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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: A120/2024

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED: YES/~~NO~~

Date 09/02/26

Signature

In the matter between: -

OSCAR VELAPI HLATSWAYO

APPELLANT

And

THE STATE

RESPONDENT

JUDGMENT

CORAM BAQWA et VAN NIEKERK JJ

BAQWA J

Introduction

1. This matter comes before us as an appeal in terms of Section 309 of the Criminal Law Amendment Act¹ 51 of 1977 as amended by section 10 of Act 42 of 2013 (the Act) against the sentence of life imprisonment imposed by the Acting Regional Magistrate, Mrs. K Pillay in respect of count one (1) of rape on 8 March 2024.

The facts

2. The background to this matter is succinctly summarized in the report of the Social Worker, Nicole Rashid, which except for minor discrepancies almost totally corroborates the evidence tendered by the complainant herein, T[...] Chauke at her home, 1[...] N[...], Klipgat on 14 November 2023.
3. I do not propose to traverse the evidence tendered at the trial as this is an appeal against sentence only and the evidence with regard to the conviction for rape is not contested in this appeal.
4. The report tendered before the court a quo forms part of the record of evidence. MS Rashid stated as follows: 'The victim indicated that she does not know the accused person, she stated on the day of the crime she went alone to Making Tavern in Soshanguve, Block NN. She mentioned that she was sitting and drinking beer with a person named T[...] who she met at the

¹ The Criminal Procedure Act 51 of 1977

tavern whilst waiting for her friend and her boyfriend to join them. She further said that when her friend and boyfriend arrived, she left T[...] and went to sit with them, they continued to consume alcohol and socialize until her friends asked her if she knew any B&B around, as the victim was familiar with the area. She stated her friend informed her that her boyfriend needed a place to sleep as it was late and he could not drive back to Johannesburg, the victim continued to explain that her friend requested her to accompany them and promised to take her home, she mentioned that she left the tavern around 2am. She said they found the accused sitting at the back of her friend's boyfriend's bakkie and he started to conversate (sic) with her friend's boyfriend, she stated that they got into the car and they drove off and the accused was still sitting at the back of the bakkie, she further mentioned that the accused started banging the rooftop of the bakkie and her friend's boyfriend stopped. The accused jumped off the bakkie and opened the door where she was sitting and said she must get out of the car. The victim indicated that the accused insulted her, pulling her out of the car and hit her with a beer bottle on the head. She stated that she started screaming and her friend and her boyfriend drove off to make a U-turn and put the headlights on them, she continued to explain that the accused continued to beat her whilst she and her boyfriend were watching and did nothing. They drove off leaving her alone with the accused. She stated that a few people from the neighborhood came out to see what was happening and the accused told them that he bought alcohol for the victim and she was refusing to go with him to his house. The victim said that the people then told her to go with the accused. The victim stated that the accused pulled her forcefully as they were

walking, they came across an open pit toilet that was isolated from the other houses. She stated that the accused asked her to take off her jersey and throw it in the pit toilet because it had bloodstains from being hit by a beer bottle. She said she was left in her underwear, a bra and a tight. The accused then took off his pants and instructed her to suck his penis. She said the accused threatened to kill her or rape her if she does not co-operate, she further mentioned that when she was done sucking his penis they went to the accused's place and he opened the shack door whilst threatening her with a knife. According to the victim, the accused instructed her to undress, and he put a condom on his penis and opened her legs and started penetrating her vagina. She stated that when the accused was done penetrating her, she told the accused that she had to go to work the following day and she requested him to wake her up around 6am. She further indicated that the accused went to tell his mother to wake him up at 6 in the morning. The accused said that at 6 am the accused's mother shouted his name and he woke up. She indicated that she did not sleep the whole night because she was scared. She further mentioned that the following morning the accused asked her to get dressed and he gave her a soccer jersey to wear. They walked together for a short distance and the accused turned around at the corner of the street, leaving the victim without saying anything. The victim stated that she continued to walk and she came across two male acquaintances and they asked her what happened to her because of the blood on her forehead. She stated that she told the acquaintances that the accused raped her and they encouraged her to go to the police station to open a case of rape against the accused."

