



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

CASE NO: A13/2025

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

In the matter between:

MTLOMELO DAVID BONGANI

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 charged with two counts of kidnapping and rape in contravention of section 3 of Criminal Law Amendment Act 32 of 2007 (Sexual Offences Act) read with sections 1, 55, 56(1), 57, 58, 59, 60 and 61 of the same Act; sections 256, 257 and 258 of Criminal Procedure Act 51 of 1977 (Criminal Procedure Act) and; sections 51(1) of Criminal Law Amendment Act 105 of 1997 (Minimum Sentencing Act). The appellant was legally represented, although three different attorneys ultimately represented him.
- [2] The appellant pleaded not guilty and gave three different plea versions throughout the trial. The State called three witnesses: the complainant; Mr Sandile Xhosa; and the doctor who examined the complainant and recorded the injuries and all the observations she noted. The evidence is that the appellant penetrated the complainant more than once.

Factual background

- [3] The complainant was at a pub with her aunt when her aunt had a scuffle with her boyfriend and got injured in her eye. The complainant rushed home to seek help from her mother. Whilst walking home, she was approached by the appellant who was driving a black bakkie. The appellant offered to assist her but she said she was close to her home and there was no need for the appellant to help her. The next thing the appellant slapped her and he tied her hands with a rope and bundled her into his bakkie.
- [4] The appellant then drove to a house where a white flower pot was outside and there he took a key from under it and unlocked the house. He took the complainant into the bedroom where there were two beds, a single bed and a double bed. He ordered her to sleep in a single bed and undress herself and thereafter ordered her to perform the sexual movements which she had demonstrated whilst dancing at the pub.

- [5] The appellant told her that they should pray first as he would kill her. After prayer, he took a condom and placed it on his penis and penetrated her. The condom broke, he withdrew his penis and got another condom. He then placed it over his penis and penetrated her vagina again. She asked him to allow her to go to the bathroom which he agreed. The complainant had an intention to escape through the bathroom window. Unfortunately, it had burglar bars and she could not escape. She then flushed the toilet although she did not do anything so as to pretend as if she had relieved herself. They fell asleep and later in the morning he penetrated her vagina again. Thereafter, he told her who he was and where he originated from.
- [6] The complainant heard people outside as it was already daylight and people were awake. When the appellant received a telephone call he then put on his boxer shorts and went outside talking on the phone. The complainant also put on her clothes and went outside. She was not familiar with the area but she found a young man whom she asked about the area.
- [7] Thereafter, the complainant continued walking when a motor vehicle came. She waved to stop the car and explained to the driver that she needed help. The driver took her in and, in the meantime, she called the police. When she arrived home, the police also showed up. She then brought them to the scene of the crime.
- [8] The appellant was not home but he was ultimately arrested after she spotted him and called the police. The complainant did not doubt the identity of the appellant. She pointed out to the police the house in which the crime was committed. She reported the incident the very morning after it occurred.
- [9] Mr Sandile Xhosa, who responded when she stopped him while driving and explained her ordeal to him, also spotted the injuries on her face and soiled clothes. He confirmed that he took her to her home.
- [10] Dr Relebogile Ncha testified about the injuries she observed on the complainant, including bruises on her face, neck, and evidence of penetration. The doctor's evidence was never challenged

- [11] The appellant testified that the complainant was assaulted by her boyfriend when he saw her coming out of the pub running. He was sitting in his car outside. He got out of his car when she got to him. She fell and hurt her lips. This was to account for her injuries and that her clothes were soiled and bloodstained. She asked him to take her to a safe place which was his house. He was so drunk that he did not recall exactly what happened until he woke up and was shocked to find her in his bed. He fell asleep immediately when he got to the house, hence there was no sexual intercourse that took place.
- [12] His second version was that she fought with another lady in the pub, not her boyfriend, and that is why she sustained the injuries that she had. The next version was a bare denial that he had ever been at the pub, which he did not know at all. He denied that there were two beds in his house. He testified that the second bed was bought long after the incident.
- [13] The complainant also testified that after the last sexual encounter with the appellant in the morning, he introduced himself and asked her to tell him who she was, which she did. He repeated what he said the previous night, which is that she would now be able to identify him, and that he would have to kill her. She pleaded with him not to kill her as she had responsibilities.

