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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION)**

REPORTABLE

Case no.: A180/2023

In the matter between:

C[...] V[...] D[...] M[...]

Appellant

And

THE STATE

Respondent

Coram: Saldanha J et Pangarker J

Hearing dates: 1 November and 5 December 2024, 20 March 2025

Judgment delivered (electronically): 22 July 2025

JUDGMENT

PANGARKER J (SALDANHA J concurring)

Introduction

[1] On 13 October 2019¹, in a house in Belhar, Cape Town, Ms. B. v R (the complainant) became the victim of the most horrific, violent and brutal crimes perpetrated against her by her husband, Mr. C[...] v[...] d[...] M[...], the appellant. The house literally became her prison where she endured severe and repeated physical assaults to various parts of her body by the appellant in an attempt at murdering her, multiple rapes and sexual assault. She remained in the house for three days, in a bloodied and injured state, with medical assistance denied to her by the appellant and where, on the third day during his temporary absence, she managed to escape from the house.

[2] The first person she encountered, a female neighbour, dismally refused to provide her with any assistance despite her bloodied condition and the obvious pain she was in. The neighbour dismissively claimed that she did not want to involve herself in what she regarded as no more than a domestic dispute. A second neighbour called the Belhar SAPS for urgent assistance, only to be informed that they were too busy attending to a shooting in the area. No police officers arrived to take her to the police station or a hospital. She was eventually assisted by the sister of the appellant and her own father, Mr v R, who had been contacted for assistance. He immediately took her to the police station where she waited for two hours without any police officer paying any attention to her despite her visible battered and bloodied state. These are but some of the shocking details that emerged in this appeal.

Plea and conviction

[3] On 21 September 2022, the appellant pleaded guilty to one count of attempted murder, and not guilty to three counts of rape and one count of sexual assault, all of which occurred on 13 October 2019 in Belhar. The Bellville Regional Court convicted him on 1 November 2022 on all five counts. In respect of the rape

¹ The charge sheet was amended to reflect the date of the attempted murder, rapes, and sexual assault.

counts, the appellant faced life imprisonment as the offences fell within the ambit of section 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA) as the rapes were listed in Schedule 2 Part 1 of the CLAA. Section 5(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 applied to the sexual assault.

[4] On 15 November 2022, the Regional Magistrate sentenced the appellant to 15 years' direct imprisonment for the attempted murder (Count 1), and life imprisonment for the rapes and sexual assault (Counts 2 to 5.) The Regional Magistrate took the convictions together for the purposes of sentencing. The appellant did not apply for leave to appeal in relation to the attempted murder but enjoyed an automatic right of appeal in respect of the sentence of life imprisonment. During the appeal hearing, the court was informed that the appellant decided to withdraw the appeal against convictions on the rapes and sexual assault. A formal notice of withdrawal was duly filed. The appeal thus proceeded only against the sentence of life imprisonment imposed in respect of counts 2 to 5.

Factual background

[5] The horrific, shocking sequence of events emerge from the record of the proceedings in the court *a quo* and the judgment of the Regional Magistrate. The appellant and the complainant were married in 2014 of which two minor daughters were born. By 2017, they were estranged, with each living separate lives but having intermittent contact with each other. During 2019, the complainant attended a Christian-based recovery and rehabilitation centre due to her abuse of drugs, more specifically, "tik". The minor children resided with her father, with whom it appeared she had a difficult relationship due to his "tough love" approach.

[6] In October 2019, the complainant left the rehabilitation centre and sought accommodation. Her father was not prepared to accommodate her due to her history of drug use and she therefore went to the appellant's residence in Belhar and sought accommodation on a temporary basis. The appellant had attended some sessions at the rehabilitation centre and claimed to have an interest in re-establishing the family bond.

[7] By all accounts, despite the details being sketchy, neither the complainant nor the appellant really wished to rekindle their fractured marital relationship, which seemed to have been characterised by incidents of domestic violence and mutual drug abuse. Nonetheless the appellant expressed a willingness to assist the complainant for as long as she wished and/or until she found employment.

[8] The complainant slept at the residence in Belhar for approximately a week without incident. Their conduct toward each other appeared to be civil and the appellant accepted that they were no longer in a loving relationship. Each sought forgiveness from the other for past events and the complainant's plan was to return to Ceres to her current partner and to then look for employment.

[9] On 12 October 2019, the appellant, who ran a driving school, left for work and was to have returned in the afternoon with a pair of sneakers and food for the complainant. He however only returned the evening, without any food. The complainant noticed that his mood had changed and that he appeared to be "*zoned out*" as she put it and pre-occupied.² At some stage he sat down on the bed with her. She became scared and wanted to leave the house as she knew from previous occasions, that his behaviour and body language lead to physical abuse of her. He said to her that they were going to get food but instead turned off the television and switched on the bedroom light.

[10] Ominously the atmosphere in the room suddenly changed. The appellant demanded that she inform him how many times over the years she had taken him for a "*p..s*" and proceeded to threaten her by saying that he would "*f..k*" her up with the use of a cricket bat which he took from the top of a cupboard. Out of fear, the complainant desperately grabbed the cricket bat from the appellant, sat on top of it and that appeared to have diffused the situation. She also beseeched him that they had promised each other not to fight. The appellant then left to buy food, leaving her alone in the house. In an attempt at leaving the house she discovered that the appellant had locked all the doors from the outside, thus preventing her escape. He

² Record, p18

returned later with food and appeared to be in a calmer mood. He thereafter went into a nearby room where he smoked mandrax.

[11] The next morning, 13 October 2019, the appellant left the house to attend to his driving school instructions. He again locked her in the house without any food. On his return at about 18h00, she asked him about food and the sneakers. His response was that she took him for a "p..s," had ruined his life and then spat in her face and slapped her. She fought back. The appellant again took the cricket bat and while she covered her face with her hands to ward off any blows, he hit her with it, striking her little finger.

