

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: A15/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 29/07/2025

SIGNATURE:

In the matter between:

SELLO PRINCE MABELA

APPELLANT

And

THE STATE

RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The appellant was arraigned in the regional court Mahwelereng on one count of rape read with the provisions of section 51(1) and Schedule 2 of the

*Criminal Law Amendment Act*¹ (CLAA). It is alleged that in the process of raping the complainant, the appellant had inflicted grievous bodily harm on the complainant. The appellant had pleaded not guilty to the charge, however, the court *a quo* convicted him as charged and sentenced him to life imprisonment. In terms of section 309(1)(a) of the *Criminal Procedure Act*² as amended, the appellant has automatic right of appeal by virtue of been sentenced to life imprisonment. The appellant is appealing against sentence only.

- [2] The background facts are briefly as follows. The complainant testified that on 16th December 2022 she left her homestead in Mosesetjane around past 17h00 in order to go and assist her aunt at her workplace in town. After work she went to the taxi rank to go and catch a taxi back home which is extension 14. When she arrived at the taxi rank there was only one taxi that was left. The driver of that taxi was the appellant whom she started knowing during 2016. She boarded that taxi and it drove towards extension 14. On the way to extension 14 some passengers were alighting from the taxi. When the complainant was supposed to alight from the taxi, the appellant requested her not to alight. The appellant told the complainant that he was still going to drop some other passengers in extension 19 and that he will drop her later. As the complainant knew the appellant, she did not have a problem with that.
- [3] After dropping the passengers in extension 19, the appellant received a call that he must drive back to town to take the last load and drop it in Masodi and Moshate. As it was already at night at about 20h00, the complainant agreed to drive back to town together with the appellant, and that the appellant will drop her last after he had transported other passengers. After transporting all the passengers, the appellant told the complainant that he was taking the taxi to its owner and that his friend who is also a taxi driver will transport them, and they will find his friend at the cross-road waiting for them. They dropped the taxi at its owner's place and walked to the cross-road.

¹ 105 of 1997

² 51 of 1977

- [4] On arrival at the cross-road, they found a taxi waiting for them. Inside the taxi there was a boy and girl. They boarded the taxi and it drove away. At Mahwelereng cross-road, the appellant told the taxi driver that he was alighting. The taxi stopped and the appellant alighted from the taxi. Since the complainant did not know the occupants of the taxi, she alighted together with the appellant. After alighting the appellant told the complainant to accompany him to the tavern where he bought alcohol. After buying alcohol, they went back to the cross-road where they hitchhiked. They boarded a sedan vehicle which the appellant seems to know the driver as they were happy to see each other.
- [5] The appellant requested the complainant to accompany him so that he could buy alcohol for the driver of the sedan vehicle, and thereafter the driver will drop them in extension 14. They bought alcohol and thereafter the driver of the sedan dropped the appellant and the complainant in extension 14. The appellant told the complainant that he first wanted to go to his homestead and take a jersey so that he could accompany the complainant home. They went to the appellant homestead, and on entering the house the complainant sat on the sofa. Later the appellant came back in possession of a bread knife, and told the complainant to undress. The complainant refused, and the appellant stabbed the complainant with that knife on her finger on her right hand. The complainant sustained an open wound. The complainant ran towards the door on the right hand side which was closed, and when she opened it she found a woman asleep with two children.
- [6] On entering the room the complainant woke up the woman who was asleep and tried to explain to her what was happening. As the complainant was trying to explain, the appellant entered the room holding a knife. The woman in the room was the appellant's mother. The appellant's mother asked the appellant as to what was happening. The appellant responded by telling his mother stay out of that if she did not want to die. The appellant's mother woke up, took the two children and left the room. The appellant dragged the complainant out of that room into the sitting room where he told the complainant to undress. The complainant refused to undress and the appellant stabbed her once on the

nose with a knife. The complainant sustained an open wound as a result of the stabbing. The appellant proceeded to stab the complainant on the head several times with that knife, which resulted in the complainant sustaining open wounds.

[7] That resulted in the complainant undressing by taking off her trouser. The appellant assisted the complainant by removing her trouser, and thereafter the appellant took off the complainant's panty. The appellant made the complainant to lie on the floor in the sitting room. After the complainant had lied down on the floor with her stomach, the appellant took out his penis, lied on top of the complaint from the back, penetrated the complainant's vagina with his penis, and started making the up and down movements. The appellant did not use a condom, and the complainant did not give the appellant consent have sexual intercourse with her. From there the appellant dragged the complainant to a certain room which its door was already open.

