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

Case No: CA&R 36/2024

Reportable: YES / **NO**

Circulate to Judges: YES / **NO**

Circulate to Magistrates: YES / **NO**

Circulate to Regional Magistrates: YES / **NO**

In the matter between:

S[...] V[...] W[...]

Appellant

and

THE STATE

Respondent

Quorum: *Mamosebo ADJP et Nxumalo J*

Heard on: 03/03/2025

Delivered on: 06/06/2025

Summary: Criminal law and procedure- Whether the trial court was correct to convict the accused on counts of exposing or displaying his nudity (i.e “flashing”) to children for sexual gratification of himself or any third party. Further, whether the conviction on flashing in addition to that of compelling or causing children to witness

sexual offences, sexual acts, or self-masturbation amounts to a duplication of charges. Regarding evidence of a single child witness in a rape case – whether the trial court was correct to convict the appellant on the evidence of the single child witness on each count despite contradictions in their evidence.

ORDER

1. The appeal is partially upheld to the extent that the convictions and sentences imposed in respect of counts 3, 6, 9 and 12 are set aside.
 2. Save as aforesaid, the appeal is dismissed.
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JUDGMENT ON APPEAL: CONVICTIONS

MAMOSEBO ADJP

[1] The appellant, Mr S[...] V[...] W[...], was charged and convicted in the regional court, sitting at Galeshewe, Northern Cape Province, with two counts of sexual assault (counts 1 and 4); four counts of the contravention of s 21(1) of Act 32 of 2007 (compelling or causing children to witness sexual offences, sexual acts or self-masturbation) (counts 2, 5, 8 and 11); four counts of contravention of s 22 of Act 32 of 2007 (exposure or display of or causing exposure or display of genital organs, anus or female breasts to children i.e. “flashing”) (counts 3, 6, 9 and 12) and two counts of rape (counts 7 and 10).

[2] The appellant was sentenced as follows: on counts 1 and 4 of sexual assault, to 3 years imprisonment on each count. In respect of counts 2, 5, 8 and 11 (c/s 21/1) on each count to two years imprisonment. In respect of counts 3, 6, 9 and 12 (c/s22), on each count to one year imprisonment. In

respect of counts 7 and 10 (rape), on each count to 25 years imprisonment. Counts 2, 5, 6, 7, 8, 9, 11 and 12 were ordered to run concurrently with count 10. Resultantly, the effective term of imprisonment amounted to 28 years.

[3] Leave to appeal against the convictions was refused by the trial court. Subsequently, this court, on petition, granted leave to appeal against the convictions on counts 3, 6, 7, 9, 10 and 12.

[4] Mr Steynberg, for the appellant, argued that a conviction in counts 3, 6, 9 and 12 (exposure or display of or causing exposure or display of genital organs, anus or female breasts to children i.e. “flashing”) is a duplication of charges and urged the court to set them aside. It was further argued that the trial court erred in convicting the appellant of rape in counts 7 and 10, instead of convicting him on the competent verdict of sexual assault.

[5] These are the material facts surrounding the commission of the offences:

The appellant and Ms Belinda Bekker reside in the same yard. He occupies the main house while Ms Bekker and the appellant’s cousin (PS’s father) occupy the shack at the back of the house. On 10 January 2020, she was cleaning their shack when PS¹ came looking for her father. Ms Bekker explained to PS that her father was at work. As PS and her friends were leaving, the appellant called them into his house, and they entered. Ms Bekker continued with her chores. As she walked outside towards the washing line, she observed the appellant, fully dressed, seated on the floor. The girls were standing naked in front of him and he was licking their vaginas. R was not yet present at that stage. She then saw R crying, and she showed her a blue mark on her inner thigh and reported that the appellant had caused it. The appellant was about three meters from where Ms Bekker stood. The door of the main house and the door to the shack face

¹ The minors involved are referred to by their initials.

each other. She reported to her neighbour, Charles, also known as “Bothata”, to seek his intervention.

- [6] The minor children testified through a sworn intermediary, Ms Phumla Portia Mbalu. Before their testimony, the prosecutor handed in, by consent, their medical forms known as a J88, completed by Dr Labala Mafusi at Kimberley Hospital, and the registered forensic nurse Ms Claudelia Jenkins, a Health Care Practitioner at Thuthuzela Care Centre.

