



IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Case Number: CA&R 52/2025

In the matter between:

LESLEY MEINTJIES

Appellant

and

THE STATE

Respondent

Coram: Tlaletsi JP et Lever J

Heard: 23 February 2026

Delivered: 24 February 2026.

ORDER

- 1) The convictions in the court *a quo* on two counts of rape is set aside and replaced with a conviction on a single count of rape.
- 2) The sentence in respect of the two counts of rape is set aside and the matter is referred back to the trial magistrate for sentencing proceedings.

JUDGMENT

Lever J

1. This is an appeal against a conviction on two counts of rape in the regional court for the regional division of the Northern Cape held at Kimberley. The appellant applied for and was granted leave to appeal by the learned trial magistrate. However, the appellant was only granted leave to appeal on a single narrow ground only. Mr Mafaro, who appeared for the appellant conceded that there had been no petition by the appellant to broaden the grounds of appeal. In the circumstances we are confined to the ground of appeal for which leave to appeal has been granted.
2. The complainant was nine years old at the time of the rape. She was twelve years old when she gave evidence about the said rape in court. The evidence of a forensic nurse from the Thuthuzela Foundation was that there were fresh anal and vaginal injuries that indicated forceful entry in both cases. The forensic nurse was convinced that the injuries had occurred on the same day that he had examined the complainant.

3. The complainant gave her evidence through an intermediary and with the assistance of anatomically correct dolls. She only gave evidence of anal penetration. Nonetheless, it is clear from the evidence of the forensic nurse that she had been penetrated both anally and vaginally.
4. The issue on which the learned trial magistrate granted leave to appeal on is whether these two acts of penetration constituted a single act of rape or two separate and distinct acts of rape.
5. Ms Van Heerden who appeared for the State in this appeal referred this court to the decision of Borchers J in the matter of *S v Blaauw*, where Borchers J reasoned as follows:

“Mere and repeated acts of penetration cannot without more, in my mind, be equated with repeated and separate acts of rape. A rapist who in the course of raping his victim withdraws his penis, positions the victim’s body differently and then again penetrates her, will not in my view have committed rape twice. This is what I believe occurred when the accused became dissatisfied with the position he had adopted when he stood the complainant against a tree. By causing her to lie on the ground and penetrating her again after she had done so, the accused was completing the act of rape he had commenced when they both stood against the tree. He was not committing another separate act of rape.

Each case must be determined on its own facts. As a general rule the more closely connected the separate acts of penetration are in terms of time (ie the intervals between them) and place, the less likely a court will be to find that a series of separate rapes has occurred.”¹
6. This approach was followed in the Supreme Court of Appeal (SCA) in the matter of *S v Tladi*².

¹ *S v BLAAUW* 1999 (2) SACR 295 (W) at 300 a – c.

² *S v TLADI* 2013 (2) SACR 287 (SCA) paras [12] to [13].

7. Ms Van Heerden then referred this court to the decision in *S v Willemse*³ where the evidence showed that when an accused raped his victim vaginally and turned her over and raped her anally, that the accused had formed two separate intentions which constituted two separate and distinct acts of rape.
8. Ms Van Heerden pointed out that the facts in the case before this court and those in Willemse's case are different and must be distinguished.
9. The complainant in the present matter only testified about being penetrated anally. However, the forensic nurse gave evidence that there were fresh wounds to both the anal passage and the vaginal area consistent with forced penetration. The forensic nurse also testified that he was informed that the accused was 'spooning' with the complainant at the time and that in such position penetration of the vagina can be followed by penetration of the anus in a matter of seconds.
10. Accordingly, on the facts of the present case it has not been established that both acts of penetration happened as a result of a separate and distinct intent. Accordingly, the conviction on two separate rapes cannot be supported on the facts of the instant case. This has been properly conceded by the State.

³ *S v WILLEMSE* 2011 (2) SACR (ECG) paras [18] to [19].

11. Accordingly, the conviction on the two separate and distinct rapes stands to be set aside and replaced with a conviction on a single count of rape.

12. In the regional court the accused was convicted of two counts of rape. Both counts were taken together for the purpose of sentencing in the regional court. On the 10 September 2024 the regional court found substantive and compelling reasons to depart from the statutorily prescribed minimum sentence and on both counts of rape as the conviction in this case then stood, the regional court imposed a sentence of 20 (twenty) years imprisonment.

13. After the decision of this court on appeal the original conviction on two counts of rape has been set aside and has been replaced with a single conviction of rape. The question that now looms large before this court is what becomes of the sentence, which on the face of it represents an appropriate and just sentence in the circumstances of the case for a conviction on two counts of rape.

14. The powers of a court on appeal and the process to be followed in a criminal matter are governed by both the Superior Courts Act 10 of 2013 and the Criminal Procedure Act 51 of 1977. Section 19 of the Superior Courts Act as read with section 309(1); 309(3); 304(2); and 309B, provides both the process that this court must follow on appeal and the powers that this court has in dealing with the appeal before it.

15. The powers of this court are wide ranging on appeal. However, there is one overriding concern that this court must take into account before it considers what would be an appropriate manner to deal with a position as in the present case where two convictions have been replaced with a single conviction and where the two convictions were considered together for the purpose of establishing a just and appropriate sentence to be imposed in the court *a quo*.
16. Sentencing by its very nature is a complex process of evaluating and balancing several factors. In all cases the aim of the sentencing process is to achieve both a just and appropriate sentence in the circumstances of the case.
17. To use a cooking analogy which is appropriate when considering a position where two convictions are taken together for the purpose of sentencing and such conviction is set aside and replaced with a single conviction. "The egg has been scrambled and cooked in the court *a quo*." This court, in these circumstances is in no position to unscramble the egg, reconstitute the egg, scramble and cook it again. Accordingly, the only appropriate course of action for this court is to set aside the two convictions for rape, replace it with a single conviction for rape, set aside the sentence which resulted from considering both convictions together for the purpose of sentencing and refer the matter back to the learned trial magistrate to conduct sentencing proceedings afresh.

18. Accordingly, the following order is made:

1. The convictions in the court *a quo* on two counts of rape are set aside and replaced with a conviction on a single count of rape.
2. The sentence in respect of the two counts of rape is set aside and the matter is referred back to the trial magistrate for sentencing proceedings.



L.G. LEVER

JUDGE OF THE HIGH COURT

NORTHERN CAPE DIVISION, KIMBERLEY

I agree,



L.P. TLALETSI

JUDGE PRESIDENT OF THE HIGH COURT

NORTHERN CAPE DIVISION, KIMBERLEY

Appearances

For Appellant:

Adv MMA Mafaro

Instructed by:

Legal Aid South Africa, Kimberley

For Respondent:

Adv A Van Heerden

Instructed by:

The Directors of Public Prosecutions