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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case No.: A184/2025

In the appeal between:

JEREMY CLAASSEN

Appellant

and

THE STATE

Respondent

Coram: DA SILVA SALIE, J et HIGGINS, AJ

Heard on: 24 October 2025

Delivered on: 24 February 2026 (handed down electronically)

Summary:

Criminal law – Rape – Appeal against conviction and life sentence – Complainant a single witness – Material discrepancies between viva voce testimony and history recorded in J88 medico-legal report not interrogated by trial court – Improper reliance on demeanour and emotional state – Alibi supported by documentary proof rejected on speculative grounds – Section 186 CPA invoked after close of defence case to undermine alibi – Misapplication of court’s powers – J88 finding that hymen “not intact” neutral and not probative of rape on date alleged – State failed to prove guilt beyond reasonable doubt – Appeal upheld – Conviction and sentence set aside – Accused acquitted.

ORDER

1. The appeal against conviction and sentence is upheld.
2. The order of the court a quo dated 14 May 2025 is set aside and substituted as follows:

“The accused is acquitted in respect of count 1.”

3. The above order is antedated to 14 May 2025.

JUDGMENT

DA SILVA SALIE, J

Introduction:

[1] This appeal arises from the conviction and sentence imposed by the Regional Court, Worcester, on the appellant, Mr Jeremy Claassen. On 14 May 2025, the appellant was convicted of rape under section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, read with sections 51(1) and 52(1) of the Criminal Law Amendment Act 105 of 1997. He was sentenced to life imprisonment, with his particulars ordered to be entered into the National Register for Sex Offenders and the National Child Protection Register. The appellant exercises his right of automatic appeal against the conviction and sentence.

[2] The appellant pleaded not guilty to both charges and did not tender a plea explanation. He was legally represented throughout the trial. In order to prove the two charges of rape, the State called the complainant, a minor, who was a single witness to the incidents and her classmate as the person to whom she first reported the sexual assault. The J88 medical report was handed in to support the allegations of rape. The appellant testified in his own defence and called no further witnesses. On the date set down for judgment, the magistrate instead made a direction calling a witness for the court, the school principal, on the basis that his evidence was necessary to clarify certain aspects in the interests of justice. The appellant was convicted on the first count, however, was acquitted on the second count and sentenced to life imprisonment. The appellant exercises his right to an automatic appeal to this Court. The appeal is based on a number of grounds, set out in more detail below. The respondent opposes the appeal on the basis that the trial court had correctly convicted the appellant and that the sentence of life imprisonment is not shockingly inappropriate which would otherwise warrant interference by this Court on appeal. I now turn to historical background which has given rise to this appeal.

Background and evidence of witnesses:

[3] The appellant, employed as a Life Orientation teacher at a school in Worcester, was charged with two (2) counts of rape in that he is alleged to have

penetrated the complainant with his penis without her consent, a 13-year-old learner, on two occasions. Both incidents are alleged to have transpired at the school and in the classroom respectively on 7 and 12 February 2020. The appellant was convicted on the first count but acquitted on the second count.

[4] This judgment will only focus on the evidence which relates to the first incident of rape, alleged to have transpired on 7th February 2020, and which conviction forms the subject of this appeal.

The complainant:

[5] The complainant testified that on Friday, 7 February 2020, and during the two school breaks that day, later changed to during the second break around midday, she went to the appellant's classroom to charge her cell phone. Upon entering the class, she found the appellant seated at his desk. She placed her phone in the charger and then sat on one of the benches. The appellant walked towards her and instructed her to stand up. He lifted her up and placed her onto the bench. He opened her legs. She tried to push him away, but he pushed her backwards on the bench and after a wrestle, he inserted his penis inside her vagina. He stopped when the bell rang. He returned to his desk, and she went to the bathroom to check whether there were any fluids.

[6] Three days later, on the Monday 10 February 2020, she told her friend what had transpired on the previous Friday. She did not inform her mother as she was fearful of rebuke and that the appellant would lose his employment as a teacher. KK however informed a teacher as to what the complainant had told her, who in turn brought it to the attention of the school principal, Mr. Titus. The matter was thereafter reported to the SAPS.