[12] The complainant extended her injured hand to show him the damage to her finger, but the appellant continued threatening to hit her all night until she told him everything he demanded to know. She went to the kitchen on the pretext of wanting to drink water, hoping her crying would alert the appellant's brother who lived in a wendy house on the premises, nothing came of it. The appellant demanded that she return to the room which she did. When in the room, the appellant hurled a number of accusations against her. He gave her another blow with the cricket bat, this time striking her arm.

[13] In utter desperation the complainant got up from the bed, punched him in the face and choked him. In retaliation he grabbed by her hair, dragged her to the ground and holding both sides of her head, banged her head three times on the carpeted floor, causing her to scream out in pain. The appellant got off from her. She then managed to drag herself onto the unmade bed, using her elbows to lever herself up. The appellant hit her again with the cricket bat, this time striking against her ankle. She heard a cracking sound from her ankle because of the impact.

[14] The threats continued while the complainant managed to seek cover and refuge under the duvet cover and blanket in the desperate hope that it would soften the impact of the further blows that rained on her body. She explained how the appellant continued hitting her to the extent that she simply answered "Yes" to all his questions and false accusations in the desperate and vain hope that he would stop the attack on her.

[15] While laying on her back on the bed the appellant stood over her with one foot on either side of her. He brought the cricket bat down on her again and she shifted her head slightly to avoid the bat striking her forehead. The cricket bat struck the back of her head. She claimed that she then saw "*only pink, looking like pink grains of rice*"³ in front of her. She touched her head and felt a large hole in her head. She realised that the "*pink grains*" had come from this bleeding hole in her head that splattered blood and pieces of flesh onto the bed linen.

[16] The complainant became dizzy and all the while the appellant persisted in swearing at her. He accused her of messing on the bed and forced her to pick up the pieces of flesh from her head wound and eat it. She was thus forced to eat her own flesh.

[17] She then passed out in excruciating pain. She explained that she "*cut out*" from time to time, in reference to losing and then regaining consciousness because of the devastating blow to her head. The appellant also persisted with threats to "*f..k her up.*" He ordered her to lie on top of him, but she lacked the strength to do so. She tried raising herself on her hands but again lost consciousness. Upon regaining consciousness, she found herself on her back and tried to raise herself. The appellant, had at that stage already dropped his pants and forcefully shoved his penis into her mouth and demanded that she suck it.

[18] The complainant cried out that she was tired, but he simply held her up by her hair and continued to force his penis into her mouth. She lost consciousness again. Upon regaining consciousness, she found the appellant on top of her and that he had inserted his penis into her vagina. He said to her that he could not ejaculate in her, whereupon he proceeded to lift her to her side, opened her legs wider and inserted his penis into her anus. She was physically helpless and unable to ward him off her. After penetrating her in the anus, the appellant proceeded to place his penis on her face and ejaculated onto it.

³ Record, p40

[19] He subsequently cleaned himself . She was left with very little strength in both of her arms to even clean her herself. Fatty tissue hung from an open wound on her leg caused by the blow. The appellant thereafter left the house to buy food. Every time she raised her head to attempt an escape, the complainant lost consciousness. She realised that it was late in the evening, as she could not hear any people outside who could come to her assistance.

[20] In excruciating pain, she desperately requested painkillers from the appellant on his return or that he simply drop her off at a local clinic. He refused but promised to take her to the clinic the following day on his return from work. He claimed that she would inform people what he had done to her if he took her to the clinic that night . He also placed a blanket over the bedroom window so that she was unable to tell whether it was light or dark outside.

[21] The next morning, the complainant again pleaded for painkillers and to be taken to a clinic. Again, the appellant dismissed her request. He claimed that he would take her to the clinic after dark when the clinic would not be busy. In desperation, she promised him that she would say that her injuries were sustained during a motor vehicle accident and would not mention him nor implicate him in any way. The appellant nonetheless refused to give her any pain medication or take her to a clinic for much needed urgent medical attention.

[22] Sometime later, he again threatened to hit her with the cricket bat. Its handle had even broken during the earlier attack on her. She asked him for water whereupon he pulled her by her hair into the bathroom and forcefully pushed her face into the bathtub that contained soiled water and forced her to drink it. He took her back to the bedroom and despite her showing him the serious injuries to her body , he again blatantly refused to take her to a clinic.

[23] As he left for work the next morning, the appellant told her that when conducting driving lessons, he would look out for a hole in which to bury her so that she would never be found by her family. When he left, she discovered that he had not locked the bedroom door from the outside. In utter desperation, she realised that she had to get out of the house. She believed that she would not get out alive upon

the appellant's return. She forced herself up, held onto cupboards and walls, and managed to get to a window where she called out to an opposite neighbour for help. She showed the neighbour her injuries and desperately exclaimed that the appellant was intent on killing her. The neighbour's response was that she did not have a phone and dismissively stated that she did not want to become involved in what she regarded as no more than a domestic dispute between the complainant and the appellant.

[24] The complainant thereupon alerted a young child on her way to school of her desperate plight. The child called her mother, who called the Belhar SAPS. As indicated, the police claimed that they were too busy attending to a shooting in the area. The complainant managed to escape through a back door into the street where she found the appellant's sister, Ms. E[...] v[...] d[...] M[...] and called out to her for assistance. She informed, a shocked Ms v[...] d[...] M[...] that the appellant had beaten her. Ms v[...] d[...] M[...] assisted the complainant into a change of clothes and wiped the blood from her battered face. She then took the complainant to the premises of the first neighbour who had initially turned her away. Ms v[...] d[...] M[...] called the complainant's father, who immediately took the complainant to the Belhar police station.

[25] The complainant waited for almost two hours at the Belhar police station without any assistance or attention from any of the officers on duty. A nurse, who just happened to be present at the police station at the time, raised the alarm about the complainant's medical condition and demanded that the police officers immediately take her to a hospital for attention. A detective from the Delft police station, Sergeant Kellerman, readily assisted the complainant by transporting her to the Karl Bremer Hospital where she received urgent and lifesaving medical attention immediately upon arrival.

