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

CASE NO: A251/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 10 OCTOBER 2025

SIGNATURE

In the matter between:

T[...] M[...]

Appellant

and

THE STATE

Respondent

Summary: Appeal against conviction and sentence – rape of a 7 year old girl child by her 18 year old cousin – complaint made 6 years after the event but consistent with repeated previous reports of the incident – cautionary rules duly applied and the conviction upheld. Found that the age of the offender at the time, despite the heinous nature of the crime, is a sufficiently compelling circumstance to interfere with the life sentence. Sentence reduced to 25 years.

ORDER

1. The appeal against the conviction is refused.
2. The appeal against sentence is upheld and the life sentence imposed is replaced with a sentence of 25 years imprisonment, antedated to 28 May 2024.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 10 October 2025.

DAVIS, J (MORE AJ (Ms) concurring)

Introduction

[1] The appellant was convicted in the Regional Division of Gauteng held at Benoni on 27 November 2023. The conviction was for rape in contravention of Section 3 of the Sexual and Related Matters Amendment Act¹ read with the provisions of Section 51(1) of the Criminal Law Amendment Act².

[2] The victim was 7 years old at the time but the rape was only reported to the police 6 years later.

[3] After a finding of guilty, the appellant was sentenced to life imprisonment on 28 May 2024.

[4] The appellant enjoys an automatic right of appeal in terms of the proviso to Section 309(1)(a) of the Criminal Procedure Act³ (the CPA) read with Section 10 and Section 43(2) of the Judicial Matters Amendment Act⁴.

¹ 32 of 2007.

² 105 of 2007.

³ 51 of 1977.

[5] The appeal is against both conviction and sentence.

Summary of the State's case

[6] The complainant testified that during 2013 and when she was 7 years old, she would be sleeping at her aunt's house during the week and only go home to her mother's house on weekends. At her aunt's house she had to sleep in a room with three of her cousins, being the appellant, R[...] and B[...].

[7] The incidents started with the appellant coming to her during the night, taking off her clothes and inserting his private part into her private part. She testified that *"he would finish doing what he was doing and then wipe me with a facecloth"*.

[8] Due to her young age, the complainant did not understand what the appellant was doing to her although it happened a number of times. One day when she and R[...] were walking to school she told R[...] what the appellant was doing to her. R[...], who understood what was happening, told the complainant to inform the aunt.

[9] The complainant told R[...] that the rape happened virtually every night and would probably be repeated that same evening. She will wait until then and after it has happened then go and told the aunt. However, before this could come to pass, and when the children came home from school that day and the complainant was playing outside, R[...] came to call her inside.

[10] When the complainant came inside the house, it appeared that R[...] had already told his two siblings of her accusations and the appellant asked her why she was lying. An argument ensued when the complainant stuck to her guns and her evidence was that *"... everyone else believed him, because they were all older than me"*.

[11] When the aunt returned that evening, she was informed by the complainant's cousins of the complainant's accusations and was told that this was lies. The aunt

instructed the cousins to take the complainant back to her home because she was going to get the aunt's son "... *arrested by lying* ...".

[12] When the cousins took the complainant home, they told her mother that they were bringing her home "*because she was lying*". Her mother believed the cousins and the complainant was beaten with a belt by her mother. This silenced the complainant.

[13] Thereafter the complainant underwent a transformation. She started losing weight and occasionally would go for two days without eating, depending on her level of depression. She became, in the words of another aunt, "*troublesome*" and would skip school. She started staying out late at night. When sent to her aunt (the one with the cousins) by her mother, she would leave on her own, not return home but go and simply stand outside another aunt's door until 10 o'clock at night. She even attempted suicide.

[14] In 2019 when the complainant was in Grade 8 she confided in her much older sister, whose husband was a police officer. She was only then taken to the Daveyton Main Clinic for examination, whereafter charges were laid.

[15] The professional nurse who performed the examination testified and confirmed that, although no injuries were noted, the condition of the complainant's genitals was consistent with previous vaginal penetration.

[16] The other aunt of the complainant (not the mother of the cousins) also testified. She confirmed that the complainant had during 2019 reported to her that she had been raped by the appellant during the time that she had been staying at her aunt and her cousins, when she was in Grade 1. The version told to the aunt was that the appellant would wake her up in the middle of the night when everybody was asleep and get inside her blankets and have sexual intercourse with her and when he was done, he would wipe her with a towel.

[17] The aunt then further testified that the complainant would thereafter come to visit her on weekends but would refuse to go back to the other aunt. She also

confirmed that the complainant had become “*a troublesome child*”, would wander round at night and “*would jump fences and just go away*”. Regarding the issue with how the complainant’s mother had dealt with the situation, the aunt said that the complainant “... *would only visit me on weekends and I think it is because she reported this to other people and did not get help. Even to her mother she reported. She did not help her. So, I think that she just lost hope. Even looking at her, you could see she no longer cares about anything, she has lost hope*”.

[18] The complainant’s mother also testified. She confirmed the version of how the complainant had reported the incidents to her and that she had beaten her daughter with a belt because of it. She explained that when the cousins brought the complainant to her in 2013, she said “*I thought she was lying like any other child, because I did not believe the aunt’s son would do that to her*”. She has now subsequently come to believe her daughter.

