THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

[WESTERN CAPE DIVISION, CAPE TOWN]

Appeal No: A 07 / 25

In the matter between:

L[...] N[...] **APPELLANT**

and

THE STATE **RESPONDENT**

Summary: Criminal Law – Appeal against Conviction and Sentence - Rape of a Minor – Single Witness – Evidence *Aliunde* – Alleged Inconsistencies in Evidence not Material – Appeal dismissed – Convictions and Sentences Confirmed.

Coram: Wille, J *et* Christians, AJ

Heard: 28 November 2025

Delivered: 19 January 2026

JUDGMENT

THE COURT:

INTRODUCTION

[1] The appellant was convicted on two counts of rape and one count of sexual assault, as defined in sections 3 and 5(1) of Act 32 of 2007, respectively. The two counts of rape related to the digital penetration of the victim's vagina and the penile penetration of the victim's anus. The sexual assault involved the oral stimulation of the victim's vagina.

[2] The victim was 13 years old at the time the alleged were offences perpetrated against her, and she was 15 years old when she testified.[1]

[3] The appellant was legally represented and informed, at the commencement of the proceedings, that the two counts of rape may result in the imposition of the prescribed sentence of life imprisonment.[2] The appellant tendered a plea of not guilty.[3]

[4] Pursuant to his conviction on all counts, the Magistrate sentenced the appellant to life imprisonment in respect of the two counts of rape and five years'

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1 She testified through the medium of a court intermediary.
2 In terms of section 51(1), read with Schedule 2 Part I of Act 105 of 1997.
3 The appellant offered no plea explanation.

direct imprisonment for the sexual assault. The sentences of imprisonment were ordered to run concurrently. Although the Magistrate referred to the two counts of rape, it appears from his judgment that, for the purpose of sentence, the Magistrate considered the conviction as a single one when he imposed the sentence of life imprisonment.[4]

[5] The appellant has exercised his automatic right of appeal, arising from the life sentence,[5] and appeals against the conviction and life sentence imposed in respect of the two counts of rape.[6]

THE RESPONDENT'S CASE

THE COMPLAINANT

[6] She knew the appellant through her parents. According to her parents, the appellant was a traditional healer. The complainant had an introverted personality, and her father held the view that certain evil entities were to blame for this 'condition' and that such 'condition' needed to be attended to. The complainant's parents engaged the appellant to rid her of these evil entities.

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4 The order reads as follows:
"*In respect of counts 1 and 2, rape in contravention of section 3 read with sections 1, 56(1), 57, 58, 59, 60 and 61 of Act 32 of 2007, read with the provisions of section 51 and Schedule 2, Part I of the Criminal Law Amendment Act 105 of 1997, the complainant being under 16 years old, the accused is sentenced to life imprisonment.*"

Notably, at paragraph 24 of the judgment on sentence, the Magistrate stated that "*The minimum sentence relevant to the rape conviction in this matter is therefore the benchmark to be ordinarily imposed…*" Also indicative of the Magistrate having viewed the conviction as a single one is that the Magistrate did not consider whether the digital penetration of the victim's vagina warranted the same punishment as the penile-anal penetration.

5 In terms of section 309(1)(a) of the Act 51 of 1977.

6 The appellant was refused leave to appeal against the conviction and sentence in respect of the sexual assault.

[7] On the night of the alleged incidents, the appellant slept over at the complainant's home. He was assigned to sleep in the complainant's bedroom, whilst her brother and sister stayed with her in her bedroom. The alleged crimes took place in the complainant's sister's bedroom. It took place in the bedroom's darkness.[7]

[8] The complainant recalled that, whilst she was asleep, she was awoken by a tapping on her toes and found the appellant standing over her bed. He instructed her to get up and follow her to her sister's bedroom. She obeyed. The complainant explained that the reason she obeyed the appellant was because, on an earlier occasion, when the appellant was demonstrating his traditional healing abilities, her mother had assured her to trust him. The appellant instructed the complainant to undress. She took off her top, and the appellant then took off her pants and underwear. She was left only in her sports bra. The appellant then ordered her to lie on her back on the bed. The appellant licked the inside of her vagina after opening her legs. The complainant resisted, but the appellant persisted. She was ordered not to scream, as it would wake her parents.

