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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: A 234/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED:

DATE 28/8/2025

SIGNATURE

In the matter between:

E M V[...] H[...]

Appellant

and

THE STATE

JUDGMENT

(The matter was heard in open court on 6 August 2025. Judgment was reserved and after completion uploaded onto the electronic file of the matter on CaseLines. The date of uploading onto CaseLines is deemed the date of the judgment)

BEFORE: HOLLAND-MUTER J (More AJ concurring):

[1] The appellant was arraigned in the Gauteng Regional Court in Pretoria North on the following charges:

* Count 1: Assault with the intent to do grievous bodily harm;

* Count 2: Contravening section 120(6)(a) of the Fire Arms Control Act 60 of 2000 (pointing of a fire arm at the complainant);

*Count 3: Contravention of section 5(1) of the Sexual Offences Act 32 of 2007 (sexual assault of the complainant);

* Count 4: Contravention of section 3 of the Sexual Offences Act 32 of 2007 (vaginal penetration of the complainant's vagina with his fingers on several occasions between 2008 to 2019);

* Count 5: Contravention of section 3 of the Sexual Offences Act 32 of 2007 (vaginal penetration with penis during April to May 2018);

*Count 6: Contravention of section 3 of the Sexual Offences Act 32 of 2007 (vaginal penetration with penis on 27 November 2018); and

* Count 7: Contravention of section 3 of the Sexual Offences Act 32 of 2007 (vaginal penetration with penis on 15 February 2019).

The appellant, before pleading, was informed of the specific prescribed minimum sentences to be imposed on charges 3 to 7 and the provisions of the Fire Arms Control Act 60 of 2000- the pointing of a fire arm. The appellant was represented during the trial.

[2] The appellant was sentenced as follows:

* Count 1: 3 years imprisonment;

*Count 2: 3 years imprisonment;

* Count 3: 4 years imprisonment;

* Count 4: Life imprisonment;

* Count 5: 10 years imprisonment;

* Count 6: 10 years imprisonment; and

* Count 7: 10 years imprisonment.

[3] *Section 39(2) of the Correctional Services Act, 111 of 1998 (CSA)* provides that where life imprisonment has been imposed, any other sentence involving imprisonment will automatically run concurrently with the sentence of life imprisonment. **S v Mashava 2014(1) SACR 541 (SCA) at [7]. See Commentary on the Criminal Procedure Act Du Toit et al Juta Vol 2 28-201-6.**

[4] *Section 309(1)(a) of the Criminal Procedure Act 51 of 1977 (CPA)* provides for an automatic right to appeal any conviction and/or sentence by an accused person who was sentenced to life imprisonment in the Regional Court. The appellant was tried and sentenced to life imprisonment in the Gauteng Regional Court held at Pretoria North. The current appeal before the court is against conviction and sentence.

[5] There were two versions of evidence presented to court, (i) that of the complainant and (ii) that of the appellant.

[6] The two versions presented at the trial are mutually destructive in that the defence's version was a denial of the allegations raised by the complainant. There was however certain admissions made during the trial and appeal on behalf of the appellant which corroborates the version of the complainant.

[7] The summary of the evidence in the judgment of the Magistrate is a complete version of what was testified and it need not be repeated here in same detail. Suffice to state that the court will concentrate on the differences between the two versions of the complainant and the accused.

[8] It is further trite where the evidence by the state contradicts that of the accused, the court must consider whether the evidence to establish the guilt of the accused beyond reasonable doubt will only be so if at the same time no reasonable possibility

exists that the 'innocent explanation' put forward by the accused might be true. The two versions are inseparable each being the logic collar of the other. The court has to consider all the evidence and should not look at the evidence implicating the accused in isolation to determine whether there is proof beyond reasonable doubt. The onus of proof remains on the prosecution and the decision to convict or acquit must account for all the evidence. **S v Van der Meyden 1999(1) SACR 447 W at 449e-450b.**

COMPLAINANT'S VERSION:

[9] The complainant ("C[...]") was three years old when her mother (Ms V[...] H[...]), married the appellant. It was not long after when the complainant was 4 to 5 years old that the appellant started chastising the complainant by using his open hands, later his fists and a belt. This left certain marks on her legs, back and arms.

[10] The complainant testified that the sexual abuse by the appellant begun when she was about eight years old. The accused at first used his hands to fondle the private parts of the complainant. This became an almost daily event in the mornings after the complainant's mother was of the work and the appellant would either call the complainant to his room or go to her room. He fondled her body under her pajamas and on occasions made her to touch/stroke his penis.

[11] The complainant was afraid to tell her mother of these unwanted conduct of the appellant because she was of the view her mother will not believe her.

[12] The complainant testified that she was removed from the custody of her mother and the appellant after intervention of the CMR ("Christelike Maatskaplike Raad"- a private social institution) after her teacher observed chastise marks on her legs. She was placed in the care of her maternal grandmother.