In respect of count 7: rape of PS

- [7] PS was admonished to tell the truth and testified through an intermediary. She was six years old at the time of the incident. She was accompanied by BT, PB and R to her father’s place, which is in the same yard as the appellant’s. They only found her stepmother, Ms Belinda Bekker, who informed them that her father was at work. They then played in the appellant’s yard.
- [8] The appellant called them and asked to see their panties. They complied. He invited them into the house. PS swept the floor. PB invited her to feel the appellant’s ‘thing’ called ‘a piepie’ that was erect. She does not know what that thing does.² The appellant ordered them to undress, leaving them naked. PS covered herself with blankets. The appellant spread his legs and invited the girls to have him lick their vaginas. R went first, followed by PS, then PB. Charles then burst into the room, demanding to know what was happening, and the appellant told him he was counting the children. They fled, and BT left her shoes at the appellant’s place. PS went home.
- [9] According to PS, the appellant inserted his tongue in her vagina whilst she was in a standing position. She demonstrated to the court using the anatomical doll how that occurred. She said, *‘he opened my thing and then put his tongue in.’*³ When asked what she meant by ‘thing’ she answered, *‘my vagina’*. The prosecutor asked her what she felt when touching the appellant’s

² Page 309 of the record.

³ Page 321 line 17.

thing. Her response was '*I felt it was hard.*'⁴ She did not see it because the appellant was fully dressed.

[10] Capt. Nomakubenje Agnes Skampula is registered as a social worker with the South African Council for Social Service Professions (SACSSP) with Registration No 10-24726. She has a Bachelor of Social Science (SW) obtained in 2005 at the University of Fort Hare and an MA (SW) Forensic Practice, obtained at North-West University (Potchefstroom) in 2014. She has 12 years' experience as a social worker. She compiled a report dated 11 March 2020, having conducted a forensic assessment session with PS. PS related to her in similar vein to her testimony.

[11] PS was taken to the Thuthuzela Care Centre where she was examined, in the presence of her mother, by a forensic nurse, Ms Claudelia Jenkins, on 13 January 2020. She recorded the following on the J88 form under Part C Medical History at para 5:

'History of the alleged assault and/or rape – victim said that a male known to her sucked her 'koekie' and he put his finger in her vagina date 10.01.2020 during the day, she can't remember the time.'

At Part F, under Clinical Findings, the nurse wrote:

'No visible injuries observed and no complaints of physical injuries given.'

In respect of count 10: rape of PB

[12] PB was 10 years old during the incident and 11 years old when she testified. She confirms the evidence of accompanying PS to her father's place as well as being in the company of BT and R. The appellant asked them to show him their panties. PS and B showed him, but she was not wearing a panty. The appellant then ordered her and PS to clean the floors. As they were

⁴ Page 322 line 25.

cleaning, he ordered them to undress. He licked their vaginas. PS's stepmother noticed this and called Charles. She and BT hid under the bed while R and PS climbed onto the bed. Charles came and demanded to know what the appellant was doing to them. They fled. PB corroborated in all material respects that the appellant had followed the same process with her. She did not report the incident immediately to her mother as PS had advised against it. According to her the appellant's plate was broken, and the appellant chastised R for it.

- [13] PB was also examined by the forensic nurse, Ms Claudelia Jenkins, on 13 January 2020 at the Thuthuzela Care Centre. Ms Jenkins wrote the following under Part C, para 5 of the J88 regarding the history:

'victim's mother said that a male known to the victim put his finger in her vagina and sucked it. The victim told her date 10.01.2020 time during the day.'

Ms Jenkins' clinical findings were that no visible physical injuries were observed, and she did not receive any complaints relating to physical injuries.

- [14] Capt. Skampula compiled the social worker's report after assessing PB. The social worker had to postpone two assessment sessions before she could even commence, having observed the child's sitting position, lack of eye contact, followed by her crying. The social worker wrote at 7.5.1 regarding PB's emotional state:

'During both sessions PB was so tense and emotional that she could not participate in the assessment process. The child was emotional during both sessions. She was not responding to questions that need[ed] more clarity.'

Ms Martha Boitsi is PB's mother who furnished collateral information to the social worker at para 7.7 in that the children, PB, PS, BT and Fifi, were together when they told them, as parents, about the sexual abuse incident.

