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

CASE NO:
A133/2024

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO

30 October 2025

In the matter between:

M[...] W[...] W[...]

Appellant

And

THE
Respondent

STATE

JUDGMENT

Mdalana-Mayisela et Mkhabela JJ

Introduction

- [1] This is an appeal against the conviction and effective sentence of life imprisonment imposed upon the appellant by the Regional Magistrate, Germiston. The appellant enjoys an automatic right to appeal his conviction and sentence upon issuing a notice of appeal. The respondent opposed the appeal.
- [2] The appellant was charged with the contravention of section 3 read with sections 1, 55, 56(1), 57, 58, 59, 60 and 61 of the Criminal Law Amendment Act 32 of 2007 ("Sexual Offences and Related Matters Act"), further read with sections 92(2), 94, 256, 257 and 281 of the Criminal Procedure Act 51 of 1977 ("the CPA"), and further read with section 51(1)(a) and Part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997, as amended ("the CLAA").
- [3] He was legally represented throughout the proceedings in the court a quo. The proceedings were held behind closed doors. He pleaded not guilty and offered no plea explanation. On 27 February 2020, he was convicted of rape as charged. On 4 November 2020, he was sentenced to life imprisonment. In terms of section 103 of Act 60 of 2000, he was declared unfit to possess a firearm. The court a quo also ordered that his particulars be included in the National Register for sex offenders.

Factual background

- [4] The facts leading to the conviction and sentence are as follows. The complainant, NM M[...], is the appellant's biological child. She and her two older sisters were born in South Africa, the result of the romantic relationship between their mother, a citizen of Lesotho, and the appellant. When the affair ended, the mother took the children to Lesotho. The mother passed away in 2013. On 13 December 2017, the complainant came to South Africa and was reunited with the appellant. The appellant's mother is a citizen of Zimbabwe. He was born in South Africa and grew up in Zimbabwe. He owns a two-bedroom house at Buhle Park, Germiston. He lived in that house with the complainant and his wife before his incarceration. There are no children born

in the marriage between the appellant and his wife. The appellant has a boy child with his ex-girlfriend, M[...] J[...] P[...].

- [5] The complainant testified that the appellant raped her at night on 3 January 2018 in his bedroom when his wife was on holiday in Zimbabwe. She gave the details of how, where, and when it occurred. Following this first rape incident, he raped her on several occasions during his wife's absence. She could not recall the details of the other rape incidents because they occurred frequently. The last rape incident happened in the morning on 8 December 2018 in her bedroom, after his wife left for work. She recorded the rape incident on her cell phone. She managed to escape after the rape incident and went to J[...]’s house, where she made a first report. J[...] listened to the audio recording and identified the voices of the appellant and the complainant.
- [6] J[...] accompanied the complainant to Elsburg police station to report the incident. On the complainant's request, she also called her maternal aunt, G[...] M[...]. The complainant reported the rape incident to G[...] telephonically. G[...] joined them at the police station. J[...] also accompanied the police to the appellant's house. The appellant was brought to the police station. The complainant identified him to the police as the perpetrator. He was later arrested for rape.
- [7] The complainant was taken to Gremiston hospital, where she was examined, and swabs were taken. Sister Makwena Jerrida Papo noted fresh vaginal injuries consistent with recent penetration of the vagina with a blunt object.
- [8] The appellant testified in the court a quo. He denied the rape allegations. He stated that the complainant had laid a false charge against him because he refused to allow the complainant's two older siblings to move in with them. The court a quo rejected his version as not reasonably possible true. He now appeals against that finding.

Grounds of appeal

- [9] The appellant relied on the following grounds for the appeal against conviction and sentence.