[26] Later in the day, the appellant had the audacity to visit the complainant in hospital and begged her not to disclose to anyone that he had assaulted her. She became agitated and anxious, and screamed out at him. He cowardly fled the trauma room and the hospital. The complainant's condition was grave and life threatening. She overheard a doctor inform her father that she may not survive the

night, and her survival beyond the Friday would be nothing short of a miracle. She survived and remained hospitalised for two weeks before her discharge.

[27] The complainant left the hospital in a wheelchair and went to live with her cousin who very helpfully attended to her daily care and needs. She literally had to learn to speak again and because of the severe injuries to both her leg and hand, she was required to attend physical therapy. Unfortunately, because of the injuries she sustained, she subsequently lost a job she secured and was left homeless and resorted to living on the streets. She reverted to her abuse of drugs again and at the sentencing stage of the trial, the investigating officer traced her to the Pollsmoor Correctional Facility, as an awaiting trial detainee. There, he obtained a Victim Impact Statement from her.

[28] As for the medical evidence, Dr Nondumiso Tukwayo recorded multiple injuries, bruises and lacerations on the complainant's body and had to refer her to other doctors for further medical attention. Dr Tukwayo conducted a gynaecological examination of the complainant as she had reported the oral, vaginal and anal rapes by the appellant. She recorded no fresh injuries during the gynaecological examination, and some of the gynaecological injuries appeared to be older than 72 hours.

[29] According to Dr Barry Smith, the complainant sustained multiple injuries to her body including a 7 cm irregular deep laceration on her scalp, with a depth of 3 to 5 cm and with subcutaneous fat tissue protruding. The injury passed beyond the epidermis. Further injuries recorded were fractures to the complainant's finger on her right hand, a fracture to the left wrist and a bone fracture of the left ankle. She was tested for "crush syndrome" because of the trauma and shock to her cells that put her at a very high risk of developing kidney failure. She was immediately put onto an intravenous drip. The complainant's condition was regarded as life threatening if left untreated and without the emergency interventions by the medical staff of the Karl Bremer Hospital, she may tragically have lost her life. She was also admitted for neuro-observation due to the repeated loss of consciousness caused by the head injury. The complainant's injuries were consistent with the brutal assault with the use of a cricket bat.

[30] In his testimony in the court *a quo*, the appellant admitted that he assaulted the complainant with a cricket bat all over her body and that in the process, its handle broke. He claimed that he was "*blindingly angry*" because of what he thought were the complainant's lies during their marriage and that he only realised after he beat her, that she had sustained injuries. He claimed that he was ashamed of his conduct but did not know how to deal with the situation. He would have taken her to a clinic for medical attention but stated that because they had smoked "tik", therefore they never managed to go to the clinic. Needless to state, the appellant's version was rejected by the Regional Magistrate.

[31] In respect of the charges of rapes and sexual assault, the appellant denied the version of the complainant. He claimed that they had consensual sexual intercourse on all three instances even after having assaulted her. According to the appellant, she would initiate sex to prevent him from continuing with his assault on her. In cross examination, he conceded that in her injured state she may well have felt scared and accepted that in reality she would not have wanted to have sex with him, more so in her bloodied and injured state. He claimed that the sexual encounters occurred after he beat her with the cricket bat and denied that he forced her to eat her own flesh and drink the soiled bath water.

The Regional Court's judgment on sentence

[32] The Regional Magistrate rejected the appellant's version that the complainant consented to sexual intercourse with him. She found that the complainant was beaten into submission, repeatedly passed out due to the severity of her injuries and could not, in such circumstances, have consented to sexual intercourse with him. She found that the State had proved its case beyond reasonable doubt and convicted the appellant on all counts.

[33] In her judgment on sentence, the Regional Magistrate expressed her shock at the extent of the injuries inflicted upon the complainant. She went as far as to state that the injuries remained embellished in her mind, that this instance of gender-based violence was the worst that she had encountered in her entire career on the

bench. The Regional Magistrate emphasized the prevalence of gender-based violence and its pernicious and pandemic proportions throughout the country. She remarked that the appellant could hardly be held up as a role model for the young men in his community.

[34] The Regional Magistrate took account of the objectives of criminal punishment and the oft quoted triad of the appellant's personal circumstances, the interests of the community and the serious nature of the offences. She moreover highlighted the following: the effect of the severe injuries sustained by the complainant; the appellant's avowed intention to kill the complainant, his wife; the humiliation and degradation she suffered at his hands when he forced her to eat her own flesh and to drink filthy bath water; being raped three times after being bludgeoned with a cricket bat in the attempt at murdering her, and the grotesque sexual assault on the complainant.

[35] The Regional Court found no substantial and compelling circumstances had been established to warrant a deviation from the prescribed minimum sentence of life imprisonment on each of the rape convictions.

The grounds of appeal against the sentences

[36] The appellant enjoyed an automatic right of appeal in law against the sentences of life imprisonment. The grounds of appeal raised, amongst others, were that the Regional Court had overemphasised the seriousness of the crime and the element of deterrence; that the appellant had anger issues, used drugs and that the sentence of life imprisonment induced a sense of shock. In addition, the appellant also claimed that the Regional Magistrate had failed to consider that he had pleaded guilty to the charge of attempted murder.

[37] I should point out that in February 2024, the Regional Magistrate dismissed an application for leave to appeal the sentence on the attempted murder conviction. At the hearing of the appeal, counsel for the appellant confirmed on his behalf that he would not seek to petition the High Court in respect of the sentence of 15 years' imprisonment imposed on the attempted murder conviction.

