



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable

Case no: A205/2024

In the matter between:

STEPHEN MAKHETHA

Appellant

and

THE STATE

Respondent

Neutral Citation: *Stephen Makhetha v The State* (A205/2025) [2025] ZAFSHC 328
(21 October 2025)

Coram: Daffue *et* Opperman JJ

Heard: 25 August 2025 and 15 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand down is deemed to be 21 October 2025 at 15h00.

Summary: Criminal appeal – sentence – rape – robbery with aggravating circumstances – minimum sentence applicable – Criminal Law Amendment Act 105 of 1997 – substantial and compelling circumstances – concurrency of sentences – misdirection – powers of appeal court to interfere – increase of sentences

ORDER

- 1 The appeal on the sentences is dismissed on both counts.
 - 2 In terms of s 309(3) read with s 322 of the Criminal Procedure Act 51 of 1977, the sentences imposed by the court *a quo* in respect of rape (count 1) and robbery with aggravating circumstances (count 3) are set aside and substituted with the following:
 - ‘1 Count 1: Life imprisonment;
 - 2 Count 3: Fifteen (15) years’ imprisonment.
 - 3 The sentences are antedated to 2 December 2011.
 - 4 It is ordered in terms of s 280(2) of the Criminal Procedure Act 51 of 1977 that the sentences shall be served concurrently.’
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JUDGMENT

Opperman J (Daffue J concurring)

Introduction

Sentencing must be in accordance with the law

[1] This case is purely about the law regarding sentencing, a domain characterised by intricate complexities that go beyond practises every so often applied in our courts and to the detriment of the administration of justice. Terblanche¹ said it best:

¹ SS Terblanche *Criminal Law: Guide to Sentencing in South Africa* 3 ed at Chapter 1 Introduction and 4 An academic view of the law of sentencing. Also see at 5.5.6.

‘There is no doubt that a body of law exists which applies to the sentences imposed by our courts and to the processes involved in this action. There is a great temptation to call this body of law the law of sentencing...Most legal aspects related to sentencing are covered by the well-established fields of study, namely criminal law and criminal procedure.

Knowledge of and insight into the whole field of sentencing is essential for at least three reasons:

- (1) Sentencing takes place frequently. Lack of knowledge and insight becomes glaring when repeated.
- (2) Sentencing is generally considered difficult and complicated.
- (3) The sentence is probably the closest the public ever comes to observing the law in action.’

[2] Terblanche,² Du Toit *et al*³ and Kriegler & Kruger⁴ do indeed indicate the acceptance of one complete field of law. Sentencing in South Africa is regulated by a combination of common law, statutes, case law, academic literature, and the Constitution of the Republic of South Africa, 1996 (Constitution).

The predicament of the case

[3] The dilemma that caused the introduction above is the scenario that presented itself in this case. The appellant (he was accused one *a quo*) was sentenced to an effective term of 40 years’ imprisonment due to the fact that the court *a quo* ruled substantial and compelling circumstances to exist. Peculiarly he refused to let the sentences be served concurrently in terms of s 280 of the Criminal Procedure Act 51 of 1977 (CPA). One almost gets the impression that he realised that the finding on compelling and substantial circumstances was inappropriate on the facts and convictions of the case and then wanted to remedy the distortion with the 40 years’ sentence.

² Ibid at 5.1-5.6.

³ See the discussion of Du Toit *et al*: Commentary on the Criminal Procedure Act, CD-Rom & Intranet: ISSN 1819-7655, Internet: ISSN 1819-8775, Jutastat, updated to 31 January 2025, loose-leaf publication e-publicationsat at Chapter 28 pp RS 74, 2025 ch28-p1 to RS 69, 2022 ch28-p2H.

⁴ A Kruger *Criminal Law* and Hiemstra's *Criminal Procedure* (2025) at 28-1 -28-2 SI 18.

[4] Application for leave to appeal was denied but this Court granted leave on petition on the sentence only.

[5] This peculiar and irregular state of affairs caused the appellant to appeal on the grounds that the court *a quo* erred in imposing an effective sentence of 40 years' imprisonment, on the grounds that it is shockingly inappropriate under the circumstances. Counsel for the appellant maintained that substantial and compelling circumstances were present to deviate from the relevant minimum sentences. This was however nullified by the order that the sentences should not run concurrently. The submission cannot be faulted. The presence of an oxymoron within legal context is readily apparent.