[7] Under cross examination, she testified that she closed the door when she entered the classroom. She did not want others to see her going to the accused

as she was concerned as to what they would say. She charged her cellphone by borrowing the charger of the accused.

First report witness – KK:

[8] The first report was made to the complainant's fellow classmate on the following school day, the Monday 10 February 2020. KK testified that the complainant and herself were in the same class during grade 8 and that the appellant was their Life Orientation teacher. The complainant told her that she and "Mr. Claassen had sex" and that it happened during the second break on Friday, the 7th when the complainant had gone to him in the classroom to charge her cellphone. KK further testified that the complainant briefly told her that whilst she was speaking with the appellant on that day, he told her to lift her dress up and sit on the bench. When she refused, he lifted her dress, placed her on the chair, unzipped himself and had intercourse with her.

J88 Medical Report:

[9] The further evidence relied upon by the State was the J88 medico legal report which was completed by Dr. Tlhoale on 18 February 2020. The medical report was handed in by way of Section 212 (4) and (8) as well as Section 213(3) of the Criminal Procedure Act 1977 ("the CPA").

[10] The medical history, at paragraph 5 thereof, sets out what the complainant stated during the medical examination. She reported that on the 7th of February 2020, the classroom was empty when she entered around 11h00 to 11h30. She proceeded to charge her phone. Whilst she was sending music from her friend's phone to hers, the teacher entered. He told her to stand up and wanted to have sex with her. She was scared as she did not want to fall pregnant. He assured her not to worry and that he would be quick. He lifted her dress and started kissing her whilst penetrating her. When he was done, he asked if they could do it again. She refused and told him "NO". He proceeded to hold her tight and

forced himself on her. She tried to push him away, but he was holding her very tight. After the incident she went to the toilet to urinate, and she noticed that she was bleeding vaginally. She also reported that she was in pain and that she was a virgin. The gynaecological examination records that the complainant's hymen is not intact. The report concludes that the history provided by the complainant and the speculum exam, is consistent with *"an occurrence of sexual activity"*. The State thereafter closed its case.

Mr. Jeremy Claassen – the Appellant:

[11] At the commencement of the trial on 20 August 2024, the appellant was represented by new counsel, Mr. van der Merwe. The appellant testified that he had on 24 December 2020 been issued with a traffic fine. The fine stipulated a court date, 7 February 2020. During that morning, after 7h00 and before the first school period at 7h30 he informed the Mr. Titus, the principal, that he had to attend to the fine which was due on that date. Mr. Titus allowed him to use his vehicle to sort out the fine as his own vehicle was in for a service. However, he first had to arrange for another teacher to give his class, whereafter he left the school around 09h00. He went to his house to get cash to pay the fine and initially attended at the traffic department, but they informed him that since it was the date of the court appearance as set out in the fine, he could only pay it at the Worcester Court. He proceeded to the court, paid the fine whereafter he went to collect Mr. Titus from the OBOS/WECD offices on way back to the school. They arrived at school around 12h30, after second break. Exhibit D, the traffic fine enquiry report, records that the fine was paid at the Worcester Magistrates (Municipal) Court on 7 February 2020 at 11h55 AM. The printout was generated on 1 June 2022.

[12] The appellant further testified that the school day consists of 8 periods, lasting 40 minutes each with two breaks. The first break would be around 9h30 for 25 minutes and the second break around 11h30 for about 10 minutes. When he returned to school at around 12h30 on that day, his classes proceeded

as normal. He denied that he had any interaction with the complainant on that day and denied that he has had sexual intercourse with her as alleged. He testified that the only interaction he had with the complainant was on the 14 February 2020. The school had a Valentine's Day function. The complainant attended at his class with her friends, and she asked him for permission to charge her phone. Learners were not allowed cellphones but since the school had a Valentine's Day event, it was an exception so that they could take photos. His own class learners were still in the class when the complainant and her mates approached him. He undertook to let the phone charge and that he would send it to her with his class monitor and where she would be at the Valentines' Day programme.

[13] Before the complainant and her friends left, she showed him a message between herself and another learner, R, on her cellphone, which related to "*stories*" of him and the complainant and which resulted in a prior altercation between R and the complainant. He asked the complainant to retain the messages so that it could be reported to the principal on the following school day, which was Monday, 17 February 2020. When he was called to the principal's office on the 17th, he assumed it related to these rumours. When he met with the principal, members of the governing body were also present and he was informed that given the sexual allegations by the complainant, a criminal complaint would be investigated, and his contract of employment was suspended with immediate effect. No specific details were provided to him at that stage.