The decision of the trial court

- [14] The trial court rejected the appellant's evidence as false and pointed out that he tailored his version as the case was in progress. The trial court believed the complainant, although she was a single witness, and the court cautioned itself about the evidence of a single witness. The complainant's evidence stood firm despite lengthy cross-examination.

Analysis

- [15] In my view, the trial court correctly rejected the appellant's evidence and accepted the evidence of the state witnesses. The appeal against conviction should be dismissed.

[16] The Supreme Court of Appeal in *Hewitt v S*¹ stated that:

"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 a trial court's 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."

[17] The main issue is for the appellate court to assess if the trial court misdirected itself in imposing the sentence on the appellant. The Supreme Court of Appeal in *Hewitt v S* went on to say that:

"It is against this backdrop that the question whether the court a quo exercised its sentencing discretion improperly or unreasonably in the circumstances of this case must be determined. Our courts have, in countless cases of this nature, consistently expressed society's abhorrence of sexual offences, which once earned South Africa the shameful title of being the rape capital of the world."²

[18] This court needs to determine, as I stated above, whether the trial court exercised its discretion appropriately. The complainant was a young adult woman who was kidnapped and raped more than once. The appellant threatened to kill her.

[19] In *Holtzhausen v Roodt*³ it was held that:

"Rape is an experience so devastating in its consequences that it is rightly perceived as striking at the very fundamental of human, particularly female, privacy, dignity and personhood."

¹ 2017 (1) SACR 309 (SCA) at para 8.

² *Id* at para 9.

³ 1997 (4) SA 766 (W) at 778G-H.

[20] Furthermore, in *S v Chapman*⁴ it was held that:

“Women in this country are entitled to the protection of these rights. They have legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and insecurity which constantly diminishes the quality and enjoyment of their lives.”

[21] The facts in this matter confirms that the appellant took advantage of the complainant when he saw her walking to her home to seek help from her mother when he forced her into his vehicle and tied her hands with a rope.

[22] The provisions of section 51(1) of the Minimum Sentencing Act require the court to impose the prescribed sentence unless there are substantial and compelling circumstances that require the court to deviate from the prescribed minimum sentence

[23] The meaning of section 51 of the Minimum Sentencing Act was considered by the Supreme Court of Appeal in *S v Malgas*⁵. The decision of *S v Malgas* was thereafter approved by the Constitutional Court in *S v Dodo*⁶ where it was held that:

“In the light of the recent judgment of the Supreme Court of Appeal in *S v Malgas* it is unnecessary to review these decisions. In *Malgas* the words ‘substantial and compelling circumstances’ in section 51(3)(a) were interpreted by, amongst other things, detailing a step-by-step procedure to be followed in applying the test to the actual sentencing situation.”

[24] In this regard, it is worth noting that the Supreme Court of Appeal in *S v Malgas*, amongst others, held that the specified sentences are not to be departed from lightly and for flimsy reasons.⁷ Furthermore, speculative hypotheses favourable to the offenders, personal doubts as to the efficacy of the policy underlying the

⁴ 1997 (3) SA 341 (SCA) at 345C-D

⁵ 2001 (1) SACR 469 (SCA).

⁶ 2001 (1) SACR 594 (CC) at para 11.

⁷ *S v Malgas* at para 25.

legislation, and marginal differences in personal circumstances or degree of participation between co-offenders are to be excluded.⁸

[25] Against this background, I am of the considered view that there is no reason for the appellate court to interfere with the trial court's discretion on sentence.

Order

[26] I therefore make the following order that the appeal should fail.

1. The appeal against conviction and sentence is dismissed.

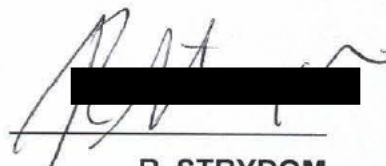


M.S. MAKAMU

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

I agree



R. STRYDOM

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

APPEARANCES:

For the Appellant

: I B MTHEMBU

For the Respondent

: M W. MAKWELA

Hearing date

: 4 August 2025

Delivered

: 17 September 2025

⁸ *Id.*