[6] The appellant now appeals that the sentence imposed on the rape should run concurrently with the term of imprisonment imposed on the robbery with aggravating circumstances; that the appellant be sentenced to an effective sentence of 25 years' imprisonment and that the sentence be antedated to 2 December 2011.⁵

[7] Upon scrutiny of the case, the Court noted issues regarding adherence to sentencing laws. The Court also considered the potential effects of the appeal on the merits of the case and recognised that the imposition of minimum sentences may be necessitated. Notice⁶ was given to the parties on 25 August 2025 of this intention and they were invited to present reasons in writing.

⁵ Appellant was convicted and sentenced as follows:

a Rape, sentenced to 29 years imprisonment.

b Robbery with aggravating circumstances, sentenced to a term of 11 years imprisonment.

⁶ Section 309(3) read with Section 322 of the Criminal Procedure Act 51 of 1977. Section 322(1)(b) gives the court the authority to confirm the conviction or sentence, set it aside, or make any other order it deems fit, while s 309(3) provides an additional power to alter a sentence. This includes the power to increase a sentence — but only if procedural fairness is observed. The *audi alteram partem* rule demands that an appellate court cannot increase a sentence unless the accused has been warned in advance that such an outcome is possible. See *Bogaards v S* (CCT

[8] The heads of arguments were filed and the appellant endeavoured to introduce new evidence on appeal by attaching some certificates that he obtained in prison since his incarceration. The new evidence on appeal is irregular, but it confirms that he received proper notice.

The reality of the case

[9] The presiding magistrate described the rape and the robbery that the appellant and his co-accused committed as: ‘... their actions were savage. They were cruel. They had no mercy.’⁷ It is trite that the victim of the rape and her boyfriend were given a lift by the appellant and his two friends in the early morning hours. They robbed the boyfriend; forced him out of the car and took turns to rape the then 17-year-old girl. She was 18 years old at the time of rendering evidence in court. The appellant was linked with DNA to the intercourse but denied the rape. The young woman was raped by the three perpetrators one after the other. The appellant took the lead that night and instigated the incident. After the first series of rapes, he instructed the complainant not to put her panties on because they were going to rape her again; they did do so. Again, one after the other. They also assaulted her with a bottle on her head. She did not suffer ‘serious’ injuries. The accused then threw her out of their moving car and left her vulnerable and desolate. She was assisted by a

120/11) [2012] ZACC 23; 2012 (12) BCLR 1261 (CC); 2013 (1) SACR 1 (CC) (28 September 2012) (*Bogaards*) paras 60-61.

Section 309(3), reads as follows:

‘(3) The provincial or local division concerned shall thereupon have the powers referred to in section 304 (2), and, unless the appeal is based solely upon a question of law, the provincial or local division shall, in addition to such powers, have the power to increase any sentence imposed upon the appellant or to impose any other form of sentence in lieu of or in addition to such sentence: Provided that, notwithstanding that the provincial or local division is of the opinion that any point raised might be decided in favour of the appellant, no conviction or sentence shall be reversed or altered by reason of any irregularity or defect in the record or proceedings, unless it appears to such division that a failure of justice has in fact resulted from such irregularity or defect.’

Section 322(6), reads as follows:

‘(6) The powers conferred by this section upon the court of appeal in relation to the imposition of punishments, shall include the power to impose a punishment more severe than that imposed by the court below or to impose another punishment in lieu of or in addition to such punishment.’

⁷ Page 643 of the record.

good Samaritan taxi driver and later some people on their way to work. She reported the incident to her family and then the police. During the event one of the perpetrators removed the complainant's earring and put it in her mouth. He took her rings from her fingers and demanded the shoes she was wearing. He bizarrely gave her his shoes. The appellant at some stage refused to attend⁸ court and delayed the case.

The substantial and compelling circumstances ruled *a quo* and some other grounds for appeal

[10] The minimum sentence in terms of the Criminal Law Amendment Act 105 of 1997 (CLAA) of life imprisonment is applicable to the rape conviction.⁹ The same is applicable to the charge of robbery and the term of imprisonment prescribed is 15 years' imprisonment.¹⁰

[11] The court *a quo* ruled the following to be substantial and compelling:

'At this stage the court is also satisfied that substantial and compelling circumstances exist in this matter and the following are read to the record in relation to accused 1 and 3. These are, one, the relative ages of accused 1 and 3, and two, they (indistinct) prospects of rehabilitation.'¹¹

⁸ Page 568 of the record.