Ms Boitsi also explained that because PB was shy, it made it difficult for her to talk to strangers. Since PB did not disclose anything to the social worker, the report was silent on the exposure count.

In respect of counts 3, 6, 9 and 12

- [15] The State alleged that the appellant exposed his penis to R, BT, PS and PB while the children were naked for his sexual gratification.
- [16] Lt Col Lezelda Raymond is a social worker registered with the SACSSP with Registration No 10-18925. She obtained a B.Diac Honours Degree in Social Work from Huguenot College (affiliated to Unisa) in 1998 and completed a master's degree in public administration from the University of the Western Cape in 2005. She conducted three assessment sessions with R, who, at four years of age at the time, was old enough to obtain a reasonable account of what had transpired. R informed the social worker that S[...] ate up her "*kubujane*", the name she used to refer to her private parts. He also scratched her with his finger in her "*kubujane*". The report is silent on the exposure of the appellant's penis.
- [17] Capt. Skampula also compiled the social worker's report having conducted an assessment for BT. She was in the company of PS, PB and R, accompanying PS to ask for money from her father. They did not find him at home. BT informed Capt. Skampula that S[...] (the appellant) resides in the house while PS's father resides in a shack in the same yard. According to BT, PS, PB, and R washed the dishes while she cleaned the floor. S[...] ordered them to undress and then licked the vaginas of PS, R and PB and inserted a finger in hers. The social worker's report is silent on the exposure or display of the appellant's genitals to her.
- [18] Mr Charles Bothata Mosikela is the appellant's neighbour. He grew up before the appellant. He says he and his late brother sat outside their house when Ms Bekker called his brother, Mr Tshepo Mosikela, for help. He and his brother went to the appellant's house. The appellant was in front of the

kitchen door. He saw the appellant lifting the girls' skirts. At that stage, R approached from the bedroom holding her pair of pants (not panties) in her hand. He asked the appellant what he was doing, but received no response. Charles told the appellant that he was going to report the incident to the appellant's sister. At his sister's house, he only found one of the nephews. He sent a text message of the incident to R's father, who is his friend. He spoke under correction that it may have been three children who were involved.

[19] The appellant's testimony was to the effect that the children were playing a game in his yard known as 'touch'. There were four girls and two boys. He sat outside the house next to the kitchen door. He went to the toilet situated outside his home and, upon his return, received a report that some of those children had broken his cup and plate inside the house. In the house, he found PS and R and chastised them by slapping them both on their buttocks. The children fled, and only R remained. He denied participating in any sexual activities with any of the children. The appellant maintains that he instructed R to report the breakage of his cup and plate to aunty Mamma.

[20] The first issue for determination is whether the court was correct to convict the appellant on counts 3, 6, 9 and 12 for exposing his penis and displaying nudity to children whether for the sexual gratification of himself or any third party. As stated, the appellant's contention is that these counts amount to a duplication of charges.

[21] Section 22 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, provides:

'Exposure or display of or causing exposure or display of genital organs, anus or female breasts to children ('flashing')

A person ('A') who unlawfully and intentionally, whether for the sexual gratification of A or of a third person ('C') or not, exposes or displays or causes the exposure or display of the genital organs, anus or female breasts

of A or C to a child complainant ('B'), with or without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display of genital organs, anus or female breasts to a child.'

[22] Mr Steynberg first attacked the manner in which the charges had been framed, purportedly creating the impression that the appellant is both A and C (the perpetrator and a third party) as explained in s 22 above. Differently couched, it seems as if the appellant exposed his penis to himself. The argument went that when the trial court made the explanation in counts 3, 6, 9 and 12 to the appellant, it neither made the distinction between who the exposure was meant for nor caused the charge sheet to be corrected during the explanation.

[23] The particulars of counts 3, 6, 9 and 12 are essentially similar. Count 3 reads:

'Exposure or display of or causing exposure or display of genital organs, anus or female breasts to children ("Flashing")

That the accused is guilty of the crime of contravening the provisions of Section 22 read with sections 1, 2, 50, 56(8), 56A, 57, 58, 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended.

Further read with sections 94, 256 and 270 of the Criminal Procedure Act 51 of 1977. Further read with section 120 of the Children's Act 38 of 2005.