[14] Under cross examination, the prosecution put it to the appellant that there would have been enough time for the incident to occur given that the complainant had testified the incident occurred during the second break even if he had paid the traffic fine at 11h55 on that day. The appellant denied that would be so as he had left the school around 08h00 that morning and returned well after 12h00. He was not present at the school and spent the morning sorting out the fine and attending at Court. He testified further that the second break is between 11h30 and 12h00. When pressed that his alibi defence of the traffic fine payment at

court was belated and essentially an afterthought, he testified that he had provided it to both his previous attorneys.

Invocation of Section 186 of the CPA by the court a quo for evidence of Mr. Titus:

[15] After the closing of the defence case, the matter was postponed for judgment to 11 February 2025. At the commencement of the proceedings that day however, the magistrate advised that having read through the record and the evidence that was presented in the matter, it was crucial to invoke Section 186 of the CPA by calling the school principal, Mr. Titus, as a witness for the Court on the basis that his evidence would be essential to clarify certain aspects and “assist the court to come to its conclusion”. The matter was postponed to the following month for Mr Titus to testify.

The Court’s witness: Mr. Titus – school principal:

[16] Mr. Titus testified that he was employed at the school for 39 years, of which he had been assuming the position as principal for 10 years from 2016. He confirmed that the appellant was employed at the school from 2018 until the day of his suspension on 17 February 2020. He indicated that a teacher reported to him what KK stated to him. KK confirmed to the witness the report so made to the teacher. He called upon the complainant as to what had been reported to him, and she confirmed having been sexually assaulted by the appellant, albeit she only referred to one incident which had transpired on 7 February 2020. He did not engage on further details as he sought to approach matters cautiously given the seriousness of the allegation and the applicable protocol procedures which requires of him to restrain himself from any investigation. He reported the matter to the school governing body, social worker and the SAPS. The appellant was summoned to his offices and in their presence together with a police officer, he was informed of the allegations, the commencement of a criminal

investigation by the SAPS and that he is suspended. At the meeting the appellant denied that the allegation of sexual intercourse with the complainant was true.

[17] The witness further testified that the first break lasted 20 minutes from 9h40 to 10h00 and the second break is at 12h00 until 12h10. Whilst he recalls the appellant approaching him at school in the morning regarding a traffic fine which he had to pay at court on the same day, and him offering his vehicle to the appellant to attend thereto, he was sure it was not on the 7th of February 2020. He recalled that the appellant left school with his vehicle before the commencement of the first break, in other words before 9h40 on such day. It was disconcerting to him that the appellant was absent for an ordinally long period of time particularly so as he needed appellant to be back in class to supervise the learners and that the appellant had left with his bakkie. Upon the appellant's return, he explained to the witness that as it was the court date, he had to pay it at court, and he had to queue in the line. That is why, he explained to the witness, it had taken him very long to attend to the payment of the fine. Mr. Titus could not remember what time the appellant returned, other than he was absent for over 1 ½ hours. However, he was sure that the appellant was back before the second break at 12h00 that day. He also confirmed that there was an occasion when the appellant borrowed his vehicle and that he was required to pick him up at the OBOS/WCED offices but that was a different date. In short, Mr. Titus confirmed that on a number of aspects which the appellant testified, such as approaching him (Mr. Titus) to pay a fine at the court which was due on the day, using his vehicle and leaving the school before the first break to pay the fine, as well as an occasion where he had to pick him up at the OBOS/WCED offices with his vehicle are correct, save for the fact that he insisted that it did not happen on the 7th of February 2020. He testified that the events occasioned over 5 years prior. He also maintained that although all the events which the appellant referred to have in fact happened, it did not happen on the 7th of February 2020. There was no indication why he would specifically remember

that these separate events did not transpire on the date when the alleged the rape incident happened.