⁹ Section 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA), provides as follows:

'51 Discretionary minimum sentences for certain serious offences

(1) Notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.'

¹⁰ Section 51(2)(a) of the CLAA, reads as follows:

'(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in— (a) Part II of Schedule 2, in the case of—

(i) a first offender, to imprisonment for a period not less than 15 years;

(ii) a second offender of any such offence, to imprisonment for a period not less than 20 years; and

(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 25 years.'

¹¹ Record at p 635.

The appellant

[12] The appellant's personal circumstances are:

a. Appellant was born on 2 May 1982; he was therefore 24 years old at the time of the incident. On this score it must be regarded that he already had a previous conviction of housebreaking and theft and assault with intent to do grievous bodily harm. He clearly was not a naïve young adult. He was the instigator and the leader in the unpleasant incident here. He showed no remorse as the record of the trial shows. Although the evidence presented was substantial, he maintained that he was not guilty. In *S v Matyityi (Matyityi)*¹² it was stated that:

'Remorse is a gnawing pain of conscience for the plight of another. Thus, genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error... In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence.'

b. Notwithstanding relying on his youthfulness, he is the father of a child, aged 9. The child was staying with the parental grandmother, and the appellant was maintaining the child before his arrest. The biological mother of the child passed away.

c. Both the parents of the appellant were still alive.

d. Appellant was employed from 1999 to 2002. Subsequently, he undertook temporary employment, earning around R150 per week.

e. Appellant's highest scholastic qualification is Grade 11. Due to financial constraints, he left school to obtain employment. He could not further any studies.

f. The appellant has previous convictions. He was apparently convicted on 29 January 2008. The convictions are housebreaking with the intent to steal and theft and assault with the intent to do grievous bodily harm. Evidently the two counts were

¹² *S v Matyityi* (695/09) [2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA) (30 September 2010) (*Matyityi*) para 13.

taken together for purpose of sentence and the sentence was six months imprisonment. The perpetration of the crimes in *casu* happened on 24 June 2006.

g. The appellant stayed in custody since his arrest in 2006. Bail was not granted. Appellant has been in custody awaiting trial for approximately 5 years. The reason(s) for his incarceration are not clear. He was sentenced on the previous convictions in 2008 and that might have been the cause.

h. Appellant suffers from back pain, for which he is sporadically hospitalized, and is regularly taking medication for pain.

The incarceration of the appellant

[13] The delay in the case and the fact that the appellant was incarcerated for five years pending finalisation of the trial was held as a substantial and compelling factor on appeal. There is not any evidence before the Court as to the reason for the incarceration of the appellant. Some reasons were given for the delay by the presiding officer in the judgment. It is clear that all the parties contributed hereto. The appellant was represented by counsel throughout the trial, but it is not known if anything was done to obtain his release pending the finalisation of the case. There is no evidence of any appeal against refusal of bail or any other efforts. It is indeed a factor but the question will be if it may be elevated to substantial and compelling in the face of the evidence as a whole.

[14] The Supreme Court of Appeal in *Loyiso Ludidi and Others v S*¹³ (*Ludidi*) investigated the effect of incarceration awaiting trial on the imposition of minimum sentences. It was concluded that it is now trite law that in respect of finite sentences there is no hard and fast rule as to the weight to be afforded to pre-sentencing

¹³ *Loyiso Ludidi and Others v S* (983/2022; 056/2024) [2024] ZASCA 162; 2025 (1) SACR 225 (SCA) (29 November 2024) (*Ludidi*) para 13.

incarceration. It is but one of the factors to take into consideration when determining the existence of substantial and compelling circumstances. The reasons for the prolonged period of detention prior to sentencing is relevant. A court cannot approach a life sentence as anything other than a sentence which is imposed for the rest of that person's life. It cannot be 'reduced' by the period spent in custody awaiting trial and it would be improper for a court to consider the possibility of parole.