[8] On entering the room, the appellant pushed the complainant to a bed. After pushing the complainant to the bed, the appellant lied on the same bed and fell asleep. The complainant sat on the bed, and could not get out of the room as she was in pains. As she was seated on the bed she heard people knocking at the door, and immediately two police officers and the appellant's mother entered the room. One police officer woke up the appellant whilst the second police officer assaulted the appellant. The complainant explained to the police officers what had transpired and the police officers asked the complainant whether she wanted to open a rape case against the appellant and she said yes. The complainant and the appellant were taken to the police vehicle, and they drove to Mokopane police station. At the police station the police took the complainant's statement, and thereafter she was taken to the hospital where she was examined by the doctor. She was stitched on her open wounds. The complainant was cross-examined by the appellant's counsel.

[9] The second witness to testify for the State was Bright Maluleke the medical doctor who had examined the complainant. He confirmed that he had

personally examined the complainant, and thereafter completed the J88 form. The complainant had explained to him what had transpired to her that evening. She had not bathed, and he had recorded all the injuries that he had observed on the complainant's body, which were lacerations on the occipital parietal area measuring 3 centimetres, and 0.5 centimetres deep. On the zygomatic area on the face, there were also lacerations measuring 1 centimetre. There was also an incision on the left side of the neck measuring 1 centimetre. There was also an incision on the right middle finger measuring 1 centimetre. There was a discharge noted on the labia majora. On the posterior fourchette there were also lacerations between 6 O' Clock and 9 O' Clock which carry a lot of weight in a case of sexual assault. The hymen was perforated, it has smooth local change with red bruising. Anything that comes between 6 and 9 is considered sexual assault until proven otherwise. The other witnesses called by the State corroborated the complaint's version.

[10] The appellant testified under oath, and most of his testimony corroborate the evidence of the complainant of how she ended up at the appellant's homestead. According to the appellant, the complainant had offered herself to him and they both agreed that whatever they were going to do was a one night affair as they were both committed to their partners. However, when the appellant and the complainant arrived at the appellant's homestead, the appellant was drunk and had also became sick. The complainant wanted to take a bath, and the appellant showed the complainant where to fetch water to bath. Thereafter the appellant went to sleep, and he did not hear the complainant when she came to sleep.

[11] The appellant was surprised at 4h30 when he was woken up by the police, and one of the police officers started assaulting him. When the appellant asked the police why they were assaulting him, the police told the appellant that they were arresting him. He was arrested and taken to the police station. When the appellant was woken up by the police, he saw the complainant sleeping on the left side of his bed. The appellant denied ever going to the kitchen where he took a bread knife that he had used to stab the complainant. The appellant denied instructing the complainant to undress herself, and also

disputed having had sexual intercourse with the complainant. The appellant denied dragging the complainant from the sitting room to the bedroom. The appellant stated that before he and the complainant went to his homestead, they were both consuming liquor. The appellant was cross-examined by the State, and thereafter he closed his case.

[12] The appellant was found guilty as charged, and in mitigation of sentence a presentencing report was prepared for the appellant by the probation officer. According to the report of the probation officer, the appellant is the first born in the family of four. His biological father never married his mother, and they separated when the appellant was six years old. The appellant and his siblings were raised by their maternal grandmother, and they were no domestic violence in his family. The appellant loved her family, and did not know his father. The appellant dropped out of school in grade 12 as he was tired of failing. After dropping out of school the appellant never attended any other formal or informal training. At the time of the incident the appellant was employed as a taxi driver by Mokopane Taxi Association. On the date of the incident the appellant was very drunk and do not remember what had happened as he might have been drugged. According to the probation officer the appellant does not take responsibility for the offence, however, he is asking the court to have mercy on him. The appellant is a first offender. At the time of sentencing the appellant was 30 years of age. The appellant used to attend church regularly, but was deceived by the devil as he started drinking alcohol, and stopped going to church.

[13] With regard to the complainant, the probation officer had stated that she did not have a love relation with the appellant. The complainant is still having some scars and that she occasionally experiences pain from the said scars. On the date of the incident the appellant was not drunk as he bought only 2 beers. It is the complainant's wish that the appellant be send to prison for a long time so that she could get healing, and that will also teach the appellant a lesson not to commit the same offence again, as he was a taxi driver working with different people.

[14] The appellant's appeal is directed against sentence only. It is trite that sentencing is the prerogative of the trial court and should not lightly be interfered with. An appeal in which the interference will be justified is when it is found that the trial court has misdirected itself in some respect or if the sentence imposed was so disturbingly disproportionate that no reasonable court could have imposed it. The test is not whether the trial court was wrong, but whether it exercised its discretion properly. (See *S v Romer*³).

[15] The court *a quo* has found that the appellant in the process of raping the complainant had inflicted grievous bodily injuries on her, and therefore the minimum sentence to be imposed is that of life imprisonment. Ordinarily where the minimum sentences are applicable, the court is obliged to impose that sentence, unless the court finds substantial and compelling circumstances to exist which justify a deviation from the prescribed minimum sentence, which ordinarily should be life imprisonment. The factors which are considered in determining whether substantial and compelling circumstances exist, are all factors traditionally taken into consideration in assessing an appropriate sentence.