Developments during the appeal proceedings

[38] Due to the serious nature of the physical and sexual assaults inflicted upon the complainant by the appellant and the abject failure of the police officers on duty at Belhar police station to respond to both the scene and to subsequently facilitate timeous and urgent medical attention for the complainant, the court on appeal (the court) held a meeting with counsel for the respective parties in chambers. The court also noted that the photographs of the victim's injuries and the scene of the attempted murder and the rapes were not included in the appeal record. The court was subsequently provided with the photograph album which graphically depicted the visible extent of the injuries suffered by the complainant.⁴

[39] The court raised its concern about the whereabouts of the complainant as it was apparent from the trial record that she had subsequently lost her employment due to the trauma and injuries she suffered, appeared to be living on the streets, had fallen back into drug use and ended up as a detainee in the awaiting trial section of the Pollsmoor Correctional Facility. Furthermore, because of the lack of police attention and assistance to the complainant at Belhar police station after her ordeal, the disregard of the first neighbour to provide any assistance to the complainant, the court therefore requested of the State Advocate to request the investigating officer, Sgt Kellerman, to make every effort at tracing the complainant and to establish whether she received any counselling or therapy as a result of the vicious crimes committed against her.

[40] The Station Commander of Belhar police station as well as the relevant police officer(s) on duty on 15 October 2019 were directed to attend the appeal hearing to no more than listen to the court's serious concerns about their conduct and lack of assistance to the complainant on the aforementioned date. The complainant's father and the appellant's sister who so kindly assisted the complainant on the day were also invited to attend the appeal hearing should they be inclined to do so. The court did not consider it necessary for the complainant to attend the appeal proceedings

⁴ Exhibit 2

lest it reignite the trauma she already suffered. The appeal hearing was postponed for compliance with the court's requests .

[41] The queries raised by the court were diligently followed up by counsel for the State. She informed the court in writing that from information received, the complainant had in fact received a few counselling sessions, was back living on the street and that the neighbour who had initially refused to assist her, had in the meantime suffered a stroke and was unable to recall her interaction with the complainant in October 2019. The minor children of the appellant and complainant continued to be cared for and lived with their grandfather, the complainant's father. Further, the Station Commander of the Belhar police station at the time of the incident had since retired, was untraceable and the identity of the nurse who so helpfully alerted the Belhar police officers to the seriousness of complainant's injuries, was unknown.

[42] On 5 December 2024 the appeal proceedings were attended by Sgt Kellerman and Ms Petlele, a social worker attached to the office of the provincial Director of Public Prosecutions (DPP) who was providing support to the complainant. The complainant's father was also in attendance at court. The complainant, at her own volition, attended the proceedings. Counsel for the State informed the court that she did so out of her own choice and preference. Sergeant Juca, the Belhar shift commander on duty on 15 October 2019 was absent due to illness.⁵ The court noted those in attendance with appreciation, especially the complainant and her father.

[43] Counsel for the appellant submitted that her client claimed that he had "anger issues" which the appellant submitted the Regional Court failed to recognise or take into account in its sentence judgment. She further contended that the court *a quo* should have obtained probation and correctional supervision reports in respect of the appellant for the purposes of sentence. She requested the court to simply refer the matter back to the Regional Court to re-open sentencing proceedings so that the reports may be obtained.

⁵ The State had subpoenaed Sgt Juca to attend the proceedings of 5 December 2024

[44] In response, the court pointed out that there was no formal application by the appellant to this effect before it. Counsel for the State contended that the appeal record was complete and that a determination of the appeal against sentence could be made by the court on the record of the proceedings in the court a quo. She further contended that the Regional Magistrate had dealt extensively with the triad of factors to be considered during sentencing, so too the objectives of sentencing, the fact that there were a complete lack of any substantial and compelling circumstances and that there was no prospect on the facts of the matter, that the Regional Magistrate would have imposed any lesser sentence if the aforementioned reports were obtained and placed before her.

[45] In light of the request made by counsel for the appellant, the court requested that she obtain full instructions directly from the appellant, in particular as to whether he wished to formally apply to re-open his case on sentence by placing further evidence before it in the appeal proceedings. The appeal was postponed to 20 March 2025. On resumption, counsel for the appellant informed the court that having consulted with her client her instructions were that he did not wish to bring a substantive application to place any further evidence before the court on appeal. She submitted that the appeal should proceed on the record as provided and that heads of argument on sentence, punctuated with the relevant case law, had already been provided to the court.

[46] Sgt Juca and the current Station Commander at the Belhar police station, were in attendance for the proceedings of 20 March 2025. So too, were the complainant and her father at their own choice, and Ms. Petlele. In further oral submissions to the court, despite having conceded that there were in fact no substantial and compelling circumstances to warrant a deviation from the prescribed minimum sentence of life imprisonment, counsel for the appellant nonetheless pressed that cumulatively considered, the appellant's personal circumstances amounted to compelling mitigating factors that should have swayed the trial court to deviate from the sentences of life imprisonment. On appeal, the court was requested to consider that the appellant's admission that his actions were wrongful as set out in his plea of guilty on the attempted murder charge was a significant mitigating factor

and therefore a measure of mercy should have favoured him in the sentencing process.

[47] Counsel for the State referred the court to her comprehensive heads of argument on sentence on appeal and reiterated that there were simply no substantial and compelling circumstances established in any form or substance by the appellant. She emphasised the brutality and horror of the attack on the complainant by her husband, the father of their minor children. She also pointed to the continued trauma suffered by the complainant especially on the rape and sexual assault incidents.

[48] Counsel for the State further informed the court that the office of the DPP was more than amenable to provide training to the police officers at the Belhar police station on how to deal with victims of gender-based violence and rape, especially so since the evidence in the court *a quo* indicated that vulnerable persons such as the complainant were seriously prejudiced and placed at risk by the conduct and lack of immediate attention and medical assistance by the police officers on duty.