[9] Thereafter, the appellant wet his fingers with Vaseline and juice and proceeded to violate her by inserting his finger into her vagina. After that, he told her to turn onto her stomach, she heard him unzip his jeans before he penetrated her anally. When she tried to rise, he hit her on her back, forcing her down again. The appellant again told the complainant to remain silent so as not to wake her parents.[8]

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7 It is alleged that the appellant switched off the lights in the bedroom.
8 Her mother was in a bedroom close by in the same house.

[10] After she had been violated, the complainant managed to escape from the bedroom and immediately went to her mother's bedroom. She told her mother that the appellant had raped her.[9]

[11] The complainant recalled her mother going to the room where she had been raped and seeing her daughter's clothing on the floor. The complainant's mother confronted the appellant. He accused the complainant of lying and her mother demanded to know why the complainant's clothes were on the floor if she was lying. When asked, the complainant estimated that the assault on her took place at around 5am in the morning.

THE FIRST REPORT

[12] The first report was made to the complainant's mother. The appellant is her husband's cousin. Her husband introduced the appellant to her, and they said that the appellant was a traditional healer. The appellant informed her husband that there was an evil spirit influencing the complainant and that this evil spirit emanated from her husband. The appellant was permitted to expel this evil spirit from the complainant.

[13] The appellant notified the complainant's parents that he would visit their home to cleanse it and rid the complainant of the evil spirit that had been bedevilling her. The complainant's father went to fetch the appellant and brought him to their home, so that this cleansing could be affected.[10]

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[9] This happened immediately after she had been raped and sexually assaulted.
[10] The appellant denied these allegations.

[14] On the eve of the rape and sexual assault, the complainant's mother was watching television with her eldest daughter and the appellant. The complainant was already asleep in her bedroom. Thereafter, she and her eldest daughter retired to bed.[11]

[15] In the early hours of the following morning, there was a knock on her bedroom door by the appellant. He wanted to know what style of shoes she wore to work.

[16] She found this interruption odd and went back to bed but did not fall asleep immediately. Her husband remained asleep because he was recuperating from a medical procedure.[12] Shortly after, she heard a door open but assumed it was the appellant retiring to bed.

[17] Shortly after that, the complainant rushed into her bedroom crying and shouted that "he" had raped her. The complainant's mother asked who had raped her, and the complainant identified the appellant.[13] The complainant's mother woke her husband before going to find the appellant.

[18] The complainant's mother confronted the appellant, and he denied any wrongdoing. The complainant was not wearing any clothes save her brassiere, and her pyjamas were in the room the appellant was occupying. The appellant offered no explanation. In her rage, she put a kettle of water on the boil with the intention of throwing it at the appellant.

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[11] This was not materially challenged.
[12] This was no disputed.
[13] This was the evidence of the first report.

[19] She notified her cousin, who lived nearby, because his wife was a police officer. The police arrived and arrested the appellant.[14]

THE MEDICAL EVIDENCE

[20] The clinical findings were as follows: (a) a fresh abrasion on the upper back, resulting from blunt force trauma, (b) the perineum had a two-millimetre fresh tear, and (c) there were fissures on the anal orifice with several tears. The medical expert confirmed that the latter injuries were consistent with penile-anal penetration.

THE APPELLANT'S CASE

[21] The appellant testified that he had known the complainant for about four (4) months before the incident (though this later became three (3) months).[15] The complainant and her mother were mistaken when they said that the purpose of the visit was to 'heal' the complainant. His evidence was that he had already done the healing and that this was a social visit.[16]

[22] He went to sleep at around 4am after watching television. About an hour later, while he was in his bedroom asleep, the complainant's mother confronted him with the allegation that he had raped the complainant. He denied the allegation but was later arrested by the police.[17]

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[14] Shortly after the incidents took place.