Judgment of the court a quo:

[18] In convicting the appellant on the incident of the 7th of February 2020, the judgment a quo stated that, notwithstanding the rules of caution, the complainant displayed demeanour of candidness and forthrightness in her evidence and furthermore she was visibly emotional when describing the sexual penetration to the extent that the court had to adjourn to allow her to compose herself. The court found that her account of the incident on 7 February 2020 was detailed and consistent. The first report to her friend, KK, illustrated consistency. Both witnesses were found to be credible witnesses.

[19] The trial court considered the belated alibi by the appellant to warrant suspicion as it was not put to the complainant during cross examination and in turn the State could not reply thereto. The trial court laid emphasis on the fact that there is no explanation before the court as to why the appellant failed to highlight the fact earlier in the trial that he was at the Magistrate's Court during the incident on the 7th of February 2020. This issue together with the fact that the school principal, Mr. Titus, denied that the appellant approached him to pay the fine and borrowed his vehicle on the date of the incident, was ineluctable proof, in the view of the magistrate, that the appellant's claim was an afterthought or a recent fabrication. The magistrate further reasoned that even if the appellant paid the traffic fine on the 7th of February 2020, the traffic receipt print-out did not indicate the time of payment and cannot account for his whereabouts throughout the day. The magistrate concluded further that because the generation of the receipt was only retrieved two years later, on 1 June 2022, the inference can be drawn that the appellant was not in possession of the receipt and it is thus highly

probable that the appellant was not the person who made the payment of the fine at court on that day.

[20] The magistrate also placed substantial reliance on the medical report in that it provided support for the complainant's account, including prior sexual penetration consistent with her testimony. I will consider the court a quo's reasoning to support the conviction later in this judgment.

Grounds of appeal:

[21] On appeal the following grounds are submitted on behalf of the appellant:

[21.1] That the trial court erred in convicting the appellant based on the complainant's single-witness testimony, in that there were both material inherent contradictions as well as substantial material contradictions between her testimony and the historical account provided to the medical doctor.

[21.2] The trial court failed to properly evaluate the appellant's alibi defence (in the form of the payment of the traffic fine on 7 February 2020) and misdirected itself in rejecting the alibi on the basis that it was an afterthought, lacked credibility and could have been paid by someone else. In the result the magistrate misdirected itself in finding that the appellant's version is not reasonably possibly true.

[21.3] In regard to sentence, it is submitted that the trial court misdirected itself in imposing life imprisonment, particularly finding that no substantial and compelling circumstances exist which would warrant a deviation of the prescribed life sentence.

[22] The respondent opposes the appeal on the basis that it submits that the complainant's evidence was clear, satisfactory, and corroborated by medical findings, justifying the conviction. It contends that the sentence was appropriate given the offence's gravity and the absence of substantial and compelling circumstances.

Discussion of the facts and applicable legal principles:

[23] The court a quo was firstly required to consider whether the complainant's evidence as both a single and minor witness was credible and reliable in all material respects. Emphasis was placed on the fact that the complainant made a favourable impression in her demeanour and emotional visibility and that she was consistent in her account of events. The court a quo also found that her testimony was strongly supported by the J88 medico-legal report and the evidence of KK to whom the complainant first reported the incident. The basis for this finding is problematic. The demeanour and emotional state of a witness during testimony forms a limited value in the assessment of credibility.

[24] Furthermore, the reliance on the complainant's report to the medical officer as reported in the medical report appears misplaced. The historical account as per paragraph 5 of the report sets out a substantially different sequence of events to the complainant's testimony in court. Reliance on the contents of the report by the court in that circumstance warranted for the contents to be put to the complainant so as to afford her an opportunity to comment on these discrepancies. For example, to the medical officer she reported that the classroom was empty and she proceeded to charge her phone. That she attended the classroom between 11h00 and 11h30 well before second break. The teacher only entered the room afterwards but during her testimony she testified that the teacher, was seated at his desk. In the report a difference account is provided as to how the rape occasioned, what they said to each other, and after the initial penetration, the teacher wanted to do it again to which she

said no, but he forced himself and held her very tight. Afterwards she went to the toilet to urinate and noted she was bleeding vaginally, that she was in pain and that she was a virgin. These discrepancies are material, as her viva voce evidence omits the pre-assault conversation, kissing, his further request, further physical force and repeated sexual assault. The testimony that the sexual assault stopped at the ringing of the bell conflicts with the J88's sequence of events. Her testimony contradicts the time of her attendance at the classroom to being before the second break.

