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

Not Reportable

Case no: A166/2024

In the matter between:

PIET MPHIRIMA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Mphirima v The State* (A166/2024) [2025] ZAFSHC 317 (8 October 2025)

Coram: Naidoo et Daniso JJ

Heard: 12 May 2025

Delivered: This judgment was delivered by email to the parties and release to SAFLII. It shall be deemed to have been delivered at 14h00 on 8 October 2025

Summary: Criminal law and procedure – appeal against conviction and sentence – evidence of a child single witness in a rape case – section 59 of the Criminal Law Amendment Act (Sexual Offences and Related Matters) 32 of 2007 – negative inference may not be drawn from evidence of delay in reporting rape- personal circumstances not

justifying a lesser sentence than the imposed twenty-five years' imprisonment – conviction and sentence upheld.

ORDER

The appeal against conviction and sentence is dismissed.

JUDGMENT

Daniso J (Naidoo J concurring)

[1] This is an appeal on petition in terms of s 309C of the Criminal Procedure Act 51 of 1977 following the trial court's refusal of the appellant's leave to appeal the conviction and sentence imposed by the Welkom Regional Court.

[2] The appellant who was legally represented throughout the trial was convicted after pleading not guilty to raping a 12-year-old girl more than once in contravention of s 3 of the Criminal Law Amendment Act (Sexual Offences and Related Matters) 32 of 2007 (the SORMA) read with of s 51 (1) of the Criminal Law Amendment Act 105 of 1997 (the CLAA). Having regard to the provisions of the CLAA, the trial court found substantial and compelling circumstances warranting a deviation from the prescribed sentence of life imprisonment, he was accordingly sentenced to 25 years' imprisonment.

[3] The conviction of the appellant arose from the incidents which occurred during August and September 2016. The summary of the evidence proffered in the court *a quo* was the following. The appellant is a traditional healer. During the time of the incidents, he lived next door the complainant's home at Mr Kele's residence, where he also attended church and played the role of an intercessor. The complainant and her family were also members of the church.

[4] The first incident occurred in August 2016. It was around 19h00 when the complainant's parents sent her outside to lock the gate. The appellant, who was standing next to Mr Kele's gate at the time, asked her to accompany him to the shop. On the way to the shop, the appellant took her to a veld where he pulled her towards a pole. He removed her dress and panties, took off his pants and raped her. When he was done, he gave her a tissue and told her to wipe herself clean. He threatened to kill her if she told anyone about the incident and, as a result, she did not mention the incident to anyone, including her parents.

[5] Several days later, the complainant attended a church event "Amafest". Around 10h00, the festivities proceeded to the school hall. The complainant and her friend Sebatso were on their way to the school hall when the appellant called out to the complainant to wait for him, which she did. When he caught up to her, he asked her whether she loved him. The complainant kept on walking and ignored him. When they finally arrived at the church hall, Sebatso had already left. The appellant continued to pester her, forcing her to tell him whether she loved him or not. She eventually relented and told him that she loved him. He pulled her and started kissing her. He ordered her to ascend the stage where he undressed and raped her by penetrating her vagina and anus. Again, he gave her tissues to wipe herself clean and reminded her that if she told anyone about the incident, he will kill her.

[6] The third incident also took place during an event at the school hall. The appellant accosted the complainant when she went to the outside toilet. He pulled her to the back of the toilet where he undressed and raped her. When he was done, he left her crying and went back inside the hall. However, he did not stop there. Days later, he tried to rape her again while she was sleeping with other church members at a church function. He came over to the bedroom where the complainant was sleeping and, after failing to drag her off the bed, he unzipped his trousers, brushed and stroked his penis against her legs. It was when he tried to kiss her that he realized that there was

someone else on the bed with the complainant. He quickly put his pants back on and left the bedroom.

[7] It was only after the complainant had a dream about being pregnant with the appellant's child that the rape incidents were discovered. The complainant had shared her disturbing dream with Sebatso and that the appellant had been having sexual intercourse with her. Their conversation was overheard by one of the church members, Disimelo, and somehow the news reached the Kele family, where the appellant was residing.

[8] Ms Seloane Melvin Kele is Mr Kele's daughter. She confirmed that at the time of the alleged incidents, the appellant was residing at her parental home and that after the complainant confirmed that the appellant had been having sexual intercourse with her, they (Ms Kele and her siblings Prince, Modea, Thabo and Takane) confronted the appellant about the allegations. At first, he denied the allegations. However, when the complainant repeated the allegations in his presence, he admitted having had sexual intercourse with the complainant on various occasions. He cried and requested that her parents should not be told. He stated that he had a problem and needed help he also undertook to hand himself over to the police.

[9] The complainant's grandmother, Ms J[...] T[...], was later called to the Kele's home. The complainant and the appellant were still there. The appellant apologised for having had sexual intercourse with the complaint and undertook to hand himself over to the police. He pretended to collect a jersey before going to the police station, but instead ran away. He was subsequently traced by the police and arrested. The complainant, was taken for a medical examination on 26 September 2016. The gynaecological findings on the J88 medical report handed in by agreement as Exhibit 'A', indicate vaginal tears, a whitish discharge and healed anal lacerations.