[15] All three factual witnesses were inconsistent in their account of exactly when the meeting with the appellant occurred. In our view, nothing much turns on these inconsistencies. Until the night in question, there would have been no reason for the timing of the meeting to stand out in their memories.

[16] In our view, nothing much turns on this potential inconsistency, it being common cause that the appellant had (a) previously performed a cleansing ritual on the complainant and (b) that he was at the complainant's residence on the night in question.

[17] He denied the allegations of rape and sexual assault.

[23] He averred that the complainant's father orchestrated the false allegations against him due to a longstanding feud. This feud, so he contended, concerned a traditional battle over who would oversee their family. The appellant's case is that the father of the complainant (who is his cousin) wanted him 'out of the picture' so that he (the father of the complainant) would oversee the extended family.[18]

GROUNDS OF APPEAL ON CONVICTION

[24] The grounds of appeal may be essentially summarised as follows: (a) that the complainant's evidence was unreliable because there were some inconsistencies in her evidence, (b) that the complainant's evidence was unreliable because she was a single witness, (c) that the complainant's evidence was unreliable because the double cautionary rule should be applied and (d) that the complainant's evidence was unsupported by any other evidence aliunde.[19]

CONSIDERATION

CONVICTION

[25] The criticism of the trial court's findings was solely directed at the alleged incorrect assessment of the alleged poor quality of the complainant's evidence. Very little, if anything, is mentioned about the totality of the evidence (and the evaluation thereof) presented during the trial.[20]

[26] It was submitted that the trial court convicted the appellant on a balance of probabilities instead of proof beyond reasonable doubt.

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[18] This was the motive suggested by the appellant.
[19] That is, not supported by the surrounding objective facts.
[20] *S v Van der Meyden* 1999 (1) SACR 447 (W) at 448.

[27] Thus, the issue in the appeal before us was whether the respondent had met its burden of proving the appellant's guilt beyond a reasonable doubt on the evidence presented to the trial court.

[28] Firstly, although the appellant was convicted based primarily on the evidence of a single child witness, there was supporting evidence from other sources to validate the complainant's version.[21] Most notably, the complainant's mother confirmed the complainant was dressed only in her sports bra when she rushed into her bedroom and that the complainant's clothes were in the bedroom in which the appellant had slept. Significantly, the complainant's mother recalled that the complainant's top was on the bed and that her pants were on the floor. The observation is inherently consistent with the complainant's evidence that she removed the top herself (she would likely have placed it on the bed) and the appellant removed her bottom garments (he would likely have just dropped them to the floor).

[29] Another factor that supports the credibility of the complainant's evidence is her off-hand recollection that the floor was wet when she escaped from the appellant. That seemingly random recollection is consistent with her earlier evidence that the appellant wet his fingers with juice before inserting his fingers into her vagina. There would have been no reason at all for the complainant to fabricate these details if her father had orchestrated the alleged plot against the appellant.

[30] It was also common cause that the commotion (whether on the complainant's version or the appellant's) occurred at around 5am in the morning. In other words, even on the appellant's version, the spontaneous accusation that he had raped the

[21] There was sufficient evidence *aliunde.*

complainant occurred at that time – whilst the complainant's father was still fast asleep.

[31] Further support for the complainant's credibility may be found in her report to her mother and in the medical evidence. These reports demonstrate that the complainant acted in a manner consistent with her allegation that she had been raped. These factual issues go to her credibility, not to be confused with issues of corroboration.

[32] Other factual evidence which supported the complainant's version were: (a) the complainant was visibly upset and crying when she reported the incident to her mother, (b) the complainant was semi-naked and was wearing only a brassiere and no other clothes, and (c) the alleged anal rape was supported by the medical evidence.