- [9.1] The court a quo erred in convicting the appellant on the evidence of a single witness, the complainant. She was not a credible witness, and her evidence had contradictions. It failed to apply a cautionary rule to her evidence.
- [9.2] The court a quo erred in finding that the state proved its case against the appellant beyond a reasonable doubt and that the appellant's version was not reasonably possible to be true.
- [9.3] The sentence of life imprisonment is shocking and inappropriate.
- [9.4] The court a quo erred in overemphasizing the seriousness of the offence over the personal interests of the appellant.
- [9.5] The court a quo erred in finding that the appellant's personal circumstances, cumulatively taken, are not substantial and compelling.

Ad conviction

- [10] It is a trite law that a Court of Appeal will not interfere with a trial court's decision unless it finds that the trial court misdirected itself as regards its findings of fact or law. To succeed on appeal, the appellant must convince this court on adequate grounds that the trial court misdirected itself in accepting the state evidence and rejecting his version as not being reasonably possible true. There are well-established principles governing appeals from findings of fact. In the absence of demonstrated and material misdirection by the trial court, its findings are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong.¹
- [11] It is also a trite law that the onus rests on the state to prove the accused's guilt beyond a reasonable doubt. If the version of the appellant is reasonably possible true, he must be acquitted.² In whichever form the test is expressed, it must be satisfied upon consideration of all the evidence.³ Where the court is faced with two mutually destructive versions, it must consider the credibility, reliability, and improbabilities. There is no rule of formula or test to apply when

¹ S v Hadebe and Others 1997 (2) SACR 641 (SCA) at 645e-f.

² S v Van der Meyden 1997(2) SA 79; R v Difford 1937 AD 370; S v Aswegen 2001 (2) SACR 95 (SCA).

³ Director of public prosecutions, EC, Makhanda v Coko and Others 2024 (2) SACR 113 (SCA).

it comes to the consideration of the credibility of a single witness. The trial court will weigh the evidence, consider its merits and demerits, and, having done so, will decide whether it is trustworthy and whether, despite shortcomings, defects, or contradictions in the testimony, it is satisfied that the truth has been told.⁴ The court a quo applied the aforesaid legal principles.

[12] The complainant was the state's sole witness to what transpired at the crime scene. Section 208 of the Criminal Procedure Act 51 of 1977 provides that a conviction may follow on the single evidence of any competent witness. It was a common cause that the complainant was a competent witness. The evidence of a single witness must be satisfactory in all material respects.⁵ The appellant contended that the complainant was not a credible witness, and her evidence was not satisfactory in all material respects.

[13] It was argued on behalf of the appellant that the complainant's evidence had contradictions and was not corroborated. The heads of argument submitted for the appellant in the appeal consisted of 91 pages, of which 77 pages were a repetition of the evidence on record, and 13 pages of the remaining 14 pages were legal submissions. The complainant was cross-examined extensively for two days during the trial. The appellant's version was a bare denial of the crime. The cross-examination was mostly on irrelevant factors, aimed at discrediting the complainant.

[14] The cross-examination failed to discredit her. She was an honest and good witness. During her testimony, she confirmed partly the appellant's version, put to her during cross-examination, as true. She disclosed the lies she told him about other irrelevant incidents that occurred before 8 December 2018, which she was cross-examined about. The court a quo correctly found that those lies had no impact on her credibility in relation to the rape incidents.

[15] Her evidence was clear and satisfactory in all material respects. I agree with the court a quo that the alleged contradictions in her evidence were not material to the issues in dispute. Her evidence was clear that she had been

⁴ S v Sauls and Others 1991 (3) SA 172 (A).

⁵ R v Mokoena, 1932 OPD 79 at 80;

raped more than once by the appellant. She gave sufficient details to convict for the rapes that occurred on 3 January 2018 and 8 December 2018. She was corroborated by J[...], to whom she made the first report; G[...], who received a report telephonically; and the medical nurse who examined her on December 8. The appellant himself also corroborated her in material respects.