IN THAT on or about the 10 January 2020 and at or near Club 2000, Galeshewe in the Regional Division of Northern Cape the said accused did unlawfully and intentionally commit an act to wit expose his penis and nudity of children whether for the sexual gratification of the accused person or of a third person or not to wit S[...] V[...] W[...], expose or display or cause the exposure or display of the genital organs, anus or female breasts of the accused or the said third person to a child complainant to wit **RVL** 4 years

old with or without the consent of the said child complainant by exposing his penis, having children walk around naked.'

The charge sheet also has, in a block, a definition of section 22, which appears in the preceding paragraph. The content in counts 6, 9 and 12 is the same and differs only in respect of the personal particulars of the complainants. The chargesheet also shows that it was compiled by the NPA and was revised in 2018.

[24] The evidence is uncontroverted in as far as the aspect that the appellant was fully dressed for the entire duration when the complainants were at his place. The only person who referred to the appellant's penis being hard (erect), as she "felt it", was PS who purportedly did so after being called by PB. PB did not testify about the appellant's private part and whether she had touched it or merely observed it. None of the other witnesses referred to this aspect, not even in the collateral information. I am not satisfied that the state has made out a case pertaining to the allegation that the appellant exposed his genitals to the complainants in counts 3, 6, 9 and 12.

[25] Mr Steynberg further argued that there was a duplication of convictions as the appellant has already been convicted of counts 2, 5, 8 and 11, that is, being in contravention of s 21 (1) of Act 32 of 2007, which provides:

'A person ('A') who unlawfully and intentionally, whether for the sexual gratification of A or of a third person ('C') or not, compels or causes a child complainant ('B'), without the consent of B, to be in the presence of or watch A or C while he, she or they commit a sexual offence, is guilty of the offence of compelling or causing a child to witness a sexual offence.'

[26] I disagree. Whereas s 21 (1) would occur where a person unlawfully and intentionally compels or causes children to witness sexual offences, sexual acts or self-masturbation, section 22 on the other hand occurs when the person exposes or displays genital organs, anus or female breasts to children ('flashing'). But for the fact that the state has failed to make out a

case in respect of counts 3, 6, 9 and 12, the evidence thereof would have been a separate intent by the appellant in respect of the counts in 2, 5, 8 and 11. The Court expounded in *S v Dlamini*⁵:

‘. . . Another test is the enquiry whether the evidence necessary to establish one crime involves proving another crime.’

It follows that the appeal in respect of the convictions in counts 3, 6, 9 and 12 stands to be upheld.

[27] The second issue for determination is whether the trial court erred in convicting the appellant of rape in counts 7 and 10 and whether it should have convicted him of a competent verdict of sexual assault. This is what the state alleges in the charge sheet pertaining to these charges:

‘That the accused is guilty of the crime of contravening the provisions of section 3 read with sections 1, 2, 50, 56(1), 56A, 57, 58, 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended. Further read with sections 94, 256, and 261 of the Criminal Procedure Act 51 of 1977. Further read with section 51 (1) and Schedule 2 of the Criminal Law Amendment Act 105 of 1997 as amended. Further read with section 120 of the Children’s Act, 38 of 2005.

IN THAT on or about the 10 January 2020 and at or near Club 2000, Galeshewe, in the Regional Division of Northern Cape the said accused did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit **PFS**, 6 years old, by sucking her vagina and/or putting his tongue into her vagina and/or inserting his finger into her vagina without the consent of the complainant.’

‘That the accused is guilty of the crime of contravening the provisions of section 3 read with sections 1, 2, 50, 56(1), 56A, 57, 58, 59, 60 and 61 of the

⁵ 2012 (2) SACR 1 (SCA) para 54.

Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended. Further read with sections 94, 256, and 261 of the Criminal Procedure Act 51 of 1977. Further read with section 51 (1) and Schedule 2 of the Criminal Law Amendment Act 105 of 1997 as amended. Further read with section 120 of the Children's Act, 38 of 2005.

IN THAT on or about the 10 January 2020 and at or near Club 2000, Galeshewe, in the Regional Division of Northern Cape the said accused did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit **PLB**, 8 years old, by sucking her vagina and/or inserting his tongue into her vagina without the consent of the complainant.'