[15] The Supreme Court of Appeal ruled in *Ncgobo v S*¹⁴ that the period spent in custody before conviction and sentencing is not, on its own, a substantial and compelling circumstance. It is merely a factor in determining whether the sentence imposed is disproportionate and unjust. It was held that the 2 years spent in custody would make a minimal impact on a sentence of life imprisonment and did not render the sentence shockingly disproportionate.

[16] In the *Ludidi*-case¹⁵ wherein the appellant was incarcerated for 5 years and 8 months, Nicholls JA ruled that:

'[17] If one turns to the offences for which the appellants were convicted, these were heinous. They were hired assassins willing to murder whoever was identified if they were paid for the deed. There is nothing disproportionate about their sentences of life imprisonment. Regarding the period in custody as awaiting trial prisoners, unless this is an exceptionally long period of time to which the conduct of the accused persons has not materially contributed, *this in my view, can never in and of itself, be a substantial and compelling circumstance where life imprisonment is imposed. The role of courts is to ensure that any sentence passed is a fair one having regard to the crime committed and the individual circumstances of the accused.*' (Accentuation added.)

¹⁴ *Ncgobo v S* (1344/2016) [2018] ZASCA 6; 2018 (1) SACR 479 (SCA) (23 February 2018) paras 7 and 21.

¹⁵ *Ludidi* fn 13 above.

[17] This factor, considered independently, does not meet the criteria for being classified as substantial and compelling in favour of the appellant.

The injuries of the complainant and rape

[18] The next issue that was relied upon by the appellant is the fact that the 17-year-old girl did not sustain serious injuries. Section 51(3)(aA)(i) of the CLAA and the matter of *Radebe v S (Radebe)*¹⁶ are relevant.

[19] Section 51(3)(aA)(i) of the CLAA, provides:

‘51(3)(aA) When imposing a sentence in respect of the offence of rape the following shall not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence:

- (i) The complainant's previous sexual history;
- (ii) *an apparent lack of physical injury to the complainant;*
- (iii) an accused person's cultural or religious beliefs about rape; or
- (iv) any relationship between the accused person and the complainant prior to the offence being committed.’ (Accentuation added.)

[20] The *Radebe*-case concluded the law on the issue:

- a. The Supreme Court of Appeal decreed against the notion that the absence of physical harm (presumably aside from the assault which constitutes the rape) can as an objective consideration minimise the impact of a rape on the subjective suffering of the victim and the victim’s family.¹⁷

¹⁶ *Radebe v S* (A03/2017, 374/04/2016) [2019] ZAGPPHC 406; [2019] 3 All SA 938 (GP); 2019 (2) SACR 381 (GP) (10 July 2019) (*Radebe*) para 46.

¹⁷ These cases are *Matyityi* per Ponnar JA para 23; *S v Nkunkuma and Others* (101/2013) [2013] ZASCA 122; 2014 (2) SACR 168 (SCA) (23 September 2013) para 12. *Bogaards* pp 58 - 72; *S v Chapman* [1997] ZASCA 45; 1997 (2) SACR 3 (SCA); 1997 (3) SA 341 (SCA); [1997] 3 All SA 277 (A) (22 May 1997) per Mohamed CJ at 344I – 345E; *Director of Public Prosecutions, North Gauteng v Thabethe* (619/10) [2011] ZASCA 186; 2011 (2) SACR 567 (SCA) (30 September 2011) per Bosielo JA para 22; and *S v GK* (A05/2013) [2013] ZAWCHC 76; 2013 (2) SACR 505 (WCC) (24 May 2013) paras 17 and 21-22.

b. Satchwell J in *S v M*¹⁸ made the crucial declaration that:

‘Furthermore, the responses of rape survivors are surely as complex and multi-layered as are the individuals who experience rape. We must therefore expect the manifestation of the impact of rape to be varied ... Some responses will be publicly displayed and others privately endured. Some rape survivors will collapse while other will bravely soldier on. . . It would seem that sentencing courts are expected to view rape as ‘more serious’ where a rape survivor cannot sleep, fears men and sex, is unable to concentrate and cannot complete school, or has a career or relationship destroyed. If this is so, then other rape survivors may question why their rapes are viewed as ‘less serious’ because they may have been fortunate or privileged enough to receive professional assistance, be endowed with different personalities and psyches, exhibit fewer post-traumatic-effects and so on. *The Legislature does not seem to have intended the rapist to be less morally and legally blameworthy because the rape survivor appears to or actually does survive or continues life with less apparent trauma.*’ (Accentuation added.)