[10] The appellant denied having raped the complainant. He also denied having been at a meeting where it is alleged that he asked for forgiveness, admitted to having had

sexual intercourse with the complainant and undertook to hand himself to the police. He explained that the Kele's were motivated by jealousy because his gift of intercession. They feared that he would take over from their father whereas he was not even a relative.

[11] The principle applicable in appeals where the lower court's judgment or decision regarding either conviction or sentence is attacked is now established: the appeal court will not interfere with or tamper with a trial court's judgment in that regard unless, it (the court of appeal) finds that the trial court misdirected itself as regards its findings of facts or the law.¹

[12] The appellant challenges his conviction essentially on the grounds that in its finding that the State proved its case against him beyond a reasonable doubt, the trial court did not adequately apply the cautionary rules to the complainant's evidence as both a child witness and a single witness implicating the appellant in the rape. In support of his contentions, the appellant raises a number of improbabilities and discrepancies in the evidence of the complainant.

[13] It is the appellant's case that it is improbable that that the complainant's parents did not look for her when she did not return to the house from closing the gate, that the appellant would rape her at the school premises or school hall where there were other people without anyone coming to her rescue and that she did not report the rape incidents to anyone, deny the rape incidents at first and only admit when questioned at length about the incidents. It is equally improbable that after having admitted at the meeting to have had sexual intercourse with the complainant the appellant would have been allowed to go home and wear a jersey if indeed he did admit to having had sexual intercourse with the complainant.

¹ See *R v Dhlumayo and Another* 1948 (2) SA 677 (A). The principle was restated in *Mkhize v S* [2014] ZASCA 52 para 14 (Maya, Shongwe, Willis and Saldulker JJA concurring).

[14] The appellant further contends that there are also discrepancies in the complainant's evidence with regard to the number of the rape incidents and exactly where the first rape took place. In her direct evidence, she testified that the appellant raped her on three occasions the first rape occurred at a soccer field. While under cross-examination, she mentioned a fourth incident and also stated that the first rape took place at the hall. Her evidence also contradicted her written statement in that she testified that the appellant asked her to accompany him to the shop whereas in the statement, she said he took her straight to the soccer field.

[15] Furthermore, she told the court that she did not report the rape incidents to her grandmother because the appellant threatened to kill her if she did. Her grandmother's testimony was that the complainant told her that the reason she did not inform her about the rapes was because she was afraid that her grandmother would beat her up. The complainant's friend, Sebatatso, was also not called as a witness to corroborate her testimony 'regarding the so-called dream'.

[16] According to the appellant, the improbabilities and discrepancies in the complainant's evidence are all indicators that the complainant was 'making up stories as she went along with her evidence' whereas, he testified fairly well and there were no improbabilities or contradictions in his evidence. Therefore, the trial court erred in rejecting his version as false beyond a reasonable doubt.

[17] From the record of the proceedings it is clear that the trial court undertook a thorough analysis of the evidence proffered by the State and the defence. The trial court was alive to the cautionary rules applicable to the complainant's evidence as both a child witness and also a single witness implicating the appellant in the rapes. The trial court took into account the complainant's ability to recollect and narrate what the appellant did to her on every occasion despite her young age and found that her version regarding the rape incidents was succinct and trustworthy. Her version was also corroborated by the J88 medical evidence, Exhibit 'A' which confirmed vaginal tears and healed anal lacerations.

[18] The appellant's version was rejected as false on the grounds that despite the State's overwhelming evidence against him, his version was simply a bare denial of the allegations. His defence of false implication was found to be a mere fabrication, having regard to the accepted evidence that there was no bad blood between him and the complainant, including her family. The appellant also undertook to hand himself over to the police instead he disappeared from the area shortly after the meeting where he admitted to having had sexual intercourse with the complainant on various occasions.

[19] A child witness's veracity and ability to give a succinct version of the events is an important consideration in applying the cautionary rule. Furthermore, s 208 of the Criminal Procedure Act 51 of 1977 permits the conviction of an accused of any offence on the evidence of any competent single witness. The court need only find that the evidence was trustworthy and that the truth has been told in that case, corroboration is not even necessary.²

[20] The improbabilities and discrepancies raised by the appellant have no bearing on whether the appellant had raped the complainant or not. It is also important to note that the fact that the complainant's young age and fear of the appellant attributed to the delay in reporting the rapes was not gainsaid by evidence to the contrary. That aside, in terms of s 59 of the SORMA, a court may not draw a negative inference only from a delay in the reporting of a sexual offence.

[21] Nowhere in the State's case was it alleged that the rape at school took place in the presence of other people. Therefore, the appellant's contention that it is improbable that he could have raped the complainant without anyone coming to her rescue is unsound.