[49] The court was also informed that the complainant had since returned to live with her father and the children and that they were all undergoing counselling at FAMSA. Counsel for the State requested of the court to issue out appropriate directives to the effect that the Belhar police officers receive the appropriate training as indicated, that the office of the DPP together with the Commission for Gender Equality be involved in such training and that an enquiry be conducted into the failure of the Belhar police officers that resulted in the complainant having to wait for two hours at the police station without any assistance or medical attention, until the wholly fortuitous and timely intervention of the unknown nurse and the prompt assistance of Sgt Kellerman.

Evaluation of the merits of the appeal on sentence

[50] In the recent decision of **Kasongo v S**⁶, Henney J (Cloete J concurring) stated the following about the extent of an appeal court's interference in a sentence imposed by a trial court:

"[39] It is trite that in an appeal against sentence that the principle that should guide the appeal court is that punishment is pre-eminently a matter for the discretion of the trial court, and a court of appeal should be slow to interfere with such discretion. Furthermore, that a court of appeal can only interfere with a sentence imposed by the trial court under the following circumstances. Firstly, where there is a material misdirection by the trial court that vitiates the exercise of that discretion. Secondly, where there is a disparity between the sentence that was imposed by the trial court and that which the court of appeal would have imposed had it been the trial court, to the extent that such a sentence can be characterized as shocking, startling or disturbingly inappropriate."

[51] I align myself with these well-established principles. In the event that it is found that the trial court exercised its sentencing discretion properly, there can be no room for interference- in its decision. The appeal against the sentence of life imprisonment is considered under the headings indicated below

The appellant's personal circumstances

[52] The appellant's personal circumstances were placed before the court *a quo* in an *ex parte* address by his counsel. At the time of sentence, the appellant was 40 years old, the father of two minor girls whom he had with the complainant and two adult children from a previous relationship. He was married to the complainant but separated for two years prior to the commission of the crimes. His adult children lived with him prior to his conviction in the matter.

[53] As for his education, the appellant progressed to Grade 11 due to financial constraints in his family at the time. He was required to seek work at a young age.

⁶ [2025] ZAWCHC 124 - Henney J with Cloete J concurring, Nziweni J dissenting

He was employed as a driving school instructor and earned between R8000 to R10 000 per month. He regularly used drugs such as tik, cannabis and mandrax and had used drugs at the time that he committed the offences. He had no history of any physical illnesses or disabilities. He resided permanently in Belhar albeit that he was not the owner of the property. The appellant had no previous convictions. The Regional Court was also informed that he was in a romantic relationship with a new partner though the details of the relationship were not provided during the trial.

[54] From the judgment on sentence, it is apparent that the Regional Magistrate had fully taken account of the appellant's personal circumstances when weighing up both the mitigating and aggravating factors. So too she took into account the interests of the community and the seriousness of the offences, in order to have reached an appropriate and just sentence. It bears mentioning that the sentence imposed should not be disproportionate to the offender, the crime and the interests of society.

The appellant's alleged anger problem

[55] At the trial, the appellant elected for his personal circumstances to be placed on record through the *ex parte* address by his legal representative rather than him testifying under oath in mitigation. His legal representative also addressed the court on aspects related to remorse, rehabilitation, the triad of factors in sentencing and the time he spent in custody awaiting trial.⁷ The appellant's drug abuse was also addressed.

[56] The only reference to the appellant's actions when committing the crimes was that he believed that his marriage was a lie and that he felt that he had a right to lift his hands to the complainant. Nowhere in the *ex parte* address in the court *a quo* was any reference made to the effect of an "anger problem" on the appellant when committing the offences. It bears mentioning that the appellant testified that he had

⁷ According to the record of the court *a quo*, the charge was previously withdrawn. The appellant was not in custody during the trial proceedings which led to his conviction and sentence.

become "*blindingly angry*" and thought that he was entitled to lift his hands against his wife. Anger, however, as it manifested itself in a fit of rage could not, in the circumstances, be any justification for his cruel and calculated attack on the complainant. Moreover, his anger could certainly not be justification for the repeated rape of the complainant and then followed by the grotesque sexual assault on her. His conduct was nothing short of an intentional and wilful abuse of his power over the complainant.

[57] If indeed the appellant suffered from an anger management problem, it was incumbent on his legal representative to have placed such information and reports before the court *a quo* during the proceedings or to have requested a postponement to obtain the necessary reports. It was simply not done. On appeal, this court afforded the appellant the opportunity of applying to re-open his case to obtain a probation officer's report, but he spurned the opportunity to do so and elected to proceed with the appeal against his sentence. The apparent reference to anger management issues by the appellant appeared to be no more than opportunistic and a detraction from his abhorrent conduct towards the complainant. It was nothing but a ruse to secure a lesser sentence.

[58] Having considered the judgment on sentence, the blame which the appellant sought to attribute to the Regional Magistrate for having not investigated his anger issues and not calling for pre-sentence reports was all together misplaced. The stark facts of the incidents were squarely placed before the Regional Magistrate and she properly rejected the appellant's version that because he allegedly lost his temper, he believed he was entitled to attack his wife whom he so gratuitously accused of infidelity by assaulting her in the most gruesome manner. A loss of temper in the circumstances must be considered to have been an aggravating factor. By no means could it have diminished the appellant's blameworthiness and the unlawfulness of his conduct. For all the reasons set out above, this ground of appeal must fail.

The appellant's admission of the assault on the complainant

[59] The Regional Court was criticized for placing no weight on the appellant's admission that what he did was wrong. Firstly, it must be emphasized that the

appellant admitted wrongfulness only in respect of Count 1, the attempted murder. He denied that he raped the complainant and sexually assaulted her. At all times in the court a *quo* he maintained that the sexual acts were consensual.

