



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: AR296/2020

In the matter between:

THABANI MFANISENI ZULU

APPELLANT

and

THE STATE

RESPONDENT

Coram: MOSSOP and HLATSHWAYO JJ

Heard: 20 February 2026

Delivered: 27 February 2026

ORDER

On appeal from: the Empangeni Regional Court (sitting as the court of first instance):

1. The appeal against the conviction and sentence on count one is dismissed and both conviction and sentence are confirmed.
2. The appeal against the conviction and sentence on count two is upheld and:
 - (a) The finding of guilty is set aside and is replaced with a finding of not guilty.
 - (b) The sentence of life imprisonment is set aside.

JUDGMENT

MOSSOP J (HLATSHWAYO J concurring):

Introduction

[1] The appellant was convicted of two counts of rape committed approximately a year apart, the first offence having occurred in 2016 and the second in 2017.

[2] The victim on both occasions was the same young girl, aged six at the time of the first incident. The alleged perpetrator and the victim were known to each other. While having no formal familial link to each other, through the coincidence of circumstances, the complainant and the alleged perpetrator found themselves both resident at the two different homesteads where the two crimes were allegedly committed.

The entitlement to an appeal

[3] Upon conviction on both counts, the appellant was sentenced to life imprisonment on each count and the two sentences imposed were ordered to run concurrently with each other. By virtue of his automatic right of appeal in terms of the provisions of s 309(1)(a) of the Criminal Procedure Act 51 of 1977, his appeal is before us.

Preliminary observations

[4] As an opening comment, it is apposite to state that appeals involving the alleged rape of young children are extremely difficult to decide, more so when the alleged rapes are said to have occurred several years before the disclosure of their occurrence was first made. This is the position in this instance. Both alleged rapes were only disclosed two years after the last rape had allegedly occurred.

[5] Experience teaches that this is not an unusual state of affairs and matters of such a nature are frequently before this court. The regularity with which these types of matters appear on the court rolls, however, does not mean that the determination of such matters is now routine. Far from it. This is because the facts of each case

are unique, and each appeal must be carefully considered before concluding what should become of it. Thus, deciding the facts of one matter gives no particular advantage in deciding the facts of the next matter. But it is probably true to say that such appeals are decided by fine margins, the cumulative weight of which ultimately tips the scale one way or the other. However, determining what those fine margins are is no easy matter and neither is determining when the tipping point has been reached.

The State's evidence

[6] Considering the evidence of the complainant on the first count, it was said to have occurred at a homestead situated at Ntambanana, Northern KwaZulu-Natal, on an undisclosed date in 2016. No precision on the date on this count, or, indeed, on the second count of rape, was possible because the complainant could not herself be certain of it due to her young age. Resident at the homestead where the first offence allegedly occurred were the complainant, her maternal grandmother (the grandmother) and the appellant.

[7] The homestead was that of the grandmother. It is not in dispute that the grandmother, an elderly lady not in the best of health, had requested that the appellant take up residence at her homestead to improve her sense of security, it being believed that a masculine presence at an otherwise female-occupied homestead would provide the grandmother with some peace of mind regarding her personal safety. While there was no consanguinity between the grandmother and the appellant, the appellant's mother and the grandmother shared a common surname and had conducted themselves as if they were, indeed, related. At the time of the request made by the grandmother to the appellant's family that the appellant come and stay with her at her homestead, to which request the appellant's family acceded, the appellant was still a schoolboy attending a local school located close to the grandmother's homestead. The arrangement appears to have suited both families, but not necessarily the appellant, who testified at the trial that he did not get on with the grandmother.

[8] On the day of the first offence, the complainant stated that the appellant had allegedly been instructed by the grandmother to go out and fetch water for the

homestead. He had declined to do so, leaving the grandmother, sickly as she allegedly was, with the tiresome task of doing so.