[13] After some time she returned to the care of her mother and the appellant only for the appellant's behaviour to continue. She was later again removed for this care by FAMSA (another social health institution) when another teacher also observed several chastise marks on her body. In this instance the appellant had to submit him

for counselling together with the complainant. The school insisted that the complainant be removed from the custody of V[...] H[...] and the appellant. When the grandmother remarried and moved away, the complainant was returned to the custody of V[...] H[...].

[14] She was again returned to the care of her mother and the appellant after some time only to be subjected to the continued indecent fondling of her by the appellant. This culminated in the appellant penetrating her vagina with his penis on three occasions as set out in charges 5, 6 and 7. The appellant fondled with her developing breasts and she had to 'play' with his penis on occasions. This all happened mostly in the mornings after her mother has left for work and she had to serve the appellant with coffee in bed before school.

[15] When the appellant found video material on the complainant's phone of intimacy between her and R[...] K[...] (her then boyfriend), the appellant took her upstairs and on the stairs had sexual intercourse with her to 'teach' different techniques and he again penetrated her with his penis in his bedroom.

[16] The complainant was open and frank during her evidence not hiding her intimate relationship with her boyfriend R[...]. The importance of the evidence of R[...] is that he listened to a voice recording made by the complainant on occasion when the appellant raped her before school. He could hear the complainant trying to stop the appellant and he heard the bed creaking. The recording was somehow deleted and not presented as evidence. His version corroborated her allegation of the rape on that specific morning. This led her to report the matter to the police on assistance by R[...].

[17] She also acknowledged that she lied to her mother in the past about small issues to save her skin because it was not allowed for friends to visit her at home. The appellant merely denied her version.

[18] The version of her grandmother, M[...] G[...], confirms that the complainant was removed from the custody of her daughter, M[...] V[...] H[...], on at least two occasions by the CMR and FAMSA because of the conduct of the appellant towards

the complainant. G[...] confirmed the blue hit marks on the body of the complainant. G[...]’s evidence was not unsettled during cross-examination on behalf of the appellant.

[19] The evidence of Warrant Officer Nel confirms that the complainant laid charges against the appellant and when he arrested the appellant after warning him of his rights, the appellant did not deny the allegations of rape and when asked if he wants to call his legal representative, the appellant said it does not matter because he was guilty. This utterance was made voluntary.

[20] The fact that the prosecution did not call one Yvette van Schalkwyk to whom the complainant made reports about the incidents does not detract from the version given by the complainant.

[21] The evidence of Dr Lukosi confirmed that the complainant was sexually active but could not take the matter any further.

APPELLANT’S VERSION:

[22] The appellant’s version was at first a denial of any sexual or other conduct towards the complainant. This changed later and he admitted that he occasionally hit the complainant with an open hand but denied using a belt or even a hockey stick. He could not explain the multiple bruises on the body of the complainant. He later changed his version that he on occasion used a belt on an isolated incident, but that it never more than one stroke. His wife, M[...] V[...] H[...], however denied that the appellant ever used a belt when hitting the complainant.

[23] The appellant and V[...] H[...] also differed on the number of strokes administered by the appellant when hitting the complainant. He stated that it was never more than four (4) strokes while she said it was one slap on her bum. She denied that the appellant ever used a belt to hit the complainant.

[24] A more problematic issue for the appellant and V[...] H[...] is the removal of the complainant from their custody to that of G[...]. V[...] H[...] first denied that the

complainant was removed from her custody by CMR and FAMSA and alleged the complainant went to stay with G[...] because G[...] had difficulties to cope on her own after her husband passed on. V[...] H[...] also denied that the second removal by FAMSA was an opportunity for the appellant for counselling together with the complainant.

[25] V[...] H[...] later admitted the removal by FAMSA but could not remember the reason why the removal occurred. The appellant also denied that it was for counselling and that it was done because the complainant was unmanageable. He later back tracked on this and conceded that it was because of the marks observed on the complainant by her teacher and that he hit the complainant too many times and too hard and that he had to go for counselling with the complainant. This was a compromise not to pursue the matter and the appellant saw it as a learning curve.

[26] It is also undisputed that the appellant did chastise the complainant when her school marks dropped but his version that he slapped her less than three times does not tie in with the severe marks on the complainant's body discovered by the teacher. V[...] H[...] contradicted the appellant in this regard. It is clear that the appellant did hit the complainant numerous times and that he used a belt and other objects and a hockey stick on one occasion. She was hit when her school marks went down and V[...] H[...] was present at one of these incidents.

[27] The appellant and V[...] H[...] bought the complainant a motorcycle but they denied that the appellant demanded sexual favours as payment for the motorcycle. This is again a mere denial of the complainant's evidence.

[28] It is clear from the record and the judgment that the appellant cast his evidence to the wind to serve his defence, but the evidence of V[...] H[...] did not always support his version. They differed about the appellant's hitting of the complainant, the reasons for removing the complainant from their custody, the frequency of hitting the complainant by the appellant, the many blue marks left on the body of the complainant after such sessions trying to justify the presence of the marks as hockey injuries. V[...] H[...] also tried to explain the earliest injuries sustained by the complainant was by falling from a play frame at the nursery school and that the

complainant was prone to blue marks for small bumps. V[...] H[...] also said that the complainant was injury prone (for blue marks) and tried to explain that many of the blue marks were the result of hockey incidents. The complainant denied this speculation.