[16] In *Director of Public Prosecutions Gauteng Division, Pretoria v Portia Thulisile Tsotetsi*⁴) Crippin AJA said:

“As held in *Malgas* confirmed in *State v Dodo* an explained and explained in *S v Vilakazi*, even though substantial and compelling factors need not be exceptional, they must be truly convincing reasons, or ‘weighty justification’, for deviating from the prescribed minimum sentence. The minimum sentence is not to be deviated from lightly and should ordinarily be imposed”.

[17] According to the evidence of the probation officer, the appellant did not take responsibility for the offence that he had committed as he maintains that on the day in question he was too drunk, and did not remember having sexual intercourse with the complainant. The evidence against him was

³ 2011 (2) SACR 153 (SCA) at paras 22 and 23

⁴⁴ 2017 (2) SACR ZASCA 83 (02 June 2017 ZASCA 83 (02 June

overwhelming and he had been duly convicted by the time he consulted with the probation officer. Despite that the appellant failed to take responsibility for what he did but blames alcohol. That shows that the appellant is not remorseful for what he did to the complainant. In *S v Matyityi*⁵ Ponnann JA said:

“Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one’s error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused rather than what he says in court, that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence”.

- [18] An accused can be said to be remorseful if he/she acknowledge the extent of his/her error and, the damage the he/she might have caused to the complainant. An accused can also ask for leniency if he or she shows remorse. By the time the probation officer consulted with the appellant, he was already convicted, remanded in custody and had some time to reflect and review the whole case on his own and see what kind of damage he might have caused to the appellant. The appellant was transporting people on daily basis until late in the evening. As the appellant does not show any remorse, other passengers who might be in the same position as the complainant might not be safe from him. It is the duty of the courts to protect those members of the community that are vulnerable from people like the appellant. It will therefore be difficult for the court to be lenient to an accused who is not remorseful. The court must pass a sentence that will reform and rehabilitate an accused person. Remorse is the beginning of a journey to reformation and rehabilitation.

⁵ 2011 (1) SACR 40 (SCA) at para 47a-c

[19] At the time of sentencing, the appellant was 30 years of age and was therefore in his youthful age at the time of the commission of the offence. However, there is no evidence that youthfulness had played a role in the appellant committing the offence or that he was of immature age. Offences of this nature are prevalent in the entire country and has become a scourge. The complainant and the appellant knew each other and that is the reason why it was easy for the appellant to lure the complainant. The complainant trusted that the appellant would safely transport her home safely after luring her not to alight from the taxi when it was still safe for her walk to her homestead alone. The appellant was in a position of trust to the complainant, and he had broken that trust by using his evil tricks.

[20] Having used his evil tricks to lure the complainant to his homestead, the appellant went on to inflict grievous bodily injuries on the complainant in order for him to get satisfaction. The appellant had failed to heed to a reprimand from his own mother to stop what he was doing. That shows that the appellant does not even respect his own mother. If the appellant does not respect his own mother, other women will mean nothing to him. By first stabbing the complainant and proceeding to rape her whilst she was bleeding and in pains, shows that the appellant is evil and a danger to society. The complainant was raped in a brutal and degrading way by the appellant.

[21] In *S v Chapman*⁶ Mohammed CJ said:

“Rape is a very serious offence, constituting as it does a degrading and brutal invasion of the privacy, dignity and the person of the victim. The rights to dignity, to privacy and the integrity of every person are the basic ethos of the Constitution and to any defensible civilisation. Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and entertainment, to go and come back from work, and to enjoy the peace and tranquillity of their homes

⁶ 1997 (2) SACR 3 (SCA) at 5b-c

without fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives”.

[22] The complainant boarded the appellant’s taxi trusting that the appellant will safely transport her home. The appellant has shown that he did not have respect for the rights which women in this country are entitled to the protection. Despite the appellant having blatantly violated these rights, he did not show any slightest remorse. In my view, the personal circumstances of the appellant cumulatively taken are not truly convincing reasons or weighty justification for deviating from the prescribed minimum sentence of life imprisonment. On the other hand, the aggravating factors far outweigh the mitigating factors. There is nothing to fault the court *a quo* in finding that there were no substantial and compelling circumstances to justify a deviation from the prescribed minimum sentence of life imprisonment on the count of rape. It follows that the appellant’s appeal stands to fail.

[23] In the result the following order is made:

23.1 The appellant’s appeal is dismissed

KGANYAGO J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
LIMPOPO DIVISION, POLOKWANE

I AGREE

DIAMOND AJ
ACTING JUDGE OF THE HIGH COURT OF
SOUTH AFRICA, LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

Counsel for the appellant : R Scott
Instructed by : Legal Aid SA Polokwane

Counsel for the respondent : Adv SM Ramuthaga
Instructed by : Office of DPP Polokwane

Date heard : 28th March 2025
Electronically circulated on : 29th July 2025

POLOKWANE HIGH COURT