[25] Single-witness evidence must be clear and satisfactory in all material respects. In my view, the court a quo failed to address these contradictions, and it merely accepted the complainant's version as probable, without consideration of various inconsistencies, whilst at the same time finding that the events are consistent with the medical report which clearly is not the case. The complainant also veered in between the timing of the incident in that initially she went to charge her phone in the classroom of the appellant during the two breaktimes and then changing it to having transpired during the second break of the day.

[26] The medical report records that the complainant's hymen was "*not intact*" and concludes that the findings are consistent with "*an occurrence of sexual activity*". That finding is of limited probative value in the present matter. A hymen that is not intact does not establish when, how, or by whom it was altered. It does not prove penetration on the date alleged, nor does it distinguish between prior sexual activity, accidental injury, or the offence charged. The finding that the exam is in keeping with a sexual occurrence is also not indicative that it is a sexual occurrence which happened as per the charge of rape. Differently put, in the absence of evidence linking the physical finding causally to the incident of 7 February 2020, it does not constitute corroboration of the complainant's version of rape by the appellant on that date. It is important to note that a finding that a hymen is not intact and consequently in keeping with a sexual occurrence does not imply that no other possibility exist for it not being intact. The conclusion that the findings are consistent with sexual activity is not equivalent to proof of rape,

and certainly not proof beyond reasonable doubt of rape committed by this appellant at the time alleged.

[27] The contradictions in the complainant's evidence were not immaterial. They concerned the sequence, manner and details of the alleged assault. It extended beyond incidental detail and bore directly upon the coherence and reliability of the complainant's version on the central issue, that is, whether the appellant had raped her on the date and place as alleged. In a matter resting solely on the evidence of a child, such contradictions required careful judicial engagement and introspection.

[28] It must be born in mind however that the discrepancies between the medical report and her testimony cannot automatically be treated as adverse to the complainant. The complainant was never confronted with the J88 narration during examination or by the court and thus was not afforded an opportunity to confirm, deny, or explain the account attributed to her. The "history" portion of the J88 does not constitute independent evidence of how the offence occurred. The doctor was not called to testify however, the medical report was submitted into evidence in terms of Section 213 and 214 of the CPA which amounts to evidence before the court.

[29] Although the J88 was admitted into evidence in terms of sections 213 and 214 and thus constituted evidence before the court without the need to call the medical practitioner, such admission addresses the question of admissibility rather than probative value. The statutory mechanism permits the contents of the report to be received without objection as to hearsay in the formal sense. It therefore overcomes the technical argument that the doctor's recorded narration is inadmissible merely because the doctor was not called.

[30] However, the fact that the report is admissible does not convert the recorded "history" into independent or tested proof of the manner in which the offence occurred. The narrative portion remains a record of what was conveyed to the medical practitioner and must still be evaluated against the viva voce

evidence and the probabilities of the case. Its probative value depends on consistency, reliability and proper judicial engagement. Admission under sections 213 and 214 does not dispense with that evaluative exercise.

[31] The distinction between admissibility and probative value is critical. While the report was properly before the court, its narrative content could not simply be treated as corroboration without addressing the material divergences between that account and the complainant's testimony. In the absence of the prosecution dealing with these discrepancies in the complainant's evidence in chief, the Court a quo was duty bound to interrogate or address it.

[32] Where the contradictions appear on the face of the record as in this case and relate to the manner and sequencing of the alleged rape, the trial court is obliged to consider whether they bear on the reliability of the complainant and in turn, the case for the State. The magistrate did not acknowledge or analyse the contradictions between the J88 narration and the complainant's testimony.

[33] A court of appeal will not readily interfere with the credibility findings made by the trial court as it was steeped in the atmosphere of the proceedings and had before it the testimonies of the witnesses and was able to make such findings. However, the findings so made must be consistent with the content of the testimony of the witness. If it is clear to the court of appeal that the trial court had made a material misdirection, it must interfere with the findings of the trial court. The acceptance of the account without engaging these issues constitutes a misdirection.

The appellant's version and alibi defence:

[34] The appellant testified that he was at court paying a traffic fine during the alleged incident, supported by a payment receipt. The trial court rejected this,

speculating that another person could have made the payment and noting that the school principal's evidence did not confirm the appellant's absence.