[9] During the grandmother's forced absence from the homestead, the appellant allegedly took the complainant to his room located in a rondavel separate from the main dwelling. He allegedly closed the door to the rondavel, told her to sit on the bed, lifted up her skirt and took off her panties. She was told to pull her knees up and he then loosened his belt and trousers, allowing his trousers to spill to the floor. He then took his penis and inserted it into her vagina. The complainant explained that she felt pain and that when the appellant had finished, she found that:

'... some white substance came out that was like mucous and then he took an orange towel of his, he wiped me and he also wiped himself.'

[10] Describing what had occurred before the appellant had finished, the complainant indicated that:

'He was putting it in, taking it out, putting it in, taking it out.'

All the while, she was lying on her back with her legs drawn up.

[11] Upon the grandmother returning to the homestead, she called out to the appellant who, after rearranging his clothing, instructed the complainant that she should indicate that, if asked, she had been in his room attending to sorting out some spoons. It appears that the appellant's bedroom was actually situated in a rondavel that was also used as a kitchen. The complainant subsequently made no mention of what had allegedly just occurred to her grandmother.

[12] As regards the second count, on a further undisclosed date, said to have been in 2017, the complainant explained that she and her grandmother had relocated from Ntambanana to the Matshana area, which is located within the broader reach of Empangeni, Zululand. They actually moved in with the appellant's family at their homestead. Resident at the appellant's homestead were the complainant, her grandmother, her aunt and uncle (the appellant's parents), whose homestead it was, their daughter, A[...] (A[...]), and the appellant's brother, Phelele (Phelele). The appellant only returned to the homestead over weekends.

[13] Ordinarily, so the complainant explained, she and A[...] would sleep together in A[...]’s room. Despite A[...] having her own room, she and the complainant actually preferred to sleep on a sponge mattress in the passageway outside the entrance to A[...]’s parents’ bedroom. They did so because they were scared to sleep alone at night and this sleeping arrangement provided them with some reassurance of their safety.

[14] On an undisclosed date in 2017, the complainant and A[...] were asleep on their sponge mattress in the passageway outside A[...]’s parents’ bedroom when the appellant allegedly woke the complainant. As to what she wore, she first explained that:

‘When we had gone to sleep, we had gone to sleep wearing T-shirts on the upper of the body and panties. He took off my panty.’

[15] That description changed when she said the following:

‘We were sleeping and he woke me up in the morning. We were sleeping only in our parties [spelling error, should be ‘panties’] and then he took my panty off and then I did not see what he did to me because I was sleeping.’

[16] The place where this rape allegedly occurred was the bedroom that A[...] would ordinarily occupy in the homestead, which was located right next door to her parents’ bedroom. As to how she got to that bedroom, the complainant first explained that:

‘He lifted me up or picked me up.’

[17] All of this allegedly occurred in the morning, a rather broad description. The complainant clarified this to state that she meant a time of the day when it was ‘already bright or daylight’.

[18] As to what the appellant was allegedly wearing, it is difficult to be certain. The complainant first said that she could not recall what he wore, but then said, in the same breath (and sentence), that he was:

‘... wearing pants that were jeans.’

[19] This then also changed when she stated that the appellant was wearing: '... a pair of trunks and he was not dressed on the upper part of the body.'

[20] The complainant was allegedly placed on the bed in A[...]’s bedroom and the appellant then undressed and put his penis in her vagina. Just then, Phelele knocked on the door. The complainant was ‘made to lie down’, and the appellant went to attend to the knock on the door. Phelele entered the bedroom, dancing and playing music. Asked where she was when this occurred, the complainant said that she was then lying on the foam mattress and had covered herself with a blanket that had been arranged in such a fashion that permitted her to peep through an opening in its folds. She was by now clad again in her panties, which she explained the appellant had put back onto her. Confusingly, she also explained at some stage that she had put her own panties on. This difference was never explored.

