REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: A30/2024

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED: YES/NO

Naude – Odendaal J

[redacted]

SIGNATURE

19/01/2026

DATE

In the matter between:

FRANS BAMBO **APPELLANT**

and

THE STATE **RESPONDENT**

JUDGMENT

NAUDÉ-ODENDAAL J:

[1] This is an appeal against both conviction and sentence. The Appellant was convicted in the Regional Court of Mahwelereng on 20 September 2024 on two

counts of contravening the provisions of Section 3 of the Criminal Law Amendment Act, 32 of 2007, read with the provisions of Section 51(1) of Act 105 of 1997 – Rape.

[2] The Appellant was sentenced by the court *a quo* to life imprisonment on both counts. The Appellant was legally represented at all material times of the trial by Mrs. Mbedzi from Legal Aid SA.

[3] The Appellant's grounds of appeal in respect of the convictions are briefly that the court *a quo* erred in making a finding that the State proved its case beyond reasonable doubt, that the state witnesses gave evidence in a satisfactory manner, that there are no improbabilities in the State's version and that the evidence of the state witnesses can be criticized on matters of details only, whereas the evidence of the evidence was contradictory in material respect.

[4] The Appellant further submits that the court *a quo* erred in failing to properly analyze and evaluate the evidence of the state witnesses, properly consider the improbabilities inherent in the State's version. The court *a quo* further erred in rejecting the evidence of the Appellant as not being reasonably possibly true and by accepting the evidence of the state witnesses and rejecting that of the defense. The court *a quo* further erred by holding against the Appellant minor contradictions in his evidence and by giving importance to minor discrepancies in the Appellant's evidence.

[5] The State Respondent called five state witnesses to prove its case. The first state witness testified about her seeing the victim with the Appellant, the second state witness was the first reporter who is the mother of the victim, the third state witness is the victim and the fourth state witness is Dr. Movundlela who testified on her discovery during the medical examination of the victim. The fifth state witness was Warrant Officer Rambau who testified on his expert analysis of the positive DNA results.

[6] The Respondent submits that if the totality of the evidence is considered regarding the issue of rape, there is no doubt that the Appellant is guilty of the charges of rape and was correctly convicted. The State further submitted that the factual and credibility findings of the trial court are presumed to be correct unless they are shown to be wrong with reference to the record.

[7] In **S v Hadebe and Others 1997 (2) SACR 641 (SCA) at page 645** it was held that when considering a matter on appeal, the appeal court, in the absence of any demonstrable and material misdirection by the trial court, presumes that the findings of fact made by the trial court are correct and will only be disregarded if the recorded evidence shows them to be clearly wrong.

[8] In this court's view, there is nothing in the record of proceedings which would lead to a conclusion that the court *a quo* erred in any material respect or misdirected itself in any material manner regarding the evaluation of the evidence or the weight to be accorded to the said evidence.

[9] The Appellant failed to demonstrate any material misdirection by the trial court and this court could not find any material misdirection either. The trial court's findings of fact were correct and there is nothing in the record indicative thereof that it should be disregarded.

[10] The trail court gave intelligent and judicial consideration to all the important features of the case and the Appellant failed to show the trial court was clearly wrong. If the totality of the evidence is considered against the Appellant, there is no doubt that the Appellant is guilty, especially in light thereof that he was positively linked through DNA and the Complainant's evidence was corroborated by the J88, as well as the DNA test results. The Complainant's evidence, although a single child witness, was satisfactory in all respects. Therefore the appeal on conviction should be dismissed.

[11] In respect of sentence, it was submitted by the Appellant that the court *a quo* imposed a harsh and disproportionate sentence under the circumstances of the present case. The Magistrate further erred in overemphasizing the seriousness and aftereffects of the offence.

[12] The Appellant further submitted that in sentencing the Appellant, the trial court erred in finding that there are no substantial and compelling circumstances. The trial court failed to consider and analyse the Appellant's circumstances.

[13] The State on the other hand submitted that the trial court correctly imposed the prescribed minimum sentence of life imprisonment upon the Appellant. It is common cause that the provisions of **Section 51(1) of the Criminal Law Amendment Act, 105 of 1997,** is applicable.

[14] It is trite that sentencing or punishment is pre-eminently a matter of discretion of the trial court. The power of the Appeal court to interfere with the discretion of the sentencing court is limited. The Appeal court will only interfere if the trial court has misdirected itself on issues of law or facts in imposing sentence or if it has committed some irregularity which vitiates the sentence. A court exercising appellate jurisdiction, cannot, in the absence of a material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at, simply because it prefers to.

