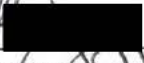


IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE



CASE NO: A 29 /2022

Reportable:	☒ YES / ☒ NO
Circulate to Judges:	☒ YES / ☒ NO
Circulate to Magistrates:	☒ YES / ☒ NO
Circulate to Regional Magistrates:	☒ YES / ☒ NO
<u>30/05/2025</u>	
DATE	SIGNATURE

In the matter between:

MZAMANE JERRY MALULEKA

APPELLANT

and

THE STATE

RESPONDENT

Neutral Citation: *Jerry Mzamane Maluleke v The State* ZALMPPHC

Coram: Kganyago J and Morgan AJ

Heard: 13 September 2024

Delivered:

JUDGMENT

MORGAN AJ

INTRODUCTION

- [1] This is an appeal by the appellant, Mzamane Jerry Maluleke (Maluleke), against his conviction and sentence imposed by Matubatse J in the Regional Division of Limpopo held at Mahwelereng. The appellant challenged both the findings of fact and the sentence delivered by Matubatse J. This appeal raises issues concerning the trial court's assessment of evidence, application of legal principles, and the proportionality of the sentence imposed.
- [2] As a court of appeal, our role is to assess whether the trial court misdirected itself in its assessment of the evidence or in the application of sentencing discretion that would warrant overturning or altering the conviction and sentence.¹ However, a court of appeal's powers to interfere with the findings of the trial Court are limited.² The primary questions before this court are: (1) whether the trial court applied the law correctly to the evidence, thereby resulting in a just conviction, and (2) whether the life sentence imposed was appropriate, given the circumstances and any potential mitigating

¹ *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645 E-F.

² *S v Francis* 1991 (1) SACR 198 (A) at 240 D.

factors.

BACKGROUND FACTS

[3] The appellant, Mr. Maluleke, was convicted in the Limpopo Regional Court on three counts of rape under section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, read with section 51(1) of the Criminal Law Amendment Act 105 of 1997. The conviction stemmed from events that took place on 1 December 2019, involving his former girlfriend, the complainant. According to the complainant's testimony, Maluleke had forced her to his residence, where he engaged in multiple acts of non-consensual sexual intercourse, threatening her with a knife and a screwdriver. She described several instances of forced penetration, which the trial court accepted as constituting rape.

[4] The trial court found Maluleke guilty on all counts, sentencing him to life imprisonment on 2 August 2022.³ The appellant now challenges both the conviction and the sentence, arguing that the complainant's testimony should have been treated with caution as she was a single witness, and that the medical evidence did not corroborate penetration. Had the trial court evaluated the evidence properly in light of these factors, the state would not have met the standard of proof required in criminal matters as it would have failed to prove its case beyond a reasonable doubt. The appellant further contends that the sentence imposed was unduly harsh and failed to consider substantial and compelling circumstances, which should have warranted a deviation from the prescribed minimum sentence.

THE LAW AND THE TRIAL COURT'S DECISION

[5] As stated earlier, the trial court convicted Maluleke of rape under section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act.⁴ This statute, read with section 51(1) of the Criminal Law Amendment Act 105 of 1997, mandates life imprisonment for rape in certain aggravating circumstances, including repeated

³ Record of proceedings dated 02 August 2022 at pg 312.

⁴ Record of proceedings dated 17 May 2022 at pg 215.

acts of penetration without consent. The charge stemmed from the complainant's account, detailing three distinct acts of non-consensual penetration, which the trial court determined met the threshold for multiple counts of rape.

- [6] In reaching this verdict, the trial court considered testimony from three state witnesses: the complainant, a medical examiner, and the investigating officer. The complainant's testimony described an ordeal involving threats with a knife and screwdriver, physical assault, and forced sexual acts, which occurred despite her expressed resistance. Although the medical examination, conducted two days post-incident, revealed no physical injuries corroborating forced penetration, the doctor explained that menstruation and prior childbirth might account for the absence of injuries.
- [7] The court applied the principles governing evidence evaluation, emphasising that a single witness's testimony could suffice for conviction if clear and satisfactory.⁵ Relying on *S v Trainor*⁶ and *S v Sithole*,⁷ the court weighed the complainant's testimony against Maluleke's version, which claimed consensual interaction influenced by alcohol. Matubatse J found there to be inconsistencies in the appellant's account while the complainant was credible and consistent, noting the lack of any apparent bias against Maluleke.⁸
- [8] The trial court ultimately rejected Maluleke's version as implausible and convicted him on the strength of the complainant's testimony.⁹ In sentencing, the court considered Maluleke's personal circumstances, as highlighted in the pre-sentence report, and the aggravating nature of the offence, underscoring the severity of rape as a violation of dignity and autonomy.¹⁰

APPLICATION AND CONCLUSION

⁵ Record of proceedings dated 17 May 2022 at pg 207.

