



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)
(CIRCUIT COURT, EAST LONDON)**

**CASE NO.: CC13/2025
Reportable YES/NO**

In the matter between:

THE STATE

versus

VUSUMZIDUKUMBANA

ACCUSED

SENTENCE

Cengani-Mbakaza AJ

[1] On 31 July 2025, this court convicted the accused on the following charges:

Count 1: Kidnapping.

Count 2: Rape in contravention of Section 3 of the Criminal Law, (Sexual Offences and Related Matters) Amendment Act 32 of 2007, read with Section 51(1), Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (as amended).

[2] The common law principles governing sentencing are well established. In determining an appropriate sentence, the court must consider a broad range of factors. In sentencing, the triad approach, as encapsulated in *Zinn*¹, is significant because it considers the nature and seriousness of the crime, the personal circumstances of the offender, as well as interests of society.

[3] In a democratic society, the rights of the victims are integral to the criminal justice system, reinforced by the Constitution's promotion of equality before the law and equal protection under the law. Gender-based violence, which has become a scourge in our communities, undermines the realization of all rights enshrined in the Bill of Rights. However, there is reason for hope, as our courts have endorsed the systematic approach adopted by the legislature to combat this scourge. As Mr Nomlala for the defence correctly pointed out, the strides and inroads made by the legislature and our courts underscore the prospect that these violent crimes may become a thing of the past in the near future.

[4] In cases where the victim was raped multiple times and suffered infliction of grievous bodily harm, as in the present case, the minimum sentence is life imprisonment. This is further exacerbated by the fact that the parties were in a domestic relationship and the offence of rape clearly demonstrates elements of abuse.

[5] However, the applicability of imprisonment for life does not undermine the court's discretion in sentencing, as it may deviate from the prescribed minimum sentence where substantial and compelling circumstances exist.

[6] The principles of punishment serve as an important guide in determining the importance of individual deterrence versus general deterrence during sentencing. Moreover, the court must consider the principle of retribution, which aims to prevent wrongdoing. Equally important is the element of rehabilitation, which should be given

¹ S v Zinn 1969 (2) SA 537 A.

due consideration. Therefore, checks and balances are essential at the sentencing stage.

[7] There is a plethora of cases that frown upon violent crimes including rape, viewing them in a more serious light.² These long line of cases upholds the principle that the Constitution, particularly the rights to freedom of movement, dignity, and privacy, applies to every citizen.

[8] In instances where there is a clear violation, like in the present matter, the limitation clause cannot be justified. Moreover, there is no doubt that the complainant suffered physical, genital, and emotional trauma. The physical injuries sustained by the complainant, as described by her and later documented by the forensic nurse stand to be repeated even at this stage. The complainant suffered the laceration on the upper lip with bleeding, bleeding laceration and bruises on the left eye, abrasion on the left cheek, abrasion on the neck due to strangulation, bruising on the breast, redness and swelling on the nose as well as swollen middle finger.

[9] The forensic nurse further noted the following gynaecological injuries: the hymen had multiple healed tears at 3, 6, and 9 o'clock. Despite the fact that there were no fresh injuries in the complainant's vagina, she noted multiple injuries in the anal area. There was redness of the anal orifice with a laceration at 12 o'clock. Furthermore, there were lacerations at 12 o'clock of the peri-anal area.

[10] The ordeal led to the complainant being hospitalized for six months for psychological treatment. Given the duration of the incident and the intermittent fights, one can only imagine the kind of anxiety she endured. The crimes are aggravated by the fact that the complainant had to escape and leave her home, a place where her roots and family bonds are.

² S v C 1996 (2) SACR 181 (C) at 186 e-f

'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 deed often haunts his victim and subjects her to mental torment for the rest of her life – a fate often worse than loss of life. Serial rapists and murderers are regarded by society as inherently evil beings. They are the most feared and loathed criminals in our community. Society demands protection in the form of heavy and deterrent sentences from the courts against such atrocious crimes.'; S v Nchenche 2005 (2) SARC 386 WLD.

[11] The accused also acknowledged that they had a tumultuous relationship, and in my view, this further motivated the complainant's decision to leave the area. There were minor children who witnessed the incident, and the accused disregarded their best interests. He showed blatant disrespect and deliberately perpetrated a pattern of bullying.

[12] The derogatory remarks he made regarding the complainant's womanhood are too egregious to repeat but suffice it to say they further demonstrate his high level of disrespect. Given the aggravating factors I have highlighted, the concepts of deterrence and retribution will play a significant role in determining an appropriate sentence.

[13] Mr Nomlala presented a comprehensive argument, highlighting the significance of the triad approach and the consideration of the accused's personal circumstances. These are:

- He is 39 years of age.
- He passed standard 9 and failed his matric.
- His mother is seriously ill.
- Due to financial constraints he could not pursue his studies.
- He has one brother who could also not pursue his studies due to ill-health.
- Before his arrest the accused was employed at Vincent hardware.

[14] In his address Mr Nomlala submitted that the circumstances of this case should be considered cumulatively, without over-emphasising and under-emphasising any particular aspect. While I agree with the approach and the principle, the accused's personal circumstances exhibit no reasonable prospects of rehabilitation.

[15] According to the evidence presented, the accused is a notorious figure in the area, known to instil fear in others. This explains why the young men who encountered the pair on the road did not intervene. The chances of rehabilitation are further limited by the negative characteristics he demonstrated at the time of the

commission of the offence, including his behaviour in court before the start of the proceedings as well as his previous convictions. It is a fact that the accused wasted the court's time by deliberately misleading it that he was ill, only to be revealed through a documented medical report that he was in fact physically fit and healthy. This is not a side issue as it demonstrates that the accused has a tendency to undermine the criminal justice system through repeated offending and deliberate dishonesty to the court.

[16] Again, although the accused had consumed liquor on the day of the incidents, given the circumstances of this case, it cannot be said that his moral blameworthiness was significantly affected by the consumption of liquor. In any event, he was moderately intoxicated. Moreover, this aspect cannot be viewed in isolation.

[17] Furthermore, despite the submissions that demise of his father adversely affected his upbringing, this is not substantiated by the facts presented. His mother, a self-entrepreneur who owns a creche, took care of him from infancy and provided a stable environment. She instilled standard moral values in him by introducing him to church and other positive influences. Moreover, the emotional support is evident in attendance at court proceedings demonstrating her investment in the accused's well-being.

[18] Therefore, in the overall scheme of things, there are no substantial and compelling circumstances that would warrant deviation from the standard approach in this matter.

[19] **The accused is sentenced as follows:**

1. Count 1- Kidnapping – To undergo 5 years' imprisonment.
2. Count 2 – Rape in contravention of Section 3 of the Criminal Law, (Sexual Offences and Related Matters) Amendment Act 32 of 2007, read with Section 51(1), Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (as amended) - the accused is sentenced to life imprisonment.

3. By operation of law, the sentence imposed in count 1 shall run concurrently with the sentence imposed in count 2.
4. In terms of section 103(1) of the Firearms Control Act 60 of 2000, the accused remains unfit to possess a firearm.
5. In terms of section 50 (1)(a) (i) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, as amended, the particulars of the accused shall be included in the National Register for Sex Offenders.

N CENGANI-MBAKAZA
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the State	:	Adv: Vena DPP, Makhanda
Counsel for the Defence	:	Adv: Nomlala Legal Aid - South Africa
Date Heard	:	01 August 2025
Date Delivered	:	01 August 2025