



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Not Reportable

High Court Case no: CA&R24/2025

Colesberg Case no: RC 7/2024

In the matter between:

THE STATE

and

ABEL PONI

Accused

Neutral citation: THE STATE v ABEL PONI (Case no: CA&R24/2025)

Coram: Tlaletsi JP & Mamosebo ADJP

Delivered: 6 May 2025

RIEVIEW JUDGMENT

Tlaletsi JP

1. The accused in this matter was convicted on a charge of rape by the Regional Court (Mr CJ Abrahams) on 4 November 2024 in Colesberg. As part of the sentencing proceedings on 4 November 2024, a victim impact statement of the

complainant which was facilitated by a court preparation officer was placed before the court. The accused was legally represented during the trial.

2. In the victim impact statement, it was stated that the complainant mentioned that *"I was terrified, I was terrified because I thought that he was going to kill me, and I was shocked because I do not know this person."* The court preparation officer was called to testify. She mentioned that the complainant spoke to her in Afrikaans and she wrote the statement in the English language. Although she is conversant in Afrikaans, she rated herself six out of ten for her proficiency in Afrikaans.
3. The complainant was recalled, and she confirmed that she knew the accused. This was consistent with her evidence during the trial on the merits.
4. After the complainant concluded her evidence, the Regional Magistrate stopped the proceedings and referred the matter to this Court requesting that the conviction be set aside. The Regional Magistrate did not refer to a specific legislative provision in terms of where he is referring the record to this Court for the conviction to be set aside. He however stated, *inter alia*, the following in the said letter: -

"1. In light of this material discrepancy, which raises serious concerns regarding the reliability of the complainant's identification, I find it necessary to request that the conviction be reviewed and set aside. I believe that proceeding with sentencing under these circumstances would result in a miscarriage of justice."
5. At our request the Director Public Prosecutions provided his opinion on the review Magistrate's request. We express our appreciation to Adv SK Weyers-Gericke for their opinion.

6. We assume that the Regional Magistrate intended to send the record for review as provided in section 304A of the Criminal Procedure Act 51 of 1977. Section 304A of the Act provides that:

“304A Review of proceedings before sentence

- (a) *If a magistrate or regional magistrate after conviction but before sentence is of the opinion that the proceedings in respect of which he brought in a conviction are not in accordance with justice, or that doubt exists whether the proceedings are in accordance with justice, he shall, without sentencing the accused, record the reasons for his opinion and transmit them, together with the record of the proceedings, to the registrar of the provincial division having jurisdiction, and such registrar shall, as soon as is practicable, lay the same for review in chambers before a judge, who shall have the same powers in respect of such proceedings as if the record thereof had been laid before him in terms of section 303.*
- (b) *When a magistrate or a regional magistrate acts in terms of paragraph (a), he shall inform the accused accordingly and postpone the case to some future date pending the outcome of the review proceedings and, if the accused is in custody, the magistrate or regional magistrate may make such order with regard to the detention or release of the accused as he may deem fit.”*

7. It is perspicuous that the Regional Magistrate carefully analysed the evidence of the witnesses in his judgment and was satisfied that the state has proved beyond a reasonable doubt that the complainant was indeed raped and that the accused is the person who raped the complainant. His doubt only arose during the sentencing stage. It is not without significance that the complainant was recalled and confirmed that she knew the accused as she had testified during her testimony on the merits. The part of the victim impact statement which came under scrutiny post-conviction, dealt with an issue which was not in dispute. The perceived contradiction has been explained.

8. It is a trite that special review proceedings, especially where criminal proceedings have not been finalised, should only be utilised in rare cases. (*Walhaus and Others v Additional Magistrate Johannesburg and Another* 1959(3) SA 113 (A); *S v Van Eden* 2018(2) SACR 218 (NCK) para 9; *Bagananeng v The State case number CA&R33/23 delivered on 27 October 2023, Northern Cape High Court*) Section 304A should be used in deserving cases. It should not be invoked merely to eliminate a mere doubt or hesitation on the part of the trial court. Neither should section 304A be utilised to dispose prematurely, cases that might be dealt with through appeal or review procedure after the completion of the trial. Section 304A is not there for mere implementation. It is to be invoked in deserving cases. (See: *S v Makhubela* 1987(2) SA 541 (T) at 543F – 547D).
9. The test for the High Court to intervene on review before the finalization of the proceedings is whether it would be unfair and cause irreparable prejudice to an accused to permit the case to proceed to its conclusion. (*S v Klaase* 1998(1) SACR 317 (CPA) at 322 d-f). This is not such a case that calls for intervention. It is not the Magistrate's opinion that the proceedings were not in accordance with justice, or that he doubts that they were not in accordance with justice.
10. It remains open to the accused to approach the High Court after the conclusion of the proceedings for the review or appeal of the case on permissible grounds. Piecemeal adjudication of the case in these circumstances will be prejudicial to the accused. It has the potential of the High Court providing an opinion on the correctness or otherwise of the conviction of the accused without him being party to the proceedings as in this case.
11. In the circumstances the record should be returned to the trial court for the conclusion of the proceedings. We deliberately refrain from expressing an opinion on the correctness or otherwise of the conviction. That should be considered by the court that would be seized with the appeal or review should the need arise in future. We caution that Magistrates should carefully apply their mind to the purpose of s 304A of the Act and assess the nature and veracity of the issue

creating doubt on the proceedings before embarking on the procedure therein provided. Failure to do so will result in almost every case being sent to this Court for review without good cause to do so.

12. In the result, the following order is made:

“The record is returned to the trial court for conclusion of the proceedings”



L P TLALETSI
JUDGE PRESIDENT

I concur



M C MAMOSEBO
JUDGE