



**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not Reportable / Reportable**

Case No: A119/2024

In the matter between:

**MOEKETSI JOSEPH MONAHENG**

**APPELLANT**

And

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Moeketsi Joseph Monaheng v The State (A119/2024)*

**Coram:** **Chesiwe, J et Daniso, J**

**Heard:** **03 February 2025**

**Delivered:** This judgment was delivered by email to the parties and release to SAFLII. It shall be deemed to have been delivered at 11h00 on 19 May 2025

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**ORDER**

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1. The appeal against conviction and sentence is dismissed.

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## JUDGMENT

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### **Daniso, J**

[1] The appellant appeared duly legally represented before the regional court Welkom for the rape of his former partner thereby contravening the provisions of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act<sup>1</sup> read with section 51(1) of Criminal Law Amendment Act<sup>2</sup> (The CLAA).

[2] The charge sheet alleged that the appellant raped the complainant more than once for the duration of the evening of 2 January 2022. The appellant was convicted after pleading not guilty on the basis of consensual sexual intercourse. He was subsequently sentenced to life imprisonment as provided for in the CLAA.

[3] This opposed appeal is against both the conviction and sentence. The conviction is assailed on the grounds that, in determining whether the State had proved the appellant's guilt beyond a reasonable doubt the trial court erroneously found that there were no improbabilities in the State's case and that the witnesses gave their evidence in a satisfactory manner. The trial court also erred in accepting the version of the State and rejecting the appellant's version. With regard to sentence, the appellant submits that the trial court erred in its finding that there were no substantial and compelling circumstances warranting a deviation from the prescribed minimum sentence of life imprisonment

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<sup>1</sup> Criminal Law (Sexual Offences and Related Matters) Amendment Act No, 32 of 2007.

<sup>2</sup> Criminal Law Amendment Act No, 105 of 1997.

[4] In the court *a quo*, the fact that on the date alleged in the charge sheet the appellant and the complainant engaged in sexual intercourse was not in dispute. It was the circumstances under which that sexual encounter occurred that was in dispute.

[5] The appellant was convicted on the testimony of the complainant and her partner Mr. Mokoena Isaac Mokati. The summary of the State's evidence is the following: the appellant and the complainant were previously involved in a love relationship. The last time they saw each other was in 1992. At the time of the incident the complainant was dating Mr. Mokati, the appellant was in a relationship with someone else.

[6] Earlier on the night of the incident the complainant and Mr Mokati spent the evening together visiting relatives. Around 20h00 the complainant took Mr Mokati's house keys and set off to his residence to sleep. Whilst she was at Mokati's door struggling to open it the appellant accosted her and pulled her out of the yard while swearing at her calling her a whore or a bitch. When she protested he threatened to bust her eardrum. He dragged her to his parental home where he took her to his bedroom, ordered her to undress and raped her several times during the night. The complainant was only able to leave in the morning when the appellant went to work. She went to Mr Mokati's residence and relayed the incident to him and thereafter went to the police station to report the rape.

[7] On 4 January 2022 she was taken for a medical examination. The J88 medical report (exhibit "A") compiled in that regard indicated no visible injuries except for semen like substance consistent with penile penetration.

[8] Under cross-examination, she admitted that she made a mistake about the date upon which she last saw the appellant and conceded that it could have been in the year 2021. She was adamant that the appellant took her from Mokati's residence by force and that she could not scream for help because he had threatened to harm her and

even though she could hear his parents arriving and going to their bedroom she could not ask for their assistance because she knew that they were also scared of him.

[9] Mr. Mokati corroborated the complainant's first report of the rape incident. He confirmed that the complainant took his keys and left him where they were visiting and told him she was going to sleep at his house but when he arrived later she was not there. He had to break one of the windows in order to gain entry into the house, the complainant only arrived in the morning. She was angry and hurt, she informed him that she was raped by the appellant and then went to the police station to report the matter.

[10] On the other side, the appellant testified in his defence and also called his mother Ms. Puleng Monaheng (Ms Monaheng) as a witness.

[11] He denied having taken the complainant to his parental home by force. He explained that she went with him willingly because at the time of the incident she was still his girlfriend. He told the court that he was on the street when he saw the complainant struggling with Mr. Mokati's door. He called her over, she willingly went to him, and they went to his parental home. His mother was home and after opening the door for them they had dinner in the kitchen and then went to his bedroom where they engaged in consensual sexual intercourse only once. In the morning he went to work, the complainant stayed behind and helped his mother to remove rainwater out of the house as it had been raining heavily. He was surprised when the police later arrived and arrested him for raping the complainant.

[12] It was his testimony that upon being released on bail there was no communication between him and the complainant even when they met at a drinking place they did not speak to each other. Inexplicably, he also told the court *a quo* that he was informed by the complaint that the reason she laid the rape charge against him was because of the argument she had with Mr. Mokati for taking his house keys, causing him to break his window. When this version was tested under cross-examination he stated that it was actually the complainant's sibling who informed him about the complainant's reason for accusing him of rape.