[15] In **S v RO and Another 2010 (2) SACR 248 (SCA) at paragraph 30 that Hener JA** stated as follows:-

"sentencing is about achieving the right balance or in more high-flown terms, proportionality. The elements at play are, the crime, the offender, the interest of society with different nuance, prevention, retribution, rehabilitation, reformation and deterrence. Invariably there are overlaps that render the process more unscientific, even a proper exercise of the judicial function allows reasonable people to arrive in different conclusions."

[16] In **S v Kekana 2013 (1) SACR 101 (SCA)**, it was stated that:-

"It is trite that this court will not interfere with the sentence imposed by the court a quo unless it is satisfied that the sentence has been vitiated by a material misdirection or is disturbingly inappropriate. No misdirection has been alluded to, nor can it be said that the sentence induces a sense of shock. It has been submitted on behalf of the Appellant that the sentence is out of proportion to the gravity of the offence and that, in the circumstances of this case, a non-custodial sentence was appropriate. It is true that the appellant has an unblemished record and that he was a useful member of society in gainful employment at the relevant time. Those circumstances, however, have to be weighed against the nature and severity of the offence and the requirements of society. Notwithstanding those mitigating factors being present, the seriousness of the offence makes it necessary to send out a clear message that behaviour of the kind encountered in this case cannot be countenanced. The natural indignation that the community would feel at conduct of this kind warrants recognition in the determination of an appropriate sentence."

[17] In this court's view, the Appellant failed to prove that there are any substantial and compelling circumstances present warranting a deviation from the prescribed minimum sentence of life imprisonment. None of the factors that the Appellant submitted in mitigation of sentence are substantial and compelling, even if they are taken cumulatively. The court *a quo* correctly found that there were no substantial and compelling circumstances present.

[18] **Section 51 of Act 105 of 1997** stipulates 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 1 of Schedule 2 to imprisonment for life."
(Own emphasis added)

[19] **Part 1 of Schedule 2 of Act 105 of 1997** provides for offences including *inter alia*:-

"Rape as contemplated in Section 3 of the Criminal Law (Sexual Offences and " Related Matters) Amendment Act, 2007 –

(a) ....

(b) Where the victim –

(i) Is a person under the age of 18 years."

[20] **Henriques J** referred to **S v Vilakazi 2009 (1) SACR 552 (SCA),** where the court (in Vilakazi) explained that particular factors, whether aggravating or mitigating, should not be taken individually and in isolation as substantial or compelling circumstances. In deciding whether substantial and compelling circumstances exist, one must look at traditional mitigating and aggravating factors and consider the cumulative effect thereof. When sentencing, a court considers the personal circumstances of an accused. However, only some carry sufficient weight to tip the scales in favour of the accused to impact on the sentence to be imposed. Often the fact that the accused is young and is a first offender has the effect of reducing a sentence.

[21] The minimum sentences have been legislated to be the sentences that must ordinarily. be imposed unless the court finds substantial and compelling circumstances, which justify a departure therefrom. In addition, the Supreme Court of Appeal has indicated that the minimum sentences must not be departed from for '*flimsy reasons*' and are the starting point when imposing sentence.

[22] In the event of substantial and compelling circumstances not existing, a sentencing court is then entitled consider departing from imposing the prescribed minimum sentences, if it is of the view that having regard to the nature of the offence, the personal circumstances of the accused, and the interests of society, it would be disproportionate and unjust to do so. This is often referred to as the proportionality test. In my view however, the proportionality test must be viewed against all the circumstances of the case, particularly the interests of society in violent and serious crimes. (See **S v Mlambo and Others (Sentence) (CC31/2019) [2025] ZAGPPHC 55 (13 January 2025 paras 16 – 18)**.

[23] In the present matter, the sentence imposed by the trial court was appropriate. Rape of children is appalling and perverse abuse of male power. For an Accused to rape a child is deplorable and it deserves no other censure than that imposed by the trial court in this matter. The sentence is not disproportionate to the offence that the Appellant raped an (at the time) 8 year old girl vaginally, anally and abused her orally.

[24] Accordingly, this court therefore makes the following order:-

1. The appeal against both conviction and sentence is dismissed.

[redacted]

M. NAUDÉ-ODENDAAL

JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION,

POLOKWANE

I AGREE:

[redacted]

J. STRÖH

ACTING JUDGE OF

THE HIGH COURT,

LIMPOPO DIVISION,

POLOKWANE

APPEARANCES:

HEARD ON: **19 SEPTEMBER 2025**

JUDGMENT DELIVERED ON: **19 JANUARY 2026**

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