c. Rape is an assault on the core values of a functioning society no matter that there are visible injuries or not. Rape constitutes the invasion of a bundle of rights impacting on the bodily integrity and psyche of the victim and the mere absence of physical injury cannot automatically equate with a lesser degree of degradation or emotional and psychological trauma. It is the society as a whole that suffers.¹⁹

d. The yardstick of physical injury will ignore the emotional and psychological damage to the victim which may include exhibiting (or being at risk of suffering) personality disorders or feelings of worthlessness to the point of displaying suicidal tendencies.²⁰

e. Finally, but not the least:

‘49. Nkabinde J, in the context of developing the common law of rape, said in *Masiya* at paras 36 to 39:

“... historically, rape has been and continues to be a crime of which females are its systematic target. It is the most reprehensible form of sexual assault constituting as it does a humiliating,

¹⁸ *Radebe* para 45 citing *S v M* 2007 (2) SACR 60 (W) paras 99 and 101.

¹⁹ *Radebe* para 46.

²⁰ *Radebe* para 47.

degrading and brutal invasion of the dignity and the person of the survivor. *It is not simply an act of sexual gratification, but one of physical domination. It is an extreme and flagrant form of manifesting male supremacy over females.* (para 36)

...One of the social contexts of rape is the alarming high Incidences of HIV – Infection Anal penetration also results in the spread of HIV. (para 38) The consequences caused by non-consensual anal penetration might be different to those caused by non-consensual penetration of the vagina but the trauma associated with the former is just as humiliating, degrading and physically hurtful as that associated with the latter (para 39)".'

The effect of the CLAA on the Court of Appeal

[21] In *Tuta v The State(Tuta)*²¹ the Constitutional Court discussed the minimum sentencing regime in the context of a case that lies on appeal:

- a. The decision whether “substantial and compelling circumstances” exist requires an evaluative judgment — not merely mechanical discretion.
- b. This evaluation is constitutional in nature, as it involves balancing proportionality, fairness, and justice in sentencing.
- c. Therefore, an appellate court may reconsider such determinations, since they are value judgments, not merely discretionary findings.
- d. This observation widens appellate oversight of sentencing by allowing higher courts to scrutinize whether the trial court properly appreciated the constitutional context of sentencing (fairness, dignity, proportionality). The Court of Appeal shall correct outcomes where the lower court mechanically applied the minimum sentence without exercising real moral evaluation and so ensure consistency and fairness in applying minimum sentencing laws across cases.

‘[183] The existence of what may be described as two different sentencing approaches that the Court in Bailey referred to is clearly justified and warranted by the far-reaching nature that the Act

²¹ *Tuta v The State* (CCT 308/20) [2022] ZACC 19; 2023 (2) BCLR 179 (CC); 2024 (1) SACR 242 (CC) (31 May 2022) paras 162 to 186.

has introduced into our law. *While it has not removed the sentencing discretion, it has fettered it to some extent and with that comes the likelihood of a sentencing framework that may pose a significantly higher risk to the freedom of the individual and considerations of a fair trial. In those circumstances an error in a finding of substantial or compelling circumstances is inherently more damaging to the constitutional values of freedom and liberty, justifying at the level of principle a wider scope for appellate interference.*' (Accentuation added)

The equilibrium in sentencing

[22] Both convictions pertain to harm caused to society, with the two complainants experiencing direct effects. On the facts in conspectus, it is grave and disturbing but it is imperative to balance the above with the remark in *Vilakazi v S*:²²

'[3] There is considerable risk in those circumstances that excessive punishment will be heaped on the relatively few who are convicted in retribution for the crimes of those who escape or in the despairing hope that it will arrest the scourge. But the Constitutional Court reminded us in *S v Dodo* - that punishment must always be proportionate to the deserts of the particular offender – no less but also no more – for all human beings “ought to be treated as ends in themselves, never merely as means to an end”.'