⁶ *S v Trainor* 2003 (1) SACR 35.

⁷ *S v Sithole* 1999 (1) SACR 585 (W).

⁸ Record of proceedings dated 17 May 2022 at pg 211.

⁹ Record of proceedings dated 17 May 2022 at pg 213 – 215.

¹⁰ Record of proceedings dated 02 August 2022 at pg 307.

- [9] The Constitutional Court in *S v Bogaard* said that for a court of appeal to interfere with a sentence imposed by a lower court:

'It can only do so where there has been an irregularity that resulted in a failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it.'¹¹

- [10] A court of appeal will be entitled to interfere with the sentence imposed by the trial court if the sentence is disturbingly inappropriate or out of proportion to the seriousness of the offence.¹²

- [11] It is trite that in imposing the appropriate sentence, a court should always balance the nature and circumstances of the offence, the personal circumstances of the offender and the impact of the crime on the community, its welfare and concern.¹³

- [12] In *S v Vilakazi*, it was held that:

'The personal circumstances of the appellant, so far as they are disclosed in the evidence, have been set out earlier. In cases of serious crimes, the personal circumstances of the offender by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period will be, and those seem to me to be the kind of 'flimsy' grounds that Ma/gas said should be avoided.'¹⁴

¹¹ *S v Bogaard* [2012] ZACC 23; 2012 (12) BCLR 1261 (CC); 2013 (1) SACR 1 (CC) at para 41.

¹² *S v Romer* 2011 (2) SACR 153 (SCA) at para 22.

¹³ *S v Banda and Others* 1991 (2) SA 352 BSD at 355.

¹⁴ *S v Vilakazi* 2012 (6) SA 353 (SCA) at para 53.

[13] A fundamental and well-entrenched principle of our legal system is that the authority to determine an appropriate sentence rests predominantly with the trial court. Consequently, the appellate court's ability to alter a sentence handed down by the trial court is both limited and carefully constrained. This limitation is clearly designed to prevent undue encroachment on the trial court's sentencing discretion by the appellate court. Over time, varying interpretations of the standard for appellate intervention in sentencing have emerged, leading to a measure of subtle confusion and significant uncertainty. Nonetheless, in my opinion, the definitive standard for when an appellate court is justified in interfering with a sentence has been clearly and authoritatively articulated in *S v Kgosimore*:

'It is trite law that sentence is a matter for the discretion of the court burdened with the task of imposing the sentence. Various tests have been formulated as to when a Court of appeal may interfere. These include whether the reasoning of the trial court is vitiated by misdirection or whether the sentence imposed can be said to be startlingly inappropriate or to induce a sense of shock or whether there is a striking disparity between the sentence imposed and the sentence the Court of appeal would have imposed. All these formulations, however, are aimed at determining the same thing; viz whether there was a proper and reasonable exercise of the discretion bestowed upon the court imposing sentence. In the ultimate analysis this is the true inquiry. (Compare *S v Pieters* 1987 (3) SA 717 (A) at 727G - I.) Either the discretion was properly and reasonably exercised or it was not. If it was, a Court of appeal has no power to interfere; if it was not, it is free to do so. I can, accordingly, see no juridical basis for the stricter test suggested by counsel; nor is there anything in s 316B of the Act, or for that matter s 310A, to suggest otherwise. (See also *S v Anderson* 1964 (3) SA 494 (A).) It follows that, in my view, whether it is the Attorney - General (now the Director of Public Prosecutions) or an accused who appeals against a sentence, the power of a Court of appeal to interfere is the same.'¹⁵

¹⁵ *S v Kgosimore* 1999(2) SACR 238 (SCA) at para 10.

[14] The Supreme Court of Appeal in *S v Malgas* articulated the test as follows:

'A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate Court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate Court is at large. However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate Court would have imposed had it been the trial court is so marked that it can properly be described as 'shocking', 'startling' or 'disturbingly inappropriate'. It must be emphasised that in the latter situation the appellate court is not at large in the sense in which it is at large in the former. In the latter situation it may not substitute the sentence which it thinks appropriate merely because it does not accord with the sentence imposed by the trial court or because it prefers it to that sentence. It may do so only where the difference is so substantial that it attracts epithets of the kind I have mentioned. No such limitation exists in the former situation.'¹⁶

[15] It is a cornerstone of our legal system that appellate courts exercise restraint in interfering with the findings of trial courts. This principle is rooted in the recognition that trial courts are uniquely positioned to assess credibility and determine the weight of evidence, having had the advantage of observing witnesses as they testified. The appellate court's role is not to second-guess the trial court but to ensure that justice

¹⁶ *S v Malgas* 2001(1) SACR 469 (SCA) at para 12.

was done. Thus, the threshold for intervention is high and confined to circumstances where the trial court committed material misdirection or acted irrationally.