EVALUATION BY THE MAGISTRATE: CONVICTION:

[29] The court fails to find any proof in the record that the Magistrate did not apply his mind when evaluating the evidence as a whole. The Magistrate in our view correctly assessed the evidence taking into account the credibility of the witnesses, the probabilities of the two versions when compared and applying the necessary caution regarding the age of the complainant, the long time span of the alleged events since early days, the contradictions by the appellant and V[...] H[...] on serious issues and the about turns made by the appellant during the trial regarding his version.

[30] The appellant was represented during the trial and no complaints were raised during the trial of unfair procedure. The argument that the Magistrate misdirected itself in convicting the appellant is without substance. The further argument that the Magistrate did not properly heed the cautionary rule regarding a single witness and erred to find that the evidence of the complainant was accepted even though not clear and satisfactory in all material respects is also without merit.

[31] The court is satisfied that the Magistrate did apply the dictum in **R v Van der Meyden (supra)** correct by finding that after consideration of both versions the State succeeded in proving the guilt of the appellant beyond reasonable doubt. The Magistrate did consider the evidence as a whole. The Magistrate did not reject the version of the appellant merely because the State's version was more plausible. This court is satisfied that after considering the evidence in toto, the Magistrate was correct in rejecting the appellant's version and correctly convicted the appellant.

[32] It is clear from the finding *a quo* that the Magistrate correctly applied the necessary caution regarding the complainant as a child (although no longer a young child) and that she was a single witness. There was sufficient corroboration from the

evidence of G[...], K[...] and Nel, when tied together, proves the cautious approach applied by the Magistrate.

[33] There was no reason advanced why the complainant would implicate the appellant without reason. The severe hit marks confirm her version and the turnabout made by the appellant on this aspect is but one further reason to reject his version. The version of the complainant is corroborated by the other witnesses and the admissions made on behalf of then appellant regarding the assault of the complainant. All in all the version of the appellant does not cast any probability that there is a reasonable possibility that his explanation can be true.

[34] There is nothing to suggest that the appellant did not receive a fair trial and therefore the appeal regarding the convictions is dismissed.

SENTENCE:

[35] The appellant argues that the Magistrate misdirected itself in a material respect that the imposed sentences are so striking inappropriate that it can be held to be shocking and disturbingly inappropriate. It was held in **S v Motloung 2016(2) SACR 469 (SCA) on 478d-g** that a court of appeal will only interfere when it is clear that the imposed sentence by the court *a quo* is so disproportionate that it be seen as shocking inappropriate.

[36] The appellant was informed during plea that there were certain minimum sentences prescribed with regard to the charges of sexual assault and penetration of the complainant by finger and/or penis.

[37] It is trite that a court of appeal will only interfere with, as in this matter, when the sentences imposed are so shocking disproportionate that it should be set aside. In this matter this court disagrees with the submissions made on behalf of the appellant. The court *a quo* was clear that there were little if any submissions made on behalf of the appellant to persuade it to deviate from the prescribed minimum sentences. The arguments made were nothing more than the normal mitigating aspects advanced but fails to convince that there were compelling and substantial reasons to deviate from the prescribed minimum sentence. The directions given in **S**

v Malgas 2001(10 SACR 469 (SCA) at 478d-g is clear. A similar route was directed in **S v Dodo 2001(1) SACR 594 CC** where it was held that a court should be mindful that the proportionality between the seriousness of the offence and the extent of the punishment goes to the heart of the inquiry as to whether the punishment is cruel, inhuman or degrading. This is an individual inquiry in every case.

[38] Having balanced all the information regarding the offence, the offender and the community (*the triad in Zinn 1969 (2) SA537 (A)*), this court is satisfied that the imposed sentence is an appropriate sentence considering all aspects. The cruelty and long on-going sexual abuse of the complainant by the appellant cannot be swept under the carpet of an inhuman sentence. There is an annual 16 day drive by government to curb the abuse of women and children which with the greatest respect does not curb this cancer. Young children are entitled to protection and where these horrible deeds continue to disgrace young innocent children, perpetrators should face the consequences.

[39] Taken into account all the aspects argued, this court is not persuaded that it should intervene with the convictions and the sentence at all. The appeal should be dismissed.

ORDER:

The appeal against conviction and sentences is dismissed.

HOLLAND-MUTER J
Judge of the Pretoria High Court

I AGREE
MORE AJ
Acting Judge of the Pretoria High Court

Appeal heard in open court on 6 August 2025

Judgment handed down/uploaded onto CaseLines on 28 August 2025

APPEARANCES:

Appellant: Mr M G BOTHA

Pretoria Justice Centre

Legal Aid Board

STATE: Adv A COETZEE

Director of Public Prosecutions, Pretoria