[13] Ms Monaheng testified that she was aware of the love relationship between the appellant and complainant. She testified that on the night of the incident she was home when the appellant and the complainant arrived. They went straight to the appellant's bedroom and all looked well between them, they were laughing and the complainant also greeted her. In the morning the complainant left whilst she (Ms Monaheng) was still in bed because she only wakes up late in the afternoon.

[14] When it was put to her that the appellant had testified that he and the complainant ate dinner in the kitchen before going to the bedroom she changed her version and stated that indeed they did dish up and eat before going to the bedroom. She also said she did see the complainant leaving in the morning though they did not speak to each other. Regarding the weather condition, at first she was adamant that except for the small wind it had not rained when the complainant was at their home. Her other version was that it had actually rained and the house was indeed flooded. The three of them (Ms Monaheng, her live in partner and the complainant) removed the water from the house.

[15] It is settled that the appeal court will not interfere with or tamper with a trial court's judgment or decision regarding either conviction or sentence unless, it (the court of appeal) finds that the trial court misdirected itself as regards its findings of facts or the law.<sup>3</sup>

[16] It is the appellant's case that the complainant was a single witness to the rape therefore her evidence had to be evaluated with caution instead, the trial court accepted

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<sup>3</sup> See *R v Dhlumayo & Another* **1948 (2) SA 677** (A). The principle was also restated in *AM & Another v MEC Health, Western Cape* **2021(3) SA 337** (SCA) at paragraph 8.

her version as the truth despite the fact that she contradicted herself with regard to whether upon arrival at the appellant's parental home she did see his parents or not and whether she first sat in the kitchen or the appellant took her straight to the bedroom.

[17] It is further argued that her version that she last saw the appellant in 1992 is improbable as the appellant was only two (2) years old at that time and it is also improbable that she did not seek help from the appellant's parents who were present in the house during the alleged rape. She did not try to leave when the appellant was sleeping, she did not report the rape to Mr Mokati until he asked her about her whereabouts the night before, she also did not inform him that the appellant was her ex-boyfriend and she could not even tell the court how many times she was penetrated vaginally by the appellant.

[18] According to the appellant, the fact that the J88 medical report does not show any gynaecological injuries supports the appellant's version that the sexual intercourse was consensual and that it occurred once. The absence of wrist or other bodily injuries also puts paid to the complainant's allegations that she was pulled by the appellant. Based on all these reasons, the appellant contends that his conviction should be set aside.

[19] There is no merit to the appellant's complaints. It is clear from the record of the proceedings that the trial court meticulously evaluated all the evidence proffered by both the State and the defence and having appropriately applied the cautionary rule to the complainant's evidence as a single witness to the rape, the trial court was satisfied that it could rely on her evidence. The trial court was satisfied that the complainant had no reason to falsely implicate the appellant because, at all material times hereto she and Mr. Mokati were not living together but visiting each other therefore she had no reason to lie and cry rape when he asked about her whereabouts the night before. If she was two timing him as the appellant averred, she could have easily said she was home at

her parental home where she lived. Furthermore, it was improbable that the complainant would take Mr Mokati's house keys and then proceed to go spend the night with the appellant. Her version was also corroborated by her first report Mr. Mokati who only relayed what the complainant told him without any exaggeration of the facts or indication of malice towards the appellant. I cannot fault the trial court for accepting the complainant's evidence. She indeed told the truth of how she was violated by the appellant.

[20] The contradictions complained about are also immaterial to the determination of whether the appellant raped the complainant or not. The fact that the trial court did not specifically mention them does not mean that they were not duly considered as "no judgment can be all-embracing."<sup>4</sup>

[21] There is nothing improbable about the complainant's failure to call for help when she was dragged by the appellant from Mr Mokati's yard and when he raped her at his parental home. Her version that the appellant threatened her and that even his parents feared him was not gainsaid by evidence to the contrary. Her fear of the appellant was also noticed by the court *a quo* when she testified.

[22] The substance of the appellant's testimony namely that: the complainant told her that she had fabricated the rape charge was clearly an afterthought devised to suit the circumstances of the case as it was not put to the complainant whilst she was under cross-examination to give her an opportunity for an explanation. It is highly irregular to let a witness' evidence go unchallenged in cross-examination and afterwards argue that they must be disbelieved. That aside, in his direct evidence he testified that after he was released on bail there was no communication between him and the complainant. Under cross-examination he went further and contradicted himself by stating that he was actually informed by the complainant's sibling that the complainant laid the rape charge because Mr. Mokati quarrelled with her (the complainant) for taking his house keys with the result that he had to break his window.

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<sup>4</sup> *S v Francis* **1991 (1) SACR 198** (A) at 204.

[23] It did not end there, it was expected of the appellant's mother to support the appellant's version regarding the complainant's voluntary presence at their home instead, her evidence was contradictory and also riddled with inconsistencies. As correctly pointed out by the trial court, the inconsistencies in her testimony was a clear indicator that she was coached to tailor her evidence to align with the appellant's version of consensual intercourse.