Conclusion

[23] It is indeed true that punishment must be proportionate to the deserts of the particular offender and serve the community. I add that it must be imposed in accordance with the established law. It did not happen here; a misdirection befell the administration of justice. In *Director of Public Prosecutions, Gauteng v Pistorius*,²³ Seriti JA noted that:

'[17] In *Director of Public Prosecutions, KwaZulu-Natal v P* 2006 (1) SACR 243 (SCA) para 10, when dealing with the question whether the sentence imposed by the trial court was

²² *S v Vilakazi* (576/07) [2008] ZASCA 87; [2008] 4 All SA 396 (SCA); 2009 (1) SACR 552 (SCA); 2012 (6) SA 353 (SCA) (3 September 2008).

²³ *Director of Public Prosecutions, Gauteng v Pistorius* (950/2016) [2017] ZASCA 158; 2018 (1) SACR 115 (SCA); [2018] 1 All SA 336 (SCA) (24 November 2017).

appropriate, this court said “[t]he test for interference by an appeal court is whether the sentence imposed by the trial court is vitiated by *irregularity or misdirection or is disturbingly inappropriate*”. The Constitutional Court reaffirmed this approach in *S v Boggards* [2012] ZACC 23; 2013 (1) SACR 1 (CC) para 41 when it said “[o]rdinarily sentencing is within the discretion of the trial court. An appellate court’s power to interfere with sentences imposed by courts below is circumscribed. It can only do so where there has been an irregularity that results in a failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it”. See also *S v Malgas* 2001 (1) SACR 469 (SCA) para 12 and *S v Hewitt* [2016] ZASCA 100; 2017 (1) SACR 309 (SCA) para 8.’

[24] The irregularity to regard the age of the appellant at 24 and find a potential of rehabilitation on his personal circumstances as substantial and compelling, is wrong. In the face of his previous convictions, his participation shown in the horrendous offences and his lack of remorse, it shows the direct opposite. The further mistake in law to impose a sentence of 40 years’ imprisonment that is disproportionate to the ruling of substantial and compelling circumstances is obvious.

[25] Life imprisonment is the ultimate penalty that the courts can impose and this awareness is to be pertinent when a sentence is imposed. However, the Legislator has spoken for the community and in *S v PB*,²⁴ in line with *Matyityi*,²⁵ the Supreme Court of Appeal emphasised that prescribed minimum sentences should not be departed from lightly, or for flimsy reasons. The facts of the case show barbaric gang rapes with disregard for the life of a 17-years-old young lady. The robbery with aggravating circumstances perpetrated against the boyfriend is similarly grave. Bearing in mind the seriousness of the offences, it is required that the elements of

²⁴ *S v PB* 2013 (2) SACR 533 (SCA) para 20.

²⁵ *Matyityi* para 23.

retribution and deterrence should come to the fore and that the rehabilitation of the appellants should be accorded a smaller role as emphasised by the Supreme Court of Appeal in *S v Kekana*.²⁶

[26] The sentence of 40 years' imprisonment is inappropriate, the compelling and substantial circumstances ruled are irregular; and the provisions of the CLAA must prevail. I will order for the sake of formality and clarity that the sentences shall be served concurrently.

Order

[27] In the result the following order is made:

- 1 The appeal on the sentences is dismissed on both counts.
- 2 In terms of s 309(3) read with s 322 of the Criminal Procedure Act 51 of 1977, the sentences imposed by the court *a quo* in respect of rape (count 1) and robbery with aggravating circumstances (count 3) are set aside and substituted with the following:
 - '1 Count 1: Life imprisonment;
 - 2 Count 3: Fifteen (15) years' imprisonment.
 - 3 The sentences are antedated to 2 December 2011.
 - 4 It is ordered in terms of s 280(2) of the Criminal Procedure Act 51 of 1977 that the sentences shall be served concurrently.'

²⁶ *Khuzela and Another v The State* (A149/2024) [2025] ZAFSHC 264 (28 August 2025) para 26. *Kekana v S* (37/2018) [2018] ZASCA 148; *S v Kekana* 2019 (1) SACR 1 (SCA) (31 October 2018) paras 39-42.



M L OPPERMAN
JUDGE OF THE HIGH COURT

I concur



J P DAFFUE
JUDGE OF THE HIGH COURT

Appearances

For appellant: S Kruger
Instructed by: Legal Aid South Africa,
Bloemfontein Local Office

For respondent: S Tunzi
Instructed by: Office of the Director of Public Prosecutions; Free State
Bloemfontein.