[35] An accused need not prove an alibi for it is sufficient if it raises reasonable doubt. See *R v Hlongwane* 1959 (3) SA 337 (A) at 341. The trial court's speculation about a third-party payment lacks evidential basis, amounts to conjecture and impermissible inference. The alibi, supported by documentary evidence, strengthened the reasonable possibility of the appellant's version. Furthermore, the trial court misdirected itself on the fact that the receipt did not indicate a time of payment. Indeed, it reflected that the fine was paid at court at 11h55am. After this the appellant had to return to the vehicle and drive back to the school, stopping on the way to collect the principal. The appellant testified that he paid the fine at 11h55am and set out the chronological events of the morning leading up to that payment and thereafter. For the court a quo to find that even if he made the payment, he could have returned to be seated in his classroom by the second break which happened almost simultaneously would be reasonably doubtful. Where there is reasonable doubt at the end of a trial, the accused must be given the benefit of such doubt. In *S v Van der Meyden* 1999 (1) SACR 447 (W) the Court held that the accused is entitled to an acquittal if it is reasonably possible that he or she may be innocent. *Van der Meyden* also cautions against a court ignoring evidence and instead a comprehensive assessment of all facts are required to determine if the State had met its burden of proof. A finding by the trial court that the generation of the traffic fine details on 1 June 2022 can only mean that the appellant did not have the receipt and thus was not the person who paid the fine is a material misdirection. The inference cannot withstand scrutiny as there are other possible inferences. More probable is the inference that the appellant obtained the record in preparation to answer the charges against him. He had explained during his testimony, he provided the traffic fine details to his previous counsel and he understood it was to be used in support of his defence. Thus, he had provided an explanation for the belated disclosure of his alibi.

[36] This brings me to deal with the evidence of Mr. Titus called as the court's witness. Firstly, the purpose of a witness for the court is limited to clarifying issues as the court may consider just and appropriate in the circumstances. The questions put to Mr. Titus were not clarifying questions or to avoid ambiguity. In my view, this witness was called after the presiding magistrate had assessed the evidence and which on the evidence of this case, did not amount to the State having proven its case beyond reasonable doubt and so too the version of the appellant including his alibi defence was reasonably possibly true. Clearly Mr. Titus was called to close the gaps for the State in that it could not overcome the alibi defence relating to the traffic fine. I need add that the evidence of Mr. Titus was not reliable. Whilst Mr. Titus confirmed an event where the appellant sought his leave to absent himself to pay a traffic fine, together with confirming all the details provided by the appellant, he is adamant that it was on some or other days, of which he cannot account, but simply none of which was on the 7th of February 2020. The fact is that the appellant had proof of a fine which was paid on that date and he gave a consistent account as to how he sought the principal's leave to do so, what time he left, that he travelled with the principal's vehicle, when he paid the fine and that he arrived at school after the break. The timing is crucial but so too is the fact that it is most unlikely that he could have been back in time, seated in his classroom as alleged by the complainant. The evidence of Mr. Titus that the appellant was most certainly back in the classroom before the second break at 12h00 leaves more questions than answers and is not reliable. I find it problematic that whilst Mr. Titus confirmed an event where the appellant needed to pay a fine due on the date, borrowed his vehicle to attend thereto, was absent from the school for a period of time that morning, there was no other event provided by him when a traffic fine had to be paid in similar circumstances by the appellant. No objective markers were provided by him to distinguish this date of 7 February 2020, which he unequivocally state was not the date that any of the events happened. The stance of Mr. Titus must be juxtaposed against the position that the traffic fine details independently corroborate a payment of a traffic fine by the appellant at Worcester Court under

remarkably the same circumstances. This evidence did not satisfactorily displace the reasonably possibility that the appellant's version may be true.

Section 186 - Proper Scope and Application

[37] Section 186 of the Criminal Procedure Act 51 of 1977 empowers a court to call a witness if the evidence appears to be essential to the just decision of the case. The section is intended to enable a presiding officer to clarify uncertainties or resolve ambiguities that arise from the evidence already placed before the court. It does not permit a court to descend into the arena or to bolster a case which has not been proved by the party bearing the onus.