[16] When asked why she did not include some of the details she testified about during her oral testimony in her written statement, she explained that at the time the statement was taken, she was 17 years old. She made the statement through her maternal aunt G[...]. She was speaking to her in Sesotho language, and she could not remember which language G[...] used when speaking to the police officer who was taking the statement. The statement was read back to her in English. There was also an issue of interpretation during the trial. The interpreter made errors, and he explained that he was not fluent in the deep Sesotho language the complainant was speaking. The court a quo correctly refrained from drawing a negative inference against the complainant from these difficulties.

[17] It was argued on behalf of the appellant that her evidence that he raped her in the morning of 8 December 2018 was improbable, because he and his wife would have been at work and she would have been at school that morning. This argument has no merit. The appellant corroborated the complainant on this material piece of evidence through his legal representative during her cross-examination, that he and the complainant were at home in the morning of 8 December 2018, while his wife was at work. He further corroborated the complainant's version that the door was locked. He gave her the key and R100 to buy the pads. She locked him inside the house and left with the key. He also testified that J[...] and the police came to his home that morning, and he used another key to unlock the door for them. There was no improbability in that version.

[18] It was also argued on behalf of the appellant that the court a quo should have rejected the evidence of the complainant that she made a voice recording during the rape incident of 8 December 2018, because the audio recording was not handed to the police or in court as an exhibit during the trial. The

complainant testified that she lost the phone she used during the audio recording. She also stated that on December 8, she informed the police that she had made a voice recording, but the police did not request it. J[...] and G[...] corroborated her evidence on the existence of the audio recording. They listened to it. J[...] testified that she listened to it when the complainant came to her home on December 8. She knows the appellant and complainant very well. She identified the voices of the appellant and complainant on the audio recording. The complainant was crying bitterly during the recording. She gathered that the appellant was having sexual intercourse with the complainant on the audio recording. The complainant asked the appellant why he was doing that to her, since he had a wife. I find that the court a quo did not err in accepting the evidence about the audio recording. The appellant took advantage of a motherless child and raped her, instead of protecting her as a father.

[19] The appellant contended that he should have been acquitted because the state failed to present the DNA results. It is not clear from the record what happened to the swabs taken from the complainant. However, there was compelling oral evidence against the appellant. As alluded to above, the complainant's oral testimony, corroborated by J[...] and G [...], was sufficient to convict the appellant. The testimony of the medical sister on the fresh vaginal injuries sustained by the complainant and her conclusion that they were consistent with a recent penetration was not disputed by the appellant. Instead, the appellant suggested that the complainant had sexual intercourse with her boyfriend on 7 December 2018, a day before her medical examination. The appellant's suggestion was not put to the complainant during her cross-examination. The complainant disputed that she came back home late at night on December 7. The court a quo correctly rejected the appellant's evidence in this regard.

[20] The appellant contended that the complainant failed to report the rapes immediately after their occurrence. The complainant explained that she did not report the rapes immediately because the appellant would dispossess the complainant of her cell phone after raping her to deny her an opportunity to

report the rapes. The appellant also threatened that he had a firearm and would kill her and bury her where no one would ever know. She also did not want to lose the only parent she had, whom she had eagerly sought over the years. She had hoped that her biological father would stop the sexual abuse.

[21] The appellant could not be simply acquitted solely because the complainant delayed reporting the rapes. A delay in reporting is not, by itself, proof that the allegation is false. There are many valid, trauma-informed reasons why a survivor of sexual assault might delay reporting the crime. They include trauma and shock, fear of the accused, shame and social stigma, family honour, relationship to the accused, lack of trust in the criminal justice system, and need to process the event. Our legal system, in principle, strives to be sensitive to the realities of sexual violence rather than punishing victims for their reaction to trauma. In my view, the complainant's explanation for the delay is satisfactory and reasonable. Her delay does not indicate that she made a false complaint against the appellant. Her evidence was credible and consistent.