[28] The Concise Oxford English Dictionary defines 'suck' as:

'1. Draw into the mouth by contracting the muscles of the lip and mouth to make a partial vacuum. Hold (something) in the mouth and draw at it by contracting the lip and cheek muscles. Draw in a specified direction by creating a vacuum. (Of a pump) make a gurgling sound as a result of drawing air instead of water.'

[29] The definition of rape as contemplated in s 1 read with s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, is the following:

'3 Rape

Any person (A) who unlawfully and intentionally commits an act of sexual penetration with a complainant (B), without the consent of B, is guilty of the offence of rape.'

Section 1 (1) of Act 32 of 2007 provides:

'In this Act, unless the context indicates otherwise —

. . .

"sexual penetration" includes any act which causes penetration to any extent whatsoever by —

- (a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person;
- (b) **any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person;** or
- (c) the genital organs of an animal, into or beyond the mouth of another person.' (own emphasis added)

[30] Mr Steynberg levelled a number of criticisms at the manner in which the complainant (PS) explained how her vagina was licked. The attack was based on the phrases that she used: *'the appellant was inserting his tongue inside their vaginas'* and *'the appellant put his tongue on her vagina'* and *'the appellant put his tongue on her vagina, he opened it and put his tongue in.'*

The criticism in this regard has no merit. The crux of the matter is that the appellant's tongue encountered the complainant's vagina. I accept that the appellant's tongue was inside her vagina regard being had to the continuous use of the term "sucking" their vaginas. PS's mother said the appellant had licked their vaginas.

[31] In as far as the evidence of PB is concerned, the criticism is to the effect that although the complainant had testified that the appellant *'sucked her vagina by putting his tongue inside'*, her mother told the forensic nurse that which appears on the J88 that *'a male known to the victim put his finger in her vagina and sucked it.'*

This attack is misplaced because it does not detract from the fact that the complainant's orifice was invaded.

[32] This Court in *S v Carter*⁶ remarked that the slightest penetration of an orifice (per vagina or anally) constitutes rape. The evidence of the complainants was that the appellant had inserted his finger in their vaginas and also sucked their vaginas using his tongue. This act conforms to the definition of rape as contemplated in s 3, read with the definition of “**sexual penetration**” as defined in section 1(1)(b) above.

[33] Mr Steynberg relied on the contention that the complainants in counts 7 and 10 were single witnesses. Section 208 of the Criminal Procedure Act 51 of 1977, provides:

‘An accused may be convicted of any offence on the single evidence of any competent witness.’

The contention that this court should regard the evidence of the complainants as evidence of a single witness on each count is devoid of merit since all the children maintained that they were standing next to each other when they were violated. Of crucial importance is the evidence by two adults, Ms Belinda Bekker and Mr Charles Masikela, who caught the appellant red-handed molesting the children. They made their first report, and there are also J88 forms, as well as the assessment reports by the social workers. The submission by Mr Steynberg that the court should rather consider setting aside the conviction of rape and substituting it with that of sexual assault is misplaced. The magistrate correctly looked at and evaluated the evidence of both parties holistically and in a balanced manner without analysing it in a compartmentalised fashion. See *S v Van Aswegen*⁷ referring with approval to *S v Van der Meyden*.⁸

[34] The complainants, despite their ages, were subjected to intense cross-examination by the defence but remained consistent in their testimony. The purported contradictions between the description used by PS and PB in the

⁶ 2014 (1) SACR 517 (NCK) para 17.

⁷ 2001 (2) SACR 97 (SCA) para 8.

⁸ 1999 (1) SACR 447 (W) at 449H – 450B.

forensic reports and their evidence in court are not materially different. The appellant is a sexual predator who took advantage of young children, including his very own grandchildren. There was a penetration of the orifice in both complainants. Their testimony was trustworthy. In their testimony, which included the demonstration using the anatomical dolls, their power of recollection was evident. They answered the questions posed by the defence attorney in honesty and credibly.

[35] The majority in *S v Y*⁹ made these instructive remarks:

‘In respect of sexual assault cases, thankfully there is no cautionary rule. In *S v Jackson* this Court aptly stated as follows:

“In my view, the cautionary rule in sexual assault cases is based on an irrational and out-dated perception. It unjustly stereotypes complainants in sexual assault cases (overwhelmingly women) as particularly unreliable. In our system of law, the burden is on the State to prove the guilt of an accused beyond reasonable doubt – no more and no less. The evidence in a particular case may call for a cautionary approach, but that is a far cry from the application of a general cautionary rule.”