[33] The medical evidence was tendered in support of the allegations by the complainant. No other reasonable possibility, save for anal penetration, was presented as a possible cause for the complainant's injuries. The trial court was correct to reject the suggestion – put by the appellant's legal representative – that such injuries might have been caused as a result of constipation. Not only was there no factual basis for the suggestion, but the medical expert confirmed that, in her three decades of experience, she had never seen such injuries caused by constipation.[22]

[34] The trial court also extensively evaluated the appellant's evidence and found it to be improbable that the complainant's father would have invited the appellant to

[22] Compare *S v Hammond* 2004 (2) SACR 303 (SCA) para 19.

heal his daughter and invite him into the sanctity of his home if he held a long-standing grudge against the appellant. We agree that the proposition is illogical. To this, we would add that, on the appellant's own version, when he saw the complainant's father, which was after the initial confrontation with the complainant's mother, it appeared to him that the complainant's father had just awoken. The two then got into an argument after the appellant denied having raped the complaint. The evidence is significant for at least two reasons. First, it is consistent with the complainant's mother's evidence that she woke the complainant's father after the complainant rushed into her bedroom and before going to find the appellant. Second, if the complainant's father was the mastermind behind a plot to implicate the appellant, he would surely have been awake when the events unfolded. In the circumstances, the suggestion that the entire incident was orchestrated by or at the behest of the complainant's father is far-fetched and not reasonably possibly true.

[35] The appellant was also unable to explain why the complainant's pyjamas and underwear were found in the bedroom where the appellant was sleeping (save for a bare denial of the complainant's version, it was never put to the complainant's mother that she had lied about seeing the complainant's clothes in the bedroom). The corroboration on this aspect from the complainant's mother supports the complainant's version that she was in the same bedroom as the appellant.

[36] Notably, the trial court sufficiently engaged with the evidence, both uncontested and contested and applied the double cautionary rule when evaluating the complainant's evidence.

[37] When the evidence is weighed in its totality, it raises no reasonable doubt about the appellant's guilt. There is no reasonable possibility that the appellant's version is remotely authentic for him to be entitled to the benefit of any doubt.

[38] Thus, the trial court's findings on conviction were correct and cannot be faulted.

SENTENCE

[39] The appellant submitted that there were substantial and compelling factors present within the totality of the appellant's personal circumstances, which justified a deviation from the prescribed sentence of life imprisonment. For the reasons below, we disagree.

THE OFFENCES

[40] The appellant was convicted on two counts of rape for contravening the provisions of section 3 read with sections 1, 55, 56(1), 57, 58, 59, 60, 61 and 68 of the Criminal Law Amendment Act (Sexual Offences and Related Matters), section 51 and Schedule 2 Part 1 of the Criminal Law Amendment Act, 105 of 1997.[23]

[41] The Supreme Court of Appeal has eloquently described crimes of this nature as follows:

> *'…Rape must rank as the worst invasive and dehumanising violation of human rights…'*[24]

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[23] Act No, 32 of 2007.
[24] *S v Nkunkuma and Others* 2014 (2) SACR 168 (SCA) para 17.

[42] The judicial officer in the lower court found that no substantial and compelling circumstances existed to justify a deviation from the prescribed sentence of life imprisonment.[25] In reaching this conclusion, the Magistrate expressed agreement with the following *dicta* from this division:

> "*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 deeds often haunts his victim and subjects her to mental torment for the rest of her life – a fate often worse than loss of life.*"[26]

[43] We, likewise, agree.

GROUNDS OF APPEAL ON SENTENCE

[44] The appellant's case is that the sentencing court erred in finding that no substantial and compelling circumstances existed. The case advanced on appeal is that the sentencing court did not balance the seriousness of the offences against the personal circumstances of the appellant.

[45] The personal circumstances relied upon were these: (a) he was thirty-seven (37) years old at the time of arrest, (b) he is married and has seven children, (c) he completed grade 11, (d) he worked as a traditional healer to support his family, and (e) he has suffered from asthma since the age of fifteen years old, (f) he had spent two years in custody and was unable to attend his mother's funeral as a result, and (g) he had one prior conviction of rape more than ten years previously.[27]

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[25] Thus, the sentences of life imprisonment were imposed.
[26] *S v C* 1996 (2) SACR 181 (C) at 186 e-f.
[27] This did not serve as a sufficient deterrent.