[60] Secondly, the admission of the complainant's grievous assault by the appellant with the cricket bat must be seen in the context of the overwhelming evidence of the complainant's account of the attempted murder and the medical evidence of the injuries she sustained. The level of violence and force with which the appellant beat the complainant with the cricket bat was reflected in the multiple injuries she sustained. Perhaps it is appropriate to be reminded of her injuries⁸, as follows:

Multiple small, scabbed wounds all over her body;
Extensive bruising on arms and forearms, left buttock and thigh, right thigh, left calf, both ankles and face;
10 cm abrasion on left arm;
1.5cm wound on anterior right calf;
Linear bruising on left hand;
Tender left wrist;
2 x 1cm superficial lacerations to right hand (fifth digit);
3cm x 2cm superficial scabbed abrasion posterior right thigh;
6cm x 2cm superficial scabbed abrasion posterior right thigh;
7cm irregular deep laceration on posterior scalp;
Peri-orbital bruising;
Laceration on upper lip; and
Swollen, tender bruised left ankle.

[61] In my view, the appellant had little option but to admit that he caused the injuries to the complainant. It was telling though, that he stopped short of admitting that he intended to kill her despite his cruel utterances to her after the assaults that he would keep a look out for a hole to bury her in. Moreover, the appellant was not charged with assault with intent to do grievous bodily harm but that of attempted

⁸ J88 - note, copy in record does not contain an Exhibit number.

murder, by hitting her all over her body with a cricket bat. The photographs of the victim in hospital after the attack were graphic evidence of the injuries that she sustained during the appellant's attempt at murdering her. More so, were the images of the scene in the Belhar house, depicting blood-stained pillows, bed linen and clothes in the bathroom.

[62] Thus, with all the evidence stacked against him, the appellant simply had no place to hide. The Regional Magistrate held the same view in finding in her judgment on sentence that the appellant had no choice but to admit to his assault of the complainant because of the overwhelming evidence against him in respect of Count 1. She found that:

*"There was nobody else, it was just him. You cannot lie or you cannot make up a story if you just look at the pictures. There is no way - there was no way else but to say, yes, I am the person who assaulted her."*⁹

[63] With that in mind, I hold the view that the Regional Magistrate saw the admission regarding the assault for what it really was. I therefore do not agree that the Regional Magistrate did not attribute any weight to the admission that the appellant assaulted the complainant with the cricket bat all over her body and therefore this ground of appeal must also fail.

Seriousness of crimes and the element of deterrence

[64] The actions of the appellant were brutal, cruel, and wholly inhumane. The complainant came to the home of the appellant, her estranged husband, sought refuge and a safe haven after leaving the rehabilitation program and where he agreed to provide her with accommodation and praised her for seeking to improve her life. He expressed his support for and led her to believe that she was safe with him and thus lulled her into a false state of security. All that was shattered when he began with a torrid campaign of beating her with the cricket bat all over her body,

⁹ Sentence judgment, p186 (page 11 of the judgment)

tormented her with false accusations, bashed her head against the floor and repeatedly raped and then sexually assaulted her .

[65] These actions were of itself so serious that it rendered the complainant defenseless and at a demonstrable physical disadvantage. Her ankle was injured, her finger hung loosely (as she explained), her scalp had a deep laceration which caused subcutaneous fat tissue to be exposed, causing her to "*cut out*" or lose consciousness. The attempt at murdering his wife was not enough for the appellant in exercising control over the complainant. When she regained consciousness, she found him half naked and he forced his penis into her mouth. He thereafter raped her both vaginally, then anally but did not stop there as thereafter, he sexually violated her by ejaculating all over her face.

[66] I have yet to come across more brutal, callous and grotesque conduct against a defenseless woman in any matter. The actions of the appellant displayed no regard for the life of his wife, her bodily integrity, dignity and privacy. He brought and used drugs in the house despite the complainant's efforts at rehabilitation, then proceeded to exert both physical and harsh control over her through repeated assaults with a cricket bat, forced her to eat her own flesh, drink soiled bath water and then sexually violated her person multiple times.

[67] These crimes are undoubtedly one of the worst kind of physical and sexual abuse which this court has encountered. So too, the trial court. In fact, in her judgment on sentence, the Regional Magistrate echoed the sentiment expressed by the prosecutor in argument on aggravation that the violent conduct of the appellant, committed with such brutality, was monstrous. In context, this view expressed by the Regional Magistrate so forcefully could hardly be construed to be a misdirection as counsel for the appellant sought to suggest on appeal.

[68] In my view, the Regional Magistrate was correct in emphasizing the seriousness of the offences. She correctly took account of the fact that this was an incident of severe gender-based violence perpetrated by a husband against his wife. She also recognized and appreciated that gender-based violence offences had reached pandemic proportions in South Africa without abating in the least. As

recently as 2023, the Supreme Court of Appeal in **Maila v S**¹⁰ signalled a reminder about the seriousness and prevalence of rapes and gender-based violence crimes when it stated the following:

"[57] Rape of women and children is rampant in South Africa. It has reached alarming proportions despite the heavy sentences which courts impose. South Africa has one of the highest rape statistics in the world, even higher than some countries at war. The country's annual police crime statistics confirms this: in 2019/2020, there were 42 289 rapes reported as well as 7 749 sexual assaults. This translates into about 115 rapes per day.¹¹" (footnote included)

[69] In **Chapman v S**¹², Mohamed CJ described rape as "a very serious offence, constituting as it does, a humiliating, degrading and brutal invasion of the privacy, dignity, and person of the victim." Some ten years later, the Constitutional Court in **Ndlovu v S**¹³ commented that rape is "a deeply destructive and dehumanising act."

[70] The appellant's counsel also argued that the Regional Court overemphasized the element of deterrence. I respectfully disagree. In a matter as serious as this, the rehabilitation of the offender takes on a less significant role to that of deterrence and retribution, in the determination of an appropriate sentence.¹⁴ The Regional Magistrate gave due regard to these elements and properly found, in view of the circumstances and the prevalence of gender-based violence offences, that the sentence imposed would serve to deter the appellant and other like-minded persons from offending again.

