitalia or between the vagina and the anus.

55. During the morning of Friday 22 January 2016 the Appellant took L[...] to Shoprite where he bought her a selection of treats. They were the type of treat that the children would find in his room to eat or that they would ask him to buy for them. L[...] and the Appellant spent about three hours together inside the Appellant's room after they returned from the shop. In the afternoon L[...] took the treats home with her.

56. The Appellant testified that L[...] was comfortable with him all day on the Friday. When she left to go home she was fine. Dr Dwane said that it was common for children to continue with normal activities after sustaining injuries such as were sustained by L[...].

57. The bruises to L[...]’s hymen were sustained in the twenty four hours prior to the medical examination at 13h30 on Saturday 23 January 2016. At 13h30 on Friday 22 January 2016 L[...] was with the Appellant at his home, until about 15h00. Thereafter she was with her mother and her three siblings until her two brothers left to go and sleep over at the Appellant’s home, at an undisclosed time. Her father only returned home from work when her mother called him after she bathed L[...]. Nothing improper occurred while L[...] was playing with her siblings at home that afternoon.

58. Dr Dwane said that the bruising would start to change appearance within twenty four to forty eight hours of being inflicted. The red colour would start to change. The bruising of L[...]’s hymen was still red when the doctor observed it. On this evidence it was possible that the bruising was inflicted before L[...] arrived at the Appellant’s home on the Friday morning; however, it was the doctor’s opinion that the bruising was inflicted within the twenty four hours prior to the examination. Further, it was likely that any physical injury to L[...] earlier than 7.30 a.m. on Friday the 22 nd would have come to the attention of one of the adults in whose care she was, her parents or her grandmother or the Appellant, or that she would have complained of pain or discomfort. There was no evidence of this.

59. On all the evidence the only inference that can be drawn is that it was the Appellant who committed the rape of L[...] on 22 January 2016. No other reasonable inference can be drawn. The Appellant was correctly convicted on Count 2.

SENTENCE

60. The minimum sentence prescribed by section 51(1) of the Criminal Law Amendment Act no 105 of 1997 for the rape of a victim under the age of sixteen years is life imprisonment unless the trial court finds substantial and compelling circumstances justifying the imposition of a lesser sentence.

61. At the sentencing stage in this case the defence called a social worker to testify on the Appellant's background and his personal circumstances. She had compiled a report which she referred to in her evidence and which was handed up. A victim impact statement was also handed up, apparently by consent.

62. On behalf of the Appellant it was submitted before the Magistrate that the fact that the Appellant was a first offender, that at twenty eight years he was very young, that he was capable of rehabilitation, and that the time he spent in custody awaiting trial, fourteen months, were substantial and compelling circumstances. The Magistrate also took into account that the Appellant had been employed as a caretaker earning R2200 per month and that he supported his family in Zimbabwe.

63. The State argued that the Magistrate should find that the age of the victim at the time of the rape, three years, that there had been a relationship of trust between the victim and her family and the Appellant, that the victim was injured in the rape, that the Appellant did not use a condom and that the victim's family was traumatised by the incident were aggravating factors. The prevalence of the offence, the lack of remorse shown by the Appellant, the premeditation of the crime, the callous exploitation of the victim's defencelessness and vulnerability, the nature of crime, the trauma suffered by the victim and the deceit used to commit an outrageous crime under the noses of the Appellant's former benefactors were aggravating features that could have been included in this list.

64. The Magistrate found that in all the circumstances there was insufficient reason to deviate from the prescribed sentence. The Appellant was sentenced to life imprisonment on Count 2.

65. On appeal it was argued that the Appellant's personal circumstances cumulatively amounted to substantial and compelling circumstances. It was also argued that the sentence imposed by the Magistrate was disproportionate to the circumstances of the offence.

66. The finding of the Magistrate on the question of substantial and compelling circumstances is a value judgment. The proper inquiry on appeal is whether the facts considered by the sentencing court are substantial and compelling.

67. In this case the personal circumstances of the Appellant, viewed cumulatively, do not constitute weighty justification for the imposition of a sentence less than life imprisonment. His circumstances pale into insignificance when the magnitude of the crime is considered. In cases of serious crime, such as this, retribution and deterrence come to the fore and the Appellant's rehabilitation plays a lesser role. A sentence of life imprisonment is not disproportionate to the gravity of the offence in this case. There are no substantial and compelling circumstances justifying a sentence less than the prescribed sentence. The sentence of life imprisonment is confirmed.

68. In the result the following order is made:

1. The appeal against the conviction of the Appellant on Count 2 is dismissed.
2. The appeal against the sentence of life imprisonment is dismissed.

G.Y. SIDWELL
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

I agree

A. MATHUNZI
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

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DATE OF HEARING

20 November 2023

DATE OF JUDGMENT

24 April 2024

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 24 April 2024.