[22] The appellant attempted to cast doubt on the state's case by alleging that the complainant had an ulterior motive for fabricating the charge against him because he had refused to allow her two older sisters to move in with them. The impact of a claim of ulterior motive is complex and depends entirely on the evidence in a case. The core task of the court is to determine the truth by carefully evaluating all available evidence from both sides, including inconsistencies in the complainant's evidence, forensic and medical evidence, witness testimony, digital evidence such as messages or emails, and evidence of the accused's motives.

[23] I have addressed the inconsistencies in the complainant's evidence, the other witnesses' testimonies, and the medical evidence above. It was a common cause during the trial that the appellant and complainant had a conversation on 6 December 2018 about the two older sisters moving in. The complainant disputed the contention of an ulterior motive and referred to detailed WhatsApp and personal conversations they had on the issue on that day. She testified that

“Look I had suggested that they come over and visit, but my father said no, K[...] is a very cheeky child. Maybe S[...] can come and stay here permanently, but I suggested that they should simply visit, not stay permanently, but he then said no, S[...] can stay because he wanted to, he always expressed the fact that in Lesotho there is a lot of poverty. They can come and S[...] can stay over whilst K[...] who is very cheeky can simply return back after that.”

[24] From the complainant's quoted WhatsApp conversation, the appellant was willing to allow the two older sisters to pay a visit. The difference between the complainant and the appellant was whether they should move in permanently. The complainant suggested that they visit during the December holidays, when his wife would be in Zimbabwe, but the appellant wanted S[...] to move in permanently and for K[...] to return to Lesotho after the holiday. The argument between them in a meeting held later that day concerned the appellant referring to K[...] as a cheeky child. The complainant testified that she did not like that comment.

[25] The court a quo found the complainant to be a credible witness, and there is no reason for this court to differ with that finding and reject the aforesaid version of the complainant. On the other hand, the appellant was found to be a poor and evasive witness. He was not a credible and reliable witness. His version had material contradictions and improbabilities, and when confronted with the discrepancies during cross-examination on several occasions, he apologized. The trial court has a unique advantage in observing witnesses' demeanour, appearances, and whole personality.⁶ An Appeal Court must be deferential and slow to interfere with credibility findings unless the trial court was clearly wrong.⁷

[26] For the above-stated reasons, I find that the appellant's claim that the complaint was motivated by an ulterior purpose to make a false complaint against him because he had refused to allow her two older sisters to move in with them is not true and is far-fetched. The court a quo correctly rejected his version as not reasonably possible true. It correctly evaluated the evidence as a whole, and I see no reason to overturn the conviction. I am satisfied that the

⁶ R v Dhlumayo and Another 1948 (2) SA 677 (A).

⁷ S v Pistorius 2014 (2) SACR 315 (SCA).

state proved its case against the appellant beyond a reasonable doubt. Accordingly, the appeal against the conviction must fail.

Ad sentence

[27] Section 51(1) of the CLAA is applicable to the count of rape. The conviction attracts the prescribed minimum sentence of life imprisonment, unless the court finds substantial and compelling circumstances warranting a deviation from that sentence.

[28] I have noted all the grounds of appeal against the sentence stated above, and I do not intend to repeat the same herein. The appellant contended that the sentence is shockingly inappropriate and the court a quo erred in not finding that his personal circumstances, cumulatively considered, constituted substantial and compelling circumstances justifying a departure from the prescribed minimum sentence. Briefly, his personal circumstances are as follows. He was born in June 1968. He is a Zimbabwean citizen. He is married in customary law. He has five children from previous relationships. He completed grade 7. He was employed as a driver at a construction company. He is a first offender. He spent just under one year, eleven months in custody awaiting trial.

[29] The gruesome facts of this case are deeply disturbing. The appellant, the biological father of the complainant, betrayed the most sacred trust imaginable. The complainant, who was 16 years old when the abuse began, had recently lost her mother and grandmother. She came to South Africa seeking the love, protection, and shelter of her only remaining parent. Instead, the appellant, in a perversion of his paternal role, began a sustained campaign of sexual abuse within the very home that should have been her sanctuary. He exploited her vulnerability, threatened to kill her to ensure her silence, and showed a complete absence of remorse, cruelly accusing her of fabricating the allegations for an ulterior purpose.