[71] As for rehabilitation, a submission made on appeal on behalf of the appellant was that he was already attending various programs in the Correctional Facility. That

¹⁰ [2023] ZASCA 3

¹¹ Amada Gouws 'Rape is endemic in South Africa. Why the ANC government keeps missing the mark' 9 August 2022, *Mail & Guardian*, <https://img.co.za/opinion/2022-08-09-rape-is-endemic-in-south-africa-why-the-anc-government-keeps-missing-the-mark/>.

¹² 1997 (2) SACR (SCA) 5b

¹³ [2017] ZACC 19 para [50]

¹⁴ S v Swart 2004 (2) SA 370 (A) para [12]

notwithstanding, his actions and the serious offences he committed, does not convince us that rehabilitation as an objective of sentencing should be elevated above the elements of deterrence and retribution.

A lack of remorse

[72] The appellant's crimes have had a horrific effect on the complainant, physically, emotionally and financially. He deliberately misled the Regional Court in a vain attempt at convincing that court that the complainant, in her severely injured and vulnerable state, consented to having sexual intercourse with him on three instances. He also denied that he sexually assaulted her. His utter dishonesty and attempts at controlling the complainant persisted even when he eventually found her in hospital, demanding a guarantee that she would not implicate him in the attempted murder and sexual offences that he committed against her.

[73] The appellant simply did not express any regret for his conduct. As stated earlier, he only admitted to assaulting the complainant because of the overwhelming evidence against him, and certainly not because he had an attack of conscience at her abused and injured plight¹⁵. There was simply no regret nor remorse on his part nor had he taken the court *a quo* into his confidence regarding the rapes and sexual offence. He rather sought to make out that the complainant had initiated sexual relations with him, and this after he had beaten her all over her body with a cricket bat to the extent that she intermittently lost consciousness due to the deep head wound.

[74] In my view, the Regional Magistrate was correct when she stated that the appellant showed no remorse for his actions and conduct. The issue of remorse, therefore, does not feature in the circumstances of the appellant in this matter, nor can I find any misdirection in the findings of the Regional Court in this regard.

The claim that the sentence induced shock

¹⁵ See *S v Matyityi* [2010J ZASCA 127 para [13]

[75] The last ground of appeal is that the sentence of life imprisonment induced a sense of shock. It bears mentioning that there were three counts of rape, and in respect of each, life imprisonment was the prescribed sentence as the complainant was raped more than once. As mentioned, the Regional Court took the rape offences together with the sexual assault for the purposes of sentence and imposed life imprisonment. The sentence of 15 years' imprisonment for the attempted murder thus runs concurrently with life imprisonment.

[76] I accept that life imprisonment, on the very disturbing facts and brutal nature of these crimes committed against the complainant, does not induce any sense of shock. It would rather have been shocking had the Regional Magistrate *not* imposed life imprisonment for the offences and deviated from the prescribed minimum sentence of life imprisonment. To elaborate, the legislature expect of the courts to implement the minimum sentence regime for an offender who so brutally and repeatedly violated his victim sexually and so to send a strong message that such callous and reprehensible conduct should not be countenanced.

[77] Clearly, the complainant's rights to dignity, equality and privacy were seriously invaded, and the Regional Magistrate was all too aware of this when she sentenced the appellant. He left his wife to die and very crudely said to her that he intended to find a hole to bury her in. His pathetic excuse as to why he failed to take her to hospital or a clinic, as she begged him to do more than once, was indicative of his callous disregard for her life and safety. The complainant's desperate pleas for painkillers fell on deaf ears. Thus, the appellant's failure to assist the complainant by refusing to take her to a hospital or clinic was both calculated and deliberate, and meant to protect him from being caught out and identified as the perpetrator of the crimes. Ultimately, the Regional Magistrate cannot be faulted for her finding that there existed no mitigating factors in the appellant's favour.

[78] The complainant gave a harrowing account of the impact of the appellant's assaults and treatment of her in the victim impact statement. She stated that as a result of the trauma, she now harboured feelings of claustrophobia. She has a fear of confrontation, she questions her life and death experiences, she is embarrassed about her scars and nauseated at the thought of having had her own flesh in her

mouth. She is afraid of the dark and cannot live a normal life because of her near-death experience and does not want to look at herself in the mirror.

[79] The physical after-effects of the crimes perpetrated against her are the constant pains in her hands resulting in the inability to hold onto and grasp objects. She therefore has an inability to attend to daily chores. She falls over herself, has begun to stutter when anxious and her scars are daily reminders of her experience at the hands of the appellant. Because of the trauma, she lost her job and ended up on the street.

[80] The complainant's horrific experience and effects of the rapes are aptly described with reference to the judgment of **S v C**¹⁶:

"Rape is regarded by society as one of the most heinous of crimes, and rightly so. A rapist does not murder his victim - he murders her self-respect and destroys her feeling of physical and mental integrity and security. His monstrous deeds thereafter after haunts his victim and subjects her to mental torment for the rest of her life - a fate often worse than loss of life".

[81] When regard is had to the judgment on sentence, I am satisfied that the Regional Magistrate weighed up all the elements of sentencing, and in her assessment, found no substantial and compelling reasons to deviate from life imprisonment. In fact, I would venture to state that she displayed an element of mercy when sentencing the appellant to life imprisonment, having taken the rapes and sexual assault offences together for the purposes of sentencing.

[82] I am accordingly satisfied that the sentence imposed was indeed just and balanced and does not induce a sense of shock. In the result, I propose to dismiss the appeal against sentence and confirm the sentence of life imprisonment. Before concluding, there are a few aspects that require attention, which I attend to below.

¹⁶ 1996 (2) SACR 181 at 186 D-E

The post-trial condition of the complainant, the neighbours' assistance and police officers stationed at Belhar police station

[83] We have, to an extent, stepped beyond the traditional role as the appeal court because of the horror of the appellant's actions and the abject failure of police assistance when it was so desperately needed when the complainant was initially brought to the Belhar police station. In our view, the complainant, as the victim of such heinous crimes, was entitled to prompt assistance and the facilitation of urgent medical attention by the police officers stationed at the Belhar police station on the day in question. The evidence in the court *a quo* was to the effect that had the complainant not been taken to the hospital in time and received intravenous fluids, she may have lost her life.