[46] There is plainly nothing substantial or compelling in these circumstances – neither individually nor cumulatively.

[47] It was further submitted on behalf of the appellant that a sentence of life imprisonment has no potential for achieving rehabilitation. But, in the absence of any sign of remorse from the appellant for this most heinous violation of the complainant, there is nothing before us to suggest that the appellant can be rehabilitated.

[48] In our view, in the absence of any demonstrated remorse by the appellant, the possibility of rehabilitation is best left for consideration if and when he becomes eligible for parole. The appellant was thirty-eight (38) years old at the time of sentencing. Following section 73(1)(b) of the Correctional Services Act, a person sentenced to life imprisonment theoretically remains in prison for the rest of his or her natural life. However, life imprisonment, in practice, is typically regarded as a sentence of twenty-five years. In this connection, the parole provisions that may become relevant and to the benefit of the appellant are indicated as follows:

> *'… A person sentenced to life imprisonment may not be placed on parole until he or she has served at least twenty-five (25) years of the sentence, but such a prisoner may, on reaching the age of sixty-five (65) years, be placed on parole after he has served at least fifteen (15) years of the sentence…'*[28]

AGGRAVATING FACTORS

[49] The complainant was only 13 years old at the time the offences were committed, and the appellant used his position as a traditional healer to induce her to

[28] Section 73(6)(b)(iv) of Act 111 of 1998 (the "Act").

trust him. He violated that trust in the most egregious way imaginable. The rape and sexual assault have left the complainant depressed and with suicidal thoughts. She described how she feels trapped like a tiny bear in a pill box and drew a poignant picture of a bear in a sealed jar to illustrate that feeling. [29]

[50] The rape of a child is a grave offence. It strips the child of their innocence and childhood and leaves them with lifelong invisible scars that leave them feeling misunderstood and alone – that is the essence conveyed by the complainant's victim impact statement. Through no fault of her own, her life will forever be tainted by what the appellant did to her.

[51] On the other hand, the appellant was convicted of rape in 2009 and sentenced to 7 years' imprisonment. He was evidently undeterred by that punishment.

CONCLUSION

[52] In summary, the appellant contended that the cumulative effect of the factors listed above should have been regarded as substantial and compelling, sufficient to deviate from the prescribed sentence. It is trite law that in sentencing, the punishment should fit the crime and the offender, be fair to society, and be blended with mercy.[30]

[53] In general, an appeal court's interference with a sentence will only be justified: (a) when there has been an irregularity that fails justice; (b) or when the court *a quo* misdirected itself to such an extent that its decision on sentencing is vitiated, or (c)

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[29] This is set out in her victim impact report.
[30] *S v Rabie* 1975 (4) SA 855 (AD) at 862 G.

when the sentence is so disproportionate or shocking that no reasonable court could have imposed it.

[54] As regards an appeal court's powers when considering an appeal against a mandatory sentence, the following *dicta* is apposite:

> *'…What then is the correct approach by a court on appeal against a sentence imposed in terms of the Act? Can the appellate court interfere with such a sentence imposed by the trial court's exercising its discretion properly, simply because it is not the sentence which it would have imposed or that it finds shocking? The approach to an appeal on sentence imposed in terms of the Act should, in my view, be different to an approach to other sentences imposed under the ordinary sentencing regime. This, in my view, is so because the minimum sentences to be imposed are ordained by the Act. They cannot be departed from lightly or for flimsy reasons. It follows therefore that a proper enquiry on appeal is whether the facts which were considered by the sentencing court are substantial and compelling, or not…'*[31]

[55] Thus, where the legislature has deemed it necessary to prescribe a sentence of life imprisonment, a court is expected to depart from such prescribed sentence regime only if it can find and identify substantial and compelling circumstances to justify such a departure to the appellant's benefit. In doing so, the court remains obliged to remember that the specified sentence has been prescribed by law as the sentence that should be regarded as ordinarily appropriate for the particular crime. Deterrence and retribution tend to steer the severity of the proposed sentence in a

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[31] Tafeni v S 2016 (2) SACR 720 (WCC) at para 8, with reference to S v PB 2013 (2) SACR 533 (SCA) at para 20.

specific direction. Rehabilitation, on the other hand, tends to pull the proposed sentence in yet another direction.

