



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG

CASE NO: A12/2025

(1)	REPORTABLE: YES / <u>NO</u>	 SIGNATURE
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>	
(3)	REVISED.	
<u>17/09/2025</u> DATE		

In the matter between:

MOSES MANUERE

APPELLANT

AND

THE STATE

RESPONDENT

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 17 September 2025.

JUDGMENT

MAKAMU J*Introduction*

- [1] The appellant was convicted at Johannesburg Regional Court for rape of NG, a ten-year-old girl, in contravention of section 3 of the Sexual Offences and Related Matters (Amendment) Act 32 of 2007 (Sexual Offences Act). The provisions of section 51(1) and 51(2) of the Criminal Amendment Act 105 of 1997 (the Minimum Sentencing Act) including the competent verdicts applicable, were fully explained to the accused, and he understood.
- [2] The appellant pleaded not guilty. Five witnesses were called to give testimony. They are: the complainant, her aunt, her mother, her brother, and the wife of the appellant. The appellant was found guilty as charged. He brought an appeal in terms of section 309(1)(a) of the Criminal Procedure Act 51 of 1977 (Criminal Procedure Act). He did not have to apply for leave to appeal since the trial regional magistrate court imposed life imprisonment on him and he has a right of direct appeal to the High Court.

Grounds for appeal

- [3] The appellant raises the following five grounds for appeal:
- a. The court *a quo* erred in rejecting the evidence of the appellant as it found that it was not reasonably possible true version of what transpired.
 - b. The State proved its case beyond a reasonable doubt.
 - c. The magistrate failed to consider that the complainant was a minor child and applied the cautionary rule to her evidence, and that she was still very young as a sole witness to the rape.
 - d. The magistrate erred in allowing Mr Tadius Ngwabi to testify, yet he was always sitting in court when other witnesses led evidence.
 - e. The magistrate erred in sentencing him after the above reasons, which the magistrate ought not to have done.

- [4] The appellant had a legal representative throughout the trial. This appeal is about sentence only and not conviction. However, I will provide the summary facts of the case very briefly.

Factual background

- [5] The complainant was in the lift going to her flat when she met the appellant in the lift. The appellant liked the complainant. The complainant told the appellant that her dad was home and as a result she was not alone at home. As the lift opened, the complainant opened the door to her flat and at the same time the appellant also pretended to be opening the door to his flat which was nearby. As soon as she opened her door, the appellant pushed her door open and pushed her inside.
- [6] The appellant then took her into her bedroom when he ordered her to undress. The appellant was armed with a shiny sharp object. He undressed himself and lay the complainant on her back and he penetrated her. When he was done, he dressed himself and warned her not to tell anyone or otherwise he would kill her. She went to the bathroom and realized that she was bleeding.
- [7] Her grandmother came back but did not tell her anything. She wanted to take a bath as she was bleeding from her genitals. She went to her aunt and they took a bath together, and the aunt noticed that she was bleeding and she was producing clots of blood.
- [8] The complainant recognised the appellant because he was staying at flat 53. She had seen him before and he had also argued with her father over the parking bay. Accordingly, she could recall his face very well. He also had a scar on his nose. She could also recognise him when he was with other men at the time of his arrest.

Analysis

- [9] The appeal is mainly against the sentence, as Counsel for the appellant conceded that the trial magistrate did not err in convicting the appellant. The State's evidence was overwhelming, so she did not request that the appeal

court consider whether the conviction was in order. The appellant was sentenced to life imprisonment as prescribed by section 51(1) of the Minimum Sentencing Act.

- [10] The complainant was only 10 years old at the time of the incident but her evidence remained intact even after being cross-examined by the defence. The Counsel for the appellant could not find fault with the magistrate's judgment. The only argument left was about the sentence.

- [10] The court of appeal can only interfere with the sentence of the trial magistrate if it finds that there is misdirection in imposing the sentence. Section 51 (1) of the Minimum Sentencing Act provides that when an accused person is found guilty of rape of a child under the age of 16 years, the prescribed sentence is that of life imprisonment unless the court finds that there were substantial and compelling reasons to deviate from the prescribed sentence.