[30] The impact on the victim has been severe. Her testimony, given through tears, painted a picture of a young life shattered: She was forced to change schools and move to Free State for the fear of her life, her academic performance

collapsed, she suffers from profound psychological trauma, a loss of trust in men, and severely diminished self-esteem. The appellant's actions have inflicted a life sentence of suffering upon her. In *S v C*⁸ the court said

“ Rape is regarded by society as one of the most heinous of crimes, and rightly so. A rapist does not murder his victim-he murders her self-respect and destroys her feeling of physical and mental integrity and security. His monstrous deed often haunts his victim and subjects her to mental torment for the rest of her life – a fate often worse than loss of life. Serial rapists and murderers are regarded by society as inherently evil beings. They are the most feared and loathed criminals in our community. Society demands protection in the form of heavy and deterrent sentences from the courts against such atrocious crimes.”

[31] The prescribed minimum sentence for this offence is life imprisonment. It is a trite law that a Court of Appeal may only interfere with the sentence imposed by a trial court if the latter misdirected itself or if the sentence is so disproportionate as to induce a sense of shock.⁹ The principle of judicial deference requires that we afford the trial court's decision significant weight.

[32] The trial court carefully evaluated the appellant's personal circumstances: his age, 53 at sentencing, his status as a first offender, his employment, his chronic illness, and the period he spent in prison awaiting trial. The trial court correctly found, however, that these circumstances are neither substantial nor compelling and are overwhelmingly outweighed by the aggravating factors.

[33] The aggravating factors in this case are of the most severe kind.

[33.1] The relationship of trust between the appellant and the victim was not merely broken; it was weaponized as a tool of exploitation.

[33.2] The complainant was a vulnerable child, reliant on him for everything.

[33.3] The offence was not a single act; the complainant, a 16-year-old at that time, was raped more than once.

[33.4] The appellant showed no remorse and subjected the victim to the further trauma of a trial, during which he accused her of lying.

⁸ *S v C* 1996 (2) SACR 181 at 186E-F.

⁹ *S v Hadebe and Others* 1997 (2) SACR 641 SCA at 645e-f.

[33.5] He did not use protection, exposing her to further risk.

[33.6] The profound and lasting psychological harm inflicted on the victim is a significant aggravating factor.

[34] In *S v Malgas*¹⁰, the Supreme Court of Appeal held that courts are obliged to impose the prescribed minimum sentences unless truly convincing reasons for departure exist. The personal circumstances of an offender, while important, must be weighed against the nature of the crime and society's interests. Society demands that children be protected from those who prey upon them, especially from those in positions of trust. A father raping his own child is one of the most heinous violations of this trust imaginable.

[35] I am in full agreement with the court a quo that the appellant's personal circumstances, even when viewed cumulatively, do not amount to substantial and compelling circumstances. To find otherwise in a case with such egregious aggravating features would undermine the very object and purpose of the minimum sentencing legislation.

[36] Consequently, the sentence of life imprisonment is not shockingly inappropriate; it is a proportionate, just, and a necessary response to the appellant's extreme betrayal and the serious harm he caused. The appeal against the sentence must fail.

ORDER

[37] Accordingly, the following order is made.

1. The appeal against conviction and sentence is dismissed.
2. The order made by the lower court is hereby confirmed.

¹⁰ 2001 (1) SACR 469 SCA.

MMP Mdalana-Mayisela
Judge of the High Court
Gauteng Division,
Johannesburg

I agree

R Mkhabela
Judge of the High Court
Gauteng Division,
Johannesburg

Date of delivery: 30 October 2025

Appearances:

On behalf of the appellant: Ms TP Ndhlovu

Instructed by: Legal Aid SA

On behalf of the respondent: Adv MBL Mutshaeni

Instructed by: National Prosecuting Authority