[56] As already stated, in the absence of any demonstrated remorse by the appellant, there is nothing before us to decide on the prospect of rehabilitation. In the circumstances, focusing on rehabilitation, in this case, would lead to an unfair and inappropriate sentence, which would be disproportionate to that deserved by the appellant for the crime for which he stands convicted.

[57] Crimes in general, but especially against women and children, offend against the aspirations and ethos of all right-minded South Africans. Not only are crimes against women in this country a severe invasion of the dignity of the victims, but the frequency with which these crimes are committed undermine our claims that we live in a gender-equitable and just society. The appellant's crimes, rape perpetrated against a thirteen-year-old child, fall into the category of the most heinous and abhorrent crimes and precisely what the legislature contemplated when it included such offence in section 51(1) of Act 105 of 1997.[32]

[58] Gender-based violence has regrettably reached pandemic proportions in our country. Despite campaigns and law reform efforts from the government, there is no demonstrable stem in the scourge of violent crimes committed against women and children. We believe an unambiguous message must be sent to offenders who commit this type of criminal activity. That is what section 51(1) of Act 105 of 1997 requires. That this crime was committed against an thirteen-year-old child also requires that, in considering the issue of sentence, the court must consider the provisions of section 28 of the Constitution, namely the right of every child under

[32] The complainant was a soft target for the appellant.

section 28(1)(d), to be protected from maltreatment, neglect, abuse or degradation – a right which the appellant egregiously violated in this case.[33]

[59] After careful consideration, we find no redeeming factors that would mitigate the appellant's sentence of life imprisonment to his benefit. We find only aggravating factors. We say this despite the appellant having spent a significant period incarcerated as a pre-trial prisoner. When an offender has been detained as an awaiting-trial prisoner for an extended period, this may be considered when imposing an appropriate sentence. Although it is a relevant factor to be considered, in the circumstances of the present case, the period of 1 year and 10 months incarceration awaiting trial is not a substantial and compelling reason to deviate from the prescribed sentence of life imprisonment.[34] We do note, however, that the sentencing court took into account the appellant's incarceration awaiting trial when it imposed a sentence of five (5) years in respect of the appellant's conviction for sexual assault, and antedated that sentence to the date of his arrest.

[60] In our view, therefore, the court of first instance fairly balanced the appellant's personal circumstances against the seriousness of the offence and the interests of society. The court of first instance ultimately concluded, correctly in our view, that the appellant's personal circumstances, either singularly or cumulatively, did not merit deviation of the mandated sentence. Thus, the lower court did not err in imposing a sentence of life imprisonment on the appellant.

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[33] S v Myburgh 2007 (1) SACR 11 (W), at page 15 at h.
[34] S v E T 2012 (2) SACR 478 (WCC) para 18.

[61] Finally, it is a further significant factor that the appellant has a previous conviction for rape.[35] Although this offence occurred a long time ago, despite a lengthy sentence of imprisonment, it did not appear to deter the appellant from re-offending. Thus, the sentence of life imprisonment was not unjust and disproportionate, considering the circumstances surrounding the commission of the offences.

ORDER

[55] In conclusion, an order is issued in the following terms:

1. The automatic appeal against the appellant's convictions and sentence are dismissed.

2. The convictions and sentence of life imprisonment are confirmed.

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WILLE, J

I agree.

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CHRISTIANS, AJ

[35] This cannot be ignored and weighed heavily with us.