- [11] The appellant was 30 years of age, married with three minor children, and they were residing with his parents in Zimbabwe. He was self-employed, running a restaurant and earning R27 000.00 and R10 00000 respectively. All these factors were ordinary and could not be regarded as substantial and compelling to deviate from the prescribed minimum sentence.

- [12] In *Hewitt v S*¹ (637/2015) [2016] ZASCA 100, the supreme court of appeal stated the following:

"It is a trite principle of our law that the imposition of sentence is the prerogative of the trial court. An appellate court may not interfere with this discretion merely because it would have imposed a different sentence. In other words, it is not enough to conclude that its own choice of penalty would have been an appropriate penalty. Something more is required; it must conclude that its own choice of penalty is the appropriate penalty and that the penalty chosen by the trial court is not."

¹ 2017 (1) SACR 309 (SCA) at para 8.

- [13] The next question to be asked is whether the trial court misdirected itself in imposing the sentence. In other words, this court must determine whether the trial court exercised its sentencing discretion improperly or unreasonably in the circumstances of this case.
- [14] In this regard, it is worth noting that the Supreme Court of Appeal in *Hewitt v S* also expressed that South Africa earned the shameful title of being the rape capital of the world, as the society expressed abhorrence of sexual offences.² The victim in this matter is a ten-year-old child who could hardly defend herself, and in the words of the Supreme Court of Appeal in *Hewitt v S*, it was a cruel, selfish act in which the aggressor treats with utter contempt the dignity and feelings of the victim.³
- [15] The appellant's mitigating factors are not out of the ordinary; however, he seeks the court to have empathy towards the appellant and sentence him with a measure of mercy. The sentence imposed is prescribed by the legislation, and one has to find substantial and compelling circumstances to deviate from the prescribed sentence.
- [16] The court needs to take into account the interest of society, bearing in mind that society is enraged by crime, especially this heinous crime. Further, the court has to impose an appropriate sentence without attaching more weight to one factor at the expense of the other. In *S v Mhlakaza*⁴ the court stated the following:

"The object of sentencing is not to satisfy public opinion but to serve the public interest. A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. It remains the court's duty to impose fearlessly an appropriate and fair sentence, even if the sentence does not satisfy the public."

² *Id* at para 9.

³ *Id*.

⁴ 1997 (1) SACR 479 SCA at para 7.

- [17] The complainant was a ten-year-old child at the time of the offence. In *S v Mahomotsa*⁵ it was stated that:

"Where as here, the complainants were young girls, it is quite unrealistic to suppose that there will be no psychological harm. To quantify its likely duration and degree of intensity, of course, is not possible in the absence of appropriate evidence, but that does not mean that one should approach the question of sentence on the footing that there was no psychological harm."

- [18] There was no evidence regarding the intensity of the complainant's psychological harm; as such, the court was correct to assume that there was some harm.

- [19] In *S v Zitha and Others*⁶ it was stated that:

"The word must go out to the cities and to the suburbs, to the towns and to the townships, and to the countryside that Parliament has directed the courts to punish the perpetrators of (gang) rape and child rape as heavily and severely as the law will allow in the absence of substantial and compelling circumstances dictating otherwise, and that the courts will not shrink from their duty of carrying out this directive, however, painful it may be to do so."

- [20] Against this background, there is therefore no justification that the trial court misdirected itself.

Order

- [21] In the result, I make the following order:

1. Appeal against sentence is dismissed.

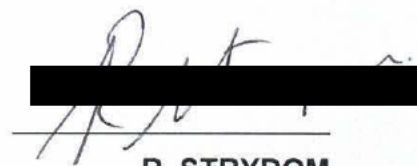


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⁵ 2002 (2) SACR 435 (SCA) at para 11.

⁶ 1999 (2) SACR 404 (W) at 418G-H.

I Agree



R. STRYDOM

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES:

For the Appellant:

ADV. N MOKOENA

For the Respondent:

ADV. MW. MAKWELA

Hearing date

4 AUGUST 2025

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17 SEPTEMBER 2025