- [16] The jurisprudence on this matter is unequivocal. In *S v Malgas*, the Supreme Court of Appeal held that an appellate court must not substitute its view simply because it would have exercised discretion differently. Instead, intervention is permissible only where the trial court's decision is vitiated by significant misdirection or where the sentence imposed is startlingly inappropriate, inducing a sense of shock. These principles are not mere formalities but safeguards against undermining the integrity and finality of judicial processes.
- [17] In the case before us, the trial court discharged its duties. It engaged in a thorough evaluation of the evidence, paying close attention to the inherent probabilities and improbabilities in the versions presented. The complainant, though a single witness, provided a coherent and unwavering account of the events. The trial court applied the cautionary rule governing single-witness testimony with scrupulous care, as outlined in *S v Sauls*, ultimately concluding that her testimony met the requisite threshold of clarity and reliability.
- [18] The appellant's version, by contrast, was riddled with inconsistencies and lacked credibility. The trial court observed material departures between the appellant's testimony and the defence presented during cross-examination, undermining the plausibility of his denial. It is well-settled that an appellate court must defer to a trial court's credibility findings unless they are demonstrably tainted by material error. In this case, no such error is apparent.
- [19] On sentencing, the trial court acted within the framework prescribed by law. The offences in question are of the utmost gravity, involving repeated violations of the complainant's dignity and autonomy under circumstances of extreme coercion. The trial court appropriately determined that no substantial and compelling circumstances existed to justify a departure from the legislatively mandated life sentence. This conclusion accords with the guidance provided in *S v Vilakazi*, where the Supreme Court of Appeal held that, in serious crimes, personal mitigating factors must recede into the background.

- [20] To interfere with the trial court's findings in this matter would not only subvert the well-established principles governing appellate review but also risk diluting the severity with which our courts must respond to offences of this nature. It is neither the function nor the prerogative of this court to usurp the trial court's discretion, save where it has been shown to be improperly exercised—a standard that has not been met in this case.
- [21] In reviewing the judgment and the record in this matter, I find no material misdirection in the trial court's evaluation of the evidence, application of evidential principles or in the discretion exercised in sentencing. Although uncorroborated, the complainant's testimony was credible, reliable, and consistent, meeting the legal threshold for conviction based on a single competent witness.
- [22] The appellant's version, however, was implausible and unsupported by the evidence. The trial court reasonably and properly rejected his version as being false beyond reasonable doubt¹⁷. The appellant conceded under cross-examination that he did not recall the events of the day in question, which undermined the force of his denial.¹⁸ The trial court also correctly noted that the appellant's testimony departed in several material respects from the version put on his behalf to the complainant by his legal representative¹⁹. This rightly diminished his credibility.
- [23] In evaluating the evidence, it should be noted that the trial court had the benefit of observing first-hand the performance of all witnesses in assessing the weight of their evidence. When viewed cumulatively and holistically, the evidence established the appellant's guilt beyond reasonable doubt. There is no reason to interfere with the trial court's finding in this regard.
- [24] Regarding the sentence, the gravity of the offence and its impact on the complainant, as well as societal interest in addressing sexual violence, justify the imposition of the prescribed life sentence. No substantial or compelling circumstances in evidence warranting deviation from the mandatory minimum sentence.

¹⁷ Judgment, record dated 17 May 2022, page 213.

¹⁸ Record of proceedings dated 8 April 2022, page 166, lines 10 - 21

¹⁹ Record of proceedings dated 8 April 2022, page 168, lines 10 - 22; pages 171 - 172; page 174, lines 15 - 25.

[25] For these reasons, this court cannot and will not interfere. Both the conviction and sentence must stand. Accordingly, both the conviction and sentence are upheld.

ORDER

1. The appeal against both conviction and sentence are dismissed.
2. No order as to costs.



LM MORGAN

Acting Judge of the High Court of South Africa,
Limpopo Division, Polokwane

I agree, and it is so ordered.



F KGANYAGO

Judge of the High Court of South Africa,
Limpopo Division, Polokwane

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