[21] Medical evidence was also led. Dr Jabulani Mthethwa (Dr Mthethwa) is an experienced medical doctor, who explained that he had been both in private practice, and in practice with the State, for a period of 24 years. Despite his longevity in the field of medicine, he indicated that he had not specialised in any particular field of medicine, and he confirmed under cross-examination that he had no additional qualifications in the specialised field of gynaecology.

[22] He testified that he had examined the complainant on 4 April 2019. It will be remembered that the second alleged rape was alleged to have occurred sometime in 2017. The complainant had been accompanied to his rooms by her mother, and it was reported to him by the complainant that a male known to her had put his private part into her private part on several occasions. On precisely how many occasions was not determined by Dr Mthethwa, nor was the identity of the alleged perpetrator ascertained by him.

[23] Upon examining the complainant’s genitalia, he discovered two clefts in her hymen at the six o’clock and eight o’clock positions, respectively. They were not considered by him to be fresh tears. He thus concluded that the hymenal clefts were: ‘... consistent with genital penetration with an object.’

[24] As regards precisely how old the clefts were that he observed, Dr Mthethwa indicated that the best that he could state in this regard was that they were older than 10 days. Considering that the alleged rapes were said to have occurred in 2016 and 2017 and that he examined the complainant in 2019, this was of no real assistance in pinpointing when they had been caused. Dr Mthethwa could be no more precise than that. He, finally, confirmed that his findings were consistent with genital penetration with an object and that object might well have been a penis.

[25] The complainant's mother testified that she noticed a change in the complainant's behaviour when the complainant came to stay with her in December 2017. The complainant finally disclosed to her mother that the appellant had raped her but initially only mentioned one such incident, namely the 2016 incident. The subject had arisen quite innocently one morning while the complainant's mother was getting the complainant ready for school. The complainant's mother had generally told the complainant what she should not let boys do when the complainant broke down and confessed that the appellant had raped her. After this disclosure, the complainant went to school and at the end of the school day, she was taken by her mother to be examined by Dr Mthethwa. Whilst waiting to be seen by the doctor, the complainant mentioned that she had also been raped a second time. The doctor's examination findings prompted the complainant's mother to lay a charge at the South African Police Services (SAPS).

[26] The complainant's grandmother was also called to testify at the trial. Her evidence did not materially advance the State's case, save to confirm that the appellant did stay in a rondavel when he stayed at her homestead and that the rondavel was also utilised as a kitchen. To a suggestion put to her by the appellant's counsel that she was behind the appellant being falsely implicated in the alleged rapes, she stated the following:

'I have never not wanted him to be at that home and I did not influence this child at all, because she did not even tell me, she went and reported to her mother, she hid this away from me.'

[27] The facts reveal that the grandmother was not informed at all of the events involving her granddaughter and the appellant until such time as a charge had

already been laid with the SAPS. The logic of the grandmother's response is accordingly unassailable.

The appellant's evidence

[28] The appellant stated that he was 24 years of age at the time of his trial. He resolutely indicated that the complainant had lied about everything. As to why she might be disposed to do so, he initially could not think of a reason why the complainant would falsely implicate him but later apparently something came to him. This related to a friend of his breaking into the grandmother's homestead in Ntambanana after his friend had missed a bus that would have taken him home and he then spent the night in the grandmother's homestead. Why this would prompt the complainant to accuse him of a double rape was not immediately clear, nor did it ever become clear.

[29] The appellant called his mother to testify. She confirmed that the appellant had not gotten on well with the grandmother and that they had often quarrelled over fetching water. It will be remembered that the complainant testified that on the day of the first rape, the appellant had refused to go and fetch water at the request of the grandmother. Perhaps the most significant part of the appellant's mother's evidence was her statement concerning the second count of rape when she stated that:

'... I do not understand how it could be alleged that she was raped while she was sleeping in my house, I do not understand why I would not hear anything if she was sleeping at my door if somebody were to take her from my door.'