The Appellant’s case

[19] The appellant, who was 18 years old in 2013, denied the allegations. His principal defence, apart from denial of the accusations of sexual impropriety or rape, was that the complainant did not sleep in the same room as the cousins when staying over at her aunt but that she slept in the kitchen. As to the version that the complainant had told her cousin R[...] about the incidents, the appellant denied this because when he had asked R[...] about it, R[...] purportedly said that “*he does not know anything*”. He also denied that R[...] would have told his mother (the aunt) about the complaints.

[20] During cross-examination the appellant alleged that the motive for the complainant and her mother to press charges against him in 2019 was “*because they could see that I am about to complete my studies at college*”. His second proffered motive was that because the complainant got into trouble for being out at night, she decided to accuse him. He suggested that she could have met “*other boys*” and speculated that this was her reason for her accusations against him.

[21] Based on the above evidence, it was argued on behalf of the appellant before us that his version might reasonably possible be true.

Evaluation

[22] On behalf of the appellant it was argued that he was not properly convicted on the evidence of a single child witness. This argument is flawed in that the complainant was no longer a child when she testified. She merely testified as an adult about what had happened to her as a child.

[23] On behalf of the appellant it was also argued that a child witness could be manipulated to falsely implicate a particular person as the perpetrator, thereby substituting such a person for the real perpetrator.

[24] In this case however, there was no suggestion of any other perpetrator and the issue of substitution did not arise.

[25] The appellant further relied on *S v Tshabalala*⁵. This case however, while repeating the principle that the guilt of the accused must be proven beyond a reasonable doubt, reiterated the correct approach to weighing up the evidence which might point towards the guilt of the accused against those that are indicative of his innocence, taking proper account of inherent strength and weaknesses of evidence, probabilities and improbabilities on both sides and having done so to decide whether the balance weighs so heavily in favour of the state as to exclude any reasonable doubt.

[26] We find that the complainant, even as a child at the time and later as an adult, had consistently repeated the same version regarding the appellant's conduct. The first report was to her cousin R[...], then she maintained her version to R[...]'s mother (her aunt) and thereafter to her own mother. Even after the passage of years, the version did not change when she told her sister and her other aunt and this consistency continued in her evidence in court.

[27] On the other hand, the appellant's version displays such unsatisfactory features, that it cannot be accepted. Whilst he is perfectly entitled to maintain a bare

⁵ 2003 (1) SA CR134 SCA.

denial, if those were the facts, his reasoning as to why the complainant would accuse him is nonsensical and must be rejected. The further unsatisfactory feature is that, whilst legally represented, the appellant indicated that he would call his mother (the complainant's aunt) and his brother R[...] to testify to confirm his version. After indicating to the court that a postponement would be necessary to call R[...] who was then busy writing matric, the appellant did an about face and terminated his counsel's mandate. After having been warned about the dangers of doing so and being reminded that he might be facing life imprisonment if convicted, the appellant elected to proceed in person and closed his case stating "*I do not need witnesses your worship. Can we proceed with the matter?*". He maintained this stance despite repeated warnings, admonitions and explanation of his rights by the magistrate.

Conclusion

[28] Regarding the conviction, on a conspectus of the evidence, and, insofar as the complainant had been a single witness regarding the rape, we find that her evidence was clear and satisfactory in every material respect, making it competent for the court *a quo* to convict on her evidence.⁶ We are therefore satisfied that the learned magistrate had correctly accepted the complainant's version and had correctly found the appellant guilty

[29] The appeal against the conviction must therefore fail.

Ad Sentence:

[30] We had regard to a recent article dealing with the imposition of life sentences, *Sentencing Rape Offenders in south Africa: Recent Case Law*⁷ and the three judgments of this Division mentioned therein⁸ and considered whether the present matter was one which justifies the imposition of a similar sentence.

[31] We find that the rehabilitation prospect of a youthful offender should count in the appellant's favour. Despite the heinousness of the crime, this was insufficiently

⁶ See: Section 208 of the CPA and *S v Artman & Another* 1968 (3) SA 339 SCA and *S v Sauls* 1981 (3) SA 172 (AD) at 180 E – F

⁷Le Roux-Bouwer *PER/PELJ* 2025 (28) DOI.

⁸ *Sithole v S* (A105/2021) [2024] ZAGPPHC 39 (18 January 2024), *Masango v S* (A175/2021) [2024] ZAGPPHC 64 (5 February 2024) and *Nyathi v S* (A133/2020) [2024] ZAGPPHC 121 (6 February 2024).

considered by the learned magistrate, resulting in a misdirection which entitles this court to interfere with the sentence. In doing so, we find that there are sufficient compelling circumstance to justify a deviation from the minimum sentencing regime and that a life sentence is inappropriate and that a sentence of 25 years imprisonment should be imposed.

[32] To the extent mentioned above, the appeal against the sentence is then upheld.

Order

[33] In the premises the order of court is as follows:

1. The appeal against the conviction is refused.
2. The appeal against sentence is upheld and the life sentence imposed is replaced with a sentence of 25 years imprisonment, antedated to 28 May 2024.

N DAVIS

Judge of the High Court
Gauteng Division, Pretoria

I agree

BMT MORE

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 19 August 2025

Judgment delivered: 10 October 2025

APPEARANCES:

For the Appellant:

Ms M M P Masete

Attorney for the Appellant:

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For the Respondent:

Adv A P Wilsenach

Attorney for the Respondent:

The Director of Public Prosecution,
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