² *S v Sauls and Others* 1981 (3) SACR 172 (A) at 180 and *S v Mahlangu* 2011 (2) SACR 164 (SCA) at 171B.

[22] With regard to the contradictions between the contents of the written statement and complainant's testimony it was pointed out in *S v Govender and Others*³ that:

' . . . police statements are, as a matter of common experience, frequently not taken with the degree of care, accuracy and completeness which is desirable. . . ' . . . Furthermore, as was pointed out in *S v Bruiners en 'n Ander* 1998 (2) SACR 432 (SE) at 437h the purpose of a police statement is to obtain details of an offence so that a decision can be made whether or not to institute a prosecution, and the statement of a witness is not intended to be a precursor to that witness' evidence in court. Quite apart from that, however, there are other problems associated with police statements. They are usually written in the language of the person who records them. Frequently the use of an interpreter is required and, invariably, such interpreter is also a policeman and not a trained interpreter. The statement, according to my experience, is also usually a summary of what the policeman was told by the witness and is expressed in language or in terms normally used by him and not necessarily the witness . . . I am of the view that the fact that discrepancies occur between a witness' evidence and the contents of that witness' police statement is not unusual nor surprising. Whenever there are contradictions between the police statement of a witness and the evidence of such witness, or where there is no reference in a police statement to what can be considered to be an important aspect of that witness' testimony, the approach to be adopted in regard thereto is as described in *S v Mafaladiso en Andere* 2003 (1) SACR 583 (SCA) at 593e - 594h.⁴

[23] Based on all these reasons, the dispute between the State and the defence with regard to whether the appellant had raped the complainant as proffered by the State was resolved appropriately.⁵ The trial court correctly found that the State had proved the guilt of the appellant beyond a reasonable doubt; there is no reason to tamper with the trial court's judgment on conviction.

[24] Regarding the sentence, the appellant is of the view that despite having imposed a lesser sentence than life imprisonment as provided for in s 51(1) of the CLAA, the trial erred in not imposing a sentence much lesser than twenty-five (25) years' imprisonment.

³ *S v Govender and Others* 2006 (1) SACR 322 (E).

⁴ *Ibid* at 324J-325G.

⁵ *S v Trainor* 2003 (1) SACR 35 (SCA) para 9.

[25] It is the appellant's case that the trial court did not consider the chances of rehabilitation, the evidence of the correctional officer and the correctional supervision report and over emphasized the seriousness of the offence, the interests of the victim and put his personal circumstances at the receiving end. The appellant contends that his personal circumstances and the fact that this is not the worst kind of rape deserving the worst punishment cumulatively and individually, these factors constitute substantial and compelling reasons justifying the imposition of a sentence of eighteen (18) years' imprisonment.

[26] In arriving at the imposed sentence, the trial court measured the appellant's personal circumstances, namely that he was 29 years old; he had passed grade 12; he is an unmarried father of three children aged 8, 3 and 1 year; he was self-employed as a traditional healer earning R3 500 per month; he was arrested on 30 November 2016 and stood trial until the matter was finalized on 12 November 2019; and that he was a first offender in relation to this offence, against the prevailing aggravating factors.

[27] The aggravating factors recorded by the trial court include the circumstances under which rapes occurred, namely that the appellant was a church leader. He violated the complainant in a church sphere, a place of worship where the complainant was entitled to feel safe. The age of the complainant, the degrading and humiliating nature of the offence, the prevalence of the offence, the injuries sustained by the complainant and the appellant's lack of remorse, were also regarded as aggravating factors by the trial court.

[28] On the available facts, the appellant received mercy as the offence that he was convicted of did not just occur once. Lack of serious physical injuries does not make the crime less heinous. Rape leaves the victims with life-long emotional and psychological scars.⁶

⁶ See in this regard *S v Chapman* [1997] ZASCA 45; 1997 (3) SA 341 (SCA) paras 3-4; *S v Vilakazi* [2008] ZASCA 87; 2009 (1) SACR 552 (SCA) para 1.

[29] The trial court was on point for disregarding the evidence of the correctional officer and the correctional supervision report as the conclusions therein were based on incorrect facts. The recommended correctional supervision sentence is not an appropriate sentence where a sentence is prescribed by the provisions of the CLAA.

[30] Having regard to the seriousness, despicable and endemic nature of the offence the appellant was convicted of, rehabilitation is but one factor that must be balanced against others such as retribution and deterrence, which come to the fore. I am thus of the view that the trial court exercised its discretion properly and judicially by imposing a long period of imprisonment. There is no basis to interfere with the sentence imposed.

Order

[31] In light of the conclusions reached, I accordingly make the following order:

The appeal against conviction and sentence is dismissed.

N S DANISO
JUDGE OF THE HIGH COURT

I concur.

S NAIDOO

JUDGE OF THE HIGH COURT

Appearances

For the appellant: V Abrahams
Instructed by: Legal Aid South Africa, Bloemfontein

For the respondent: LB Mpemvane
Instructed by: Director of Public Prosecutions, Bloemfontein.