[38] In the present matter, the defence case had closed, and the matter had been postponed for judgment. It was only thereafter, upon consideration of the evidence, that the magistrate invoked section 186 and called Mr Titus. The stated purpose was to clarify aspects relating to the appellant's alibi.

[39] However, the questions put to Mr Titus did not seek neutral clarification of an ambiguity. They went directly to undermining the appellant's alibi by eliciting evidence that the appellant was allegedly present at school on the date and time in question. This was not a peripheral issue. It was central to the defence.

[40] Where an accused raises an alibi supported by documentary evidence, and the State has closed its case without calling a witness to rebut that alibi or had not sought leave to recall a witness or call a rebuttal witness, the invocation of section 186 by the Court to introduce rebuttal evidence risks impermissibly supplementing the State's case. The court must guard against assuming the role of a litigant.

[41] While section 186 confers a wide discretion, it must be exercised sparingly and only where the evidence is essential to a just decision and not where it merely strengthens one side's case after the close of evidence. The exercise of

this discretion by the Court a quo herein was not done with the required judicial neutrality.

[42] On the facts of this case, the evidence of Mr Titus did not clarify an ambiguity. The court a quo introduced contested factual assertions aimed at discrediting the appellant's version. In doing so, it had the effect of curing a *lacuna* in the State's case rather than elucidating an unclear issue.

[43] In these circumstances, the invocation of section 186 constituted a material misdirection.

The value of demeanour evidence

[44] The court a quo placed considerable emphasis on the complainant's demeanour and her emotional state whilst testifying. It recorded that she appeared candid and forthright and that she became visibly emotional when recounting the alleged penetration, to the extent that proceedings were briefly adjourned.

[45] While demeanour is not irrelevant, it is well established that it is a fallible indicator of truthfulness. Emotional display, particularly in cases of a sexual nature, may be consistent with a range of explanations and cannot, without more, cure objective inconsistencies in the evidence. Our courts have repeatedly cautioned against elevating demeanour above the content and probabilities of the testimony.

[46] In the present matter, the emphasis placed on the complainant's emotional presentation appears to have overshadowed a proper analytical engagement with the material contradictions in her testimony as well as between her viva voce evidence and the narrative contained in the J88. Credibility cannot

be determined solely by observing a witness's distress; it must be assessed against the internal consistency of the version, its consistency with prior statements, and its alignment with objective evidence.

[47] By affording decisive weight to demeanour while failing to interrogate material discrepancies, the court a quo misdirected itself in its evaluation of the evidence.

Conclusion:

[48] For the reasons set out above, I am of the view that the appeal must succeed, and the conviction and sentence be set aside. Wherefore I make the following order:

- (i) The appeal against conviction and sentence is upheld.
- (ii) The order of the court a quo dated 14 May 2025 is set aside and substituted as follows:

“The accused is acquitted in respect of count 1.”

- (iii) The above order is antedated to 14 May 2025.

[49] The appellant has been incarcerated on these convictions since 14 May 2025 when he was convicted and sentenced. It is hereby ordered that the appellant must be released from the correctional facility where he is detained immediately and without delay, subject only to any other pending charges for which he had not been granted bail or is incarcerated in respect of other sentences of imprisonment, which I understood from both counsel is of not application herein. As such the appellant is only detained as a result of the conviction in *casu*.

[50] For the reasons as set out in paragraph 49 above, I direct that a copy of this order shall be provided by the Chief Registrar or Registrar of Criminal Matters of this Court to:

- (i) The Clerk of the Criminal Court, Worcester.
- (ii) The Head of the correctional facility where the appellant is detained.
- (iii) The Head of the Department of Correctional Services.
- (iv) The parties mentioned in subparagraphs (ii) and (iii) above together with counsel for the State and the Defence shall report to this Court by Wednesday, 4 March 2026, that the appellant, Mr. Jeremy Claassen, Identity number: 8[...], has been released from custody and if not, full reasons must be provided in writing why he had not been released as per this order.

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

I AGREE

I. HIGGINS

COURT

ACTING JUDGE OF THE HIGH

WESTERN CAPE DIVISION

APPEARANCE:

Applicant's Counsel: Mr R J Sivnarain

Respondent's Counsel: Adv. C Monis