[84] In fact, had it not been for the most helpful yet firm intervention of the unknown nurse who fortuitously raised the alarm at the Belhar police station on the day, and the swift action of the investigating officer Sgt Kellerman in transporting her to the Karl Bremer Hospital where she received the emergency treatment, the appellant may well have faced a charge of murder in the court *a quo*. Moreover, her minor children would have tragically lost their mother at the hands of their father.

[85] The court was also concerned as to whether the complainant had received the necessary counselling for the trauma she suffered. Far too often victims of crime and women and children in particular, regrettably fall through the cracks of an overburdened criminal justice system when it comes to post-trial attention and ongoing counselling. We were gratified to be informed through the diligence of counsel for the State, that the complainant had received some counselling. Regrettably, she found herself back on the streets having again succumbed to her drug addiction. Thankfully the office of the DPP also stepped in to provide assistance through the helpful social work of Ms Petlele. The court commends all of them for their considerate assistance to the complainant.

[86] The complainant, of her own volition, expressed to the court that she hoped that this matter may help other victims of gender-based violence and rape, as she wished her story and experience to be heard. To the extent that we have taken this

unusual approach to the matter, we hope that this judgment sends out a strong message that rape and gratuitous violence of the nature that the complainant faced , as do so many other women and children, are not taken lightly by the courts .

[87] This brings me to the surrounding community and neighbours whose conduct featured in the trial. The first neighbour, who notwithstanding a desperate plea from a visibly bleeding and bludgeoned complainant who begged her for help, simply refused to assist her, explaining that she did not wish to become involved in what she regarded to be no more than a domestic squabble. Such attitudes may not be isolated and given the high and pervasive levels of violence in the Western Cape, some community members fear for their lives when aiding injured persons. Needless to state, the broader fight against gender-based violence is compromised by such complex realities. Moreover, the real fears harboured by neighbours and other community members and the reality of violence should not be underestimated nor ignored.

[88] Had it not been for the second neighbour, Ms v[...] d[...] M[...] and the complainant's father, the complainant may have had to wait longer or encountered the appellant again on his return to the house. The court likewise commends their timeous assistance to the complainant, especially the complainant's father for attending and displaying a serious interest in the appeal. More so, for his welfare, care and consideration for his grandchildren and the complainant.

[89] But for the unknown nurse and Sgt Kellerman of the Delft investigation unit, the complainant may have died, such was the seriousness of the "crush syndrome" suffered by her and explained by Dr Smith in his testimony in the trial. Sgt Kellerman is commended for his efforts, and we acknowledge his dutiful assistance rendered to the complainant in taking her to the Karl Bremer Hospital. So too, he contributed to saving her life. Additionally, Sgt Kellerman also diligently carried out the court's requests and directives during the appeal. Likewise, we acknowledge the role and commend the unidentified nurse who raised the alarm at the police station and saved the complainant's life. Equally so, the court commends the medical staff at the Karl Bremer Hospital for having provided lifesaving medical treatment and assistance to the complainant.

[90] The same, however, could not be said of the Belhar police officers on duty on the day, who appeared to have been oblivious to the serious, yet clearly visible injuries sustained by the complainant. She testified in the court *a quo* that she had waited for two hours for some attention from the police officers on duty at the police station. Accordingly, we request that these circumstances be fully investigated and that appropriate training be provided to members of Belhar police station.

[91] Furthermore, we also extend our appreciation to Ms Petelele for assisting the complainant and her family on what is hopefully a road to recovery from their traumatic experience. Our appreciation is also extended to the appellant's counsel, Ms Kuun, and Legal Aid South Africa for both ably and professionally representing the appellant for which the court was all too aware, was a difficult brief given the harrowing facts which unfolded in the matter.

[92] Last but by no means least, this court extends its sincere gratitude to counsel for the State, Ms Cecil, the way she prosecuted her brief and so willingly and diligently attended to its directives and requests. The genuine concern which she so graciously and professionally displayed towards the complainant, did not go unnoticed. In conclusion, the efforts of both counsel, beyond the call of duty, are commended in what was one of the most brutal, and indeed, one of so many instances of gender- based violence and sexual offences against women.

Order

[93] In the result, I would grant the following order:

- a) The appeal against sentence on counts 2 to 5, is dismissed,
- b) The sentence of life imprisonment on counts 2 to 5 (taken together for sentencing purposes) is confirmed.
- c) The current Station Commander of Belhar police station (the police station) is requested to investigate the circumstances and reasons why

the complainant, Ms. B v R, was not promptly assisted on or about 15 October 2019.

- d) The Station Commander is requested to provide a written report on the outcome of such investigation to the office of the Director of Public Prosecutions (DPP), Western Cape, for its consideration and records.
- e) It is recommended that the DPP, Western Cape, provides training to the personnel and police officers at Belhar police station on the proper and expeditious handling of rape, sexual offences and gender-based violence offences, and the treatment of victims and complainants of such offences. The DPP may, if it deems necessary, enlist the assistance of the Commission for Gender Equality in respect of such training.
- f) The respondent's counsel is requested to:
 - i) provide copies of this judgment to the Commission for Gender Equality (Western Cape), the Station Commander of Belhar police station, and Sergeant Kellerman of the Delft police investigative unit; and
 - ii) to conduct a follow-up with FAMSA regarding trauma counselling and therapeutic support rendered to the complainant, her father and her minor children.

M PANGARKER
JUDGE OF THE HIGH COURT

I agree and it is so ordered,

V C SALDANHA

JUDGE OF THE HIGH COURT

Appearances:

For Appellant:

Ms S Kuun

Instructed by:

Legal Aid South Africa

For Respondent:

Adv E Cecil

Instructed by:

Director of Public Prosecutions

Cape Town