. . .

In *Woji v Santam Insurance Company Ltd*, a civil judgment, this Court stated that the question which the trial court must ask itself is whether the young witness' evidence is trustworthy. Trustworthiness depends on factors such as the child's power of observation, their power of recollection and their power of narration on the specific matter to be testified. In each instance the capacity of the particular child is to be investigated. Their capacity of observation will depend on whether they appear intelligent enough to observe. Whether they have the capacity of recollection will depend again on whether they have sufficient years of discretion to remember what occurs while the capacity of narration or communication raises the question whether the child has the capacity to understand the questions put, and to frame and

⁹ [2020] ZASCA 42 (unreported, SCA, case no 537/2018, 21 April 2020) also reported as 2020 JDR 0643 (SCA) paras 49-51. (*Footnotes omitted*).

express intelligent answers. There are other factors as well which the court will take into account in assessing the child's trustworthiness in the witness-box. Do they appear to be honest – is there a consciousness of the duty to speak the truth? Recently, in *Matshivha v S* this Court expressed itself as follows:

“... the prosecution of rape presents peculiar difficulties that always call for greater care to be given and even more so where the complainant is young.”

This Court went on to cite an earlier judgment *S v Vilakazi* where Nugent JA said the following:

“From prosecutors it calls for thoughtful preparation, patient and sensitive presentation of all the available evidence, and meticulous attention to detail. From judicial officers who try such cases it calls for accurate understanding and careful analysis of all the evidence”.’

[36] I am satisfied that the magistrate’s conclusion was correct. A court of appeal can only interfere with the trial court’s findings when it is convinced that its conclusion was wrong. See *R v Dhlumayo and Another*.¹⁰ I can conceive of no reason to find a misdirection on the part of the regional magistrate in convicting the appellant of rape on counts 7 and 10. In the premises, the appeal in this regard must fail.

[37] As stated hereinbefore, the regional magistrate imposed a sentence of 25 years imprisonment on each count of rape. In terms of Part 1 of Schedule 2 to the Criminal Law Amendment Act 105 of 1997, the minimum sentence prescribed in terms of s 51(1) in the case of the rape of a person under the age of 16 years, in the absence of substantial and compelling circumstances, is life imprisonment. The complainants’ birth certificates form part of the record, and it is uncontroverted that they are below the age of 16 years.

¹⁰ 1948 (2) SA 677 (A) at 706.

[38] The appellant was 56 years old at the time of the incident, which his legal representative described as an advanced age. I disagree. He spent three years in custody awaiting trial. His legal representative had claimed that because the appellant does not have a medical aid, it might affect his life expectancy. Whatever this meant without scientific evidence to back it up is a mystery. The trial court was asked to consider humanitarian grounds as part of the substantial and compelling circumstances and to deviate from the prescribed minimum sentences particularly because the rape was not vicious and was not planned.

[39] These are the considerations that the trial court considered when deviating from the prescribed minimum sentence of life imprisonment: the period of incarceration whilst awaiting trial; the appellant's age; his lack of education and sophistication, and the fact that the catalogue of previous convictions had superannuated and he was treated as a first offender.

[40] The success on appeal is in respect of only one set of charges, namely, counts 3, 6, 9 and 12 for which the appellant was sentenced to a period of one year on each count. The trial court had ordered that the sentences on counts 2, 3, 5, 6, 7, 8, 9, 11 and 12 should run concurrently with the sentence on count 10, and would therefore have 'little or no effect' on the composite sentence imposed.

[41] In the result, the following order is made:

1. The appeal is partially upheld to the extent that the convictions and sentences imposed in respect of counts 3, 6, 9 and 12 are set aside.
2. Save as aforesaid, the appeal is dismissed.

MC MAMOSEBO
ACTING DEPUTY JUDGE PRESIDENT
NORTHERN CAPE DIVISION

I concur

**APS NXUMALO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION**

For the Appellant

Instructed by:

Mr H Steynberg

Legal Aid South Africa

For the Respondent:

Instructed by:

Adv A Stellenberg

The Director Public Prosecutions