5. The above account narrates the entire episode of the complainant's abduction from the vehicle she was travelling in, her assault physically and with a beer bottle and her violent rape at knifepoint.
6. The inhumane treatment, the humiliation, and absolutely horrible experience she was subjected to by the appellant can be described as the pinnacle of any degradation any human being can be subjected by another.
7. The evidence demonstrates that she was raped more than once, firstly by the insertion of his penis into her mouth and subsequently into her vagina without her consent.

The law

8. The appellant was legally represented throughout the proceedings. He was accordingly alerted to the provisions of the Minimum Sentences Act section 51(1) of the Criminal Law Amendment Act 105 of 1997 in terms of which the court a quo in the event of the appellant being convicted of rape (count 1), in the absence of substantial and compelling circumstances could be sentenced to life imprisonment.

The sentence

9. As alluded to above, the court requested a presentencing report which has already been referred to above.

The grounds of appeal

10. The appellant herein brings this appeal on the following bases:
 - 10.1. The court a quo erred in finding no substantial and compelling circumstances in favor of the appellant justifying deviation from the

prescribed minimum sentence despite the appellant being a first-time offender for violent crimes, having spent 38 months in custody awaiting finalization of the matter, suffers from chronic illness and no life threatening injuries inflicted on the victim during the commission of the offence.

- 10.2. The court a quo erred in imposing a sentence that is shockingly severe and inappropriate considering that the rape the appellant was convicted of is not the worst kind of rape.
- 10.3. The court a quo erred in not considering time the appellant spent in custody awaiting finalization of this matter.
- 10.4. The court a quo erred in over-emphasizing the seriousness of the offence and/or the interest of society without proper weight being attached to the personal circumstances of the accused person taken cumulatively.

11. I deal with the grounds of appeal seriatim:

- 11.1. I have already dealt with the inhumane treatment to which complainant was subjected to earlier in this judgment. It is now established law as per numerous decisions of our courts that being a first offender does not exonerate an individual from receiving a life sentence in appropriate circumstances.

In my view such circumstances are present in this case. Neither do the absence of life-threatening injuries on the complainant excuse the accused. The assault with a beer bottle was inter alia to served as an aggravation of the appellant's conduct.

11.2. The sentence handed down is not shocking. It is precisely what was contemplated by the legislature when the Minimum Sentences Act was enacted, being one of the most prevalent heinous crimes to be committed in South Africa. The sentence was appropriate for the two rapes committed by the appellant.

11.3. The rather lengthy waiting period which appellant had to endure was necessary in order to properly investigate the circumstances of the appellant. The court a quo considered the report presented by the probation officer and there was therefore no misdirection on its part in that regard.

12. In *S v Malgas*² the following was said:

“ The courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment as the sentence that should ordinarily in the absence of weighty justification be imposed for the listed crimes in the specified circumstances, unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore requested to elicit a severe standardized and consistent approach from the courts. These sentences are not to be departed from lightly and for flimsy reasons.”

13. The Supreme Court of Appeal re-affirmed the above sentiments in *S v Matyityi*³.

14. In light of the above I propose that the following order be made:

² *S v Malgas* 2011 (1) SACR469 (SCA).

³ *S v Matyityi* 2011 (1) SACR 40 SCA at 41 G

14.1 That the appeal against sentence be dismissed.

SELBY BAQWA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

P VAN NIEKERK
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 27 November 2025

Date of judgment: 06 February 2026

Appearance

behalf of the Appellant

Adv Moeng

Instructed by

Legal Aid South Africa,
317 Francis Baard Street
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On behalf of the Respondents

Instructed by

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