[24] It is a trite principle that there is no obligation on an accused to prove his innocence. Having elected to provide a version of his defence, the appellant's version ought to have been reasonably possibly true to warrant an acquittal. In this matter, the appellant's version did not pass muster. The contradictions existing in his version and between his version and that of his witness had a bearing on the issue of whether he took the complainant to his home by force and also raped or not. I cannot fault the trial court's finding that the defence version when weighed against the State's overwhelming evidence to determine which version was probable and acceptable, the State's accepted version proved the appellant's guilt beyond a reasonable doubt.

[25] Regarding sentence, in the court *a quo* it was common cause that section 51(1) of the CLAA read with Part I of Schedule 2 prescribes a minimum sentence of life imprisonment for the offence the appellant was convicted of unless there were substantial and compelling circumstances warranting a deviation from the prescribed sentence.

[26] The appellant is aggrieved that the following factors were not taken into account by the court *a quo* as factors warranting a deviation from the prescribed sentence of life imprisonment namely, his personal circumstances: that at the time of sentencing he was 32 years old, he had passed grade 9, was an unmarried father of four minor children. He lived with his parents, his children lived with their mother and he worked as a



gardener earning R2 000.00 every second week; he was in custody awaiting trial for eighteen (18) months and that the complainant did not sustain any injuries. It is the appellant's case that the trial court also did not mention or consider the element of rehabilitation.

[27] In argument, it is conceded on behalf of the appellant that the offence that he has been convicted of is deserving of severe punishment it is however contended that life imprisonment is shockingly inappropriate, a lesser sentence would still meet the objectives of sentencing that would fit the crime, the appellant and the needs of the society.

[28] The appellant against whom the State proved two previous convictions involving violence did not testify or lead evidence in mitigation of sentence. On 21 May 2013 he was sentenced to ten (10) years' imprisonment for rape. In the same year on 4 September 2013, he was sentenced to two years' imprisonment for housebreaking with intent to commit an offence unknown to the State. On the other side, the State relied on the complainant's victim impact statement in aggravation of sentence (Exhibit "D").

[29] The trial court found that there was nothing exceptional about the appellant's personal circumstances to warrant a deviation from the prescribed minimum sentence, they were far outweighed by the aggravating factors prevailing in this matter which include the degrading manner in which the appellant treated the complainant. He dragged her to his home whilst insulting her calling her a bitch, he threatened her with violence when she resisted then subjected her to rape several times during the entire night.

[30] The trial court can also not be faulted for this reasoning, the gravity and prevalence of gender-based related offences cannot be overemphasized. The appellant has shown no remorse. The previous sentence for committing a similar offence has also not deterred him as he committed the present rape whilst on parole.

[31] These offences cause an outrage in the society which looks up to the courts to impose sentences which speak to their plight by placing more emphasis on retribution and deterrence. It is for that reason that the age of the appellant, his employment background and family structure is irrelevant when sentence is considered in the circumstances where the crime is deserving of a prescribed minimum sentence.

[32] It is a gross distortion of facts that the appellant was detained pending trial. The examination of the record of the proceedings reveal that the appellant was on bail.

[33] The absence of physical injuries does not make rape less heinous. Rape leaves the victims with life-long emotional and psychological scars. In *Maila v The State*<sup>5</sup> the Supreme Court of Appeal quoting *Amanda Spies 'Perpetuating Harm: Sentencing of Rape Offenders Under South African Law'* (2016) (2) SALJ 389 at 399 held that:

*"[48] The Legislature has specifically amended the Criminal Law Amendment Act to provide categorically that the fact that a complainant was not injured during a rape cannot be considered as compelling or substantial. In terms of s 51(3) (a A) of Act 105 of 1997, which came into operation in December 2007:*

*'When imposing a sentence in respect of the offence of rape the following shall not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence:*

*....*

*(ii) an apparent lack of physical injury to the complainant;*

*....*

*(iv) any relationship between the accused person and the complainant prior to the offence being committed."*

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<sup>5</sup> (429/2022) **[2023] ZASCA 3** delivered (23 January 2023).

[34] In this matter, the emotional and psychological effects resulting from the appellant's actions are set out in the complainant's victim impact statement. The incident has impacted her self-esteem and freedom of movement. She was also left traumatized and her dignity was impaired.

[35] Based on all these reasons, I am of the view that in sentencing the appellant to life imprisonment, the trial court exercised its discretion properly and judicially. There is no reason to tamper with the trial court's judgment regarding the conviction and sentence. In the result, I would make the following order:

### **Order**

- (1) The appeal against conviction and sentence is dismissed.

**NS DANISO, J**

I concur

**S CHESIWE, J**

On behalf of Appellant:

Ms S Kruger

Instructed by:

Legal Aid South Africa

**BLOEMFONTEIN**

On behalf of respondent:

Adv. L Mkhabela

Instructed by:

The Director of Public Prosecutions

**BLOEMFONTEIN**