Analysis: conviction

[30] Mr *Mkumbuzi*, who appeared for the appellant on appeal, stated in his heads of argument that the court a quo had erred in convicting the appellant and that the court:

'... should have found that the explanation given by the Appellant and his defence witness was not so highly improbable that it should be rejected as false beyond reasonable doubt.'

[31] Any explanation given by an accused person should be considered and assessed. The difficulty with Mr *Mkumbuzi's* submission is that it is not clear what

the appellant's explanation is. It seems to consist only of a denial of everything alleged by the State. No alternative factual hypothesis was suggested. All the facts advanced by the State through the witnesses that were summoned to testify for it were lies, according to the appellant. According to him, he had been falsely implicated in a plot to unlawfully convict him. Could this be true?

[32] The appellant alleged that the complainant's grandmother was out to get him because of the earlier-mentioned incident when a friend of his had broken into her empty homestead; alternatively, the appellant rationalised that he had apparently interfered with the grandmother's electricity meter resulting in the supply of electricity to the homestead being discontinued. Had any of these events occurred, they would, on their own, have afforded reason enough for the grandmother to act against the appellant and his friend. In my view, she did not need to concoct a story of a complicated double rape involving her granddaughter in order to cause trouble for him.

[33] That this could not be a reason for what had happened to the appellant becomes apparent when it is appreciated that the grandmother had absolutely nothing to do with the charging of the appellant, as previously mentioned. As the grandmother herself stated, the information about what had allegedly happened to the complainant at the hands of the appellant was actively kept from her. When a charge was eventually laid against the appellant, it was not done by her but by the complainant's mother. In my view, the appellant's theorising as to why he has been implicated may safely be rejected. I must, in the circumstances, find that the appellant is not the victim of a plot.

[34] Does the rejection of the appellant's speculative musings on why he has been charged, and convicted, on its own mean that his guilt has been established? In my view, it does not. There is no obligation on the appellant to establish why someone might falsely implicate him in an alleged criminal act.¹ The existence of some reason for this to have occurred may have made it easier for the court a quo to intellectually accept the possibility of the innocence of the appellant. But his failure to

¹ *S v Lesito* 1996 (2) SACR 682 (O) at 687i-688a; *S v BM* [2013] ZASCA 160; 2014 (2) SACR 23 (SCA) para 25.

advance a compelling reason for his implication in events does not, conversely, establish his guilt. The burden of establishing guilt always remains on the State.

[35] The cogency and reliability of the evidence adduced by the State must always be considered, even where the evidence of the accused person falls to be rejected. Were this not to be the case, it may result in the accused person being convicted on insufficient evidence simply because he was disbelieved.

[36] The regional magistrate considered the evidence of the complainant and came to the conclusion that she was a credible and reliable witness. As a general proposition with regard to count one, the rape of 2016, that was a proper finding in my view. The complainant's evidence on that count was easily understood and, moreover, had the ring of truth to it. There were details in her evidence that indicated that she had truly experienced what she described. She referred to the appellant discharging a 'white substance' 'that was like mucous' when he was finished with her and described him thereafter wiping himself and her body with a towel. Had she not seen this, I am of the view that she would not, at the tender age of six, be aware of the discharge from the appellant's body that she imperfectly described as being 'mucous'.

[37] In addition, where all this was said to have occurred was in the appellant's bedroom, which was also the homestead's kitchen. The explanation that the appellant told her to provide if the grandmother questioned her on why she was in the appellant's bedroom, namely that she was attending to sorting out some spoons, coincides with the use to which the room was put. All that evidence reads seamlessly.

[38] However, I have some reservations about the soundness of the complainant's evidence on the second count of rape. On that count, her evidence was not as clear as her evidence on count one. I consider now parts of her evidence on this count that I consider to pose certain difficulties for the State case:

(a) She testified that she was asleep on the foam mattress in the passage with A[...] on the morning that she was raped for the second time. While she described it as being in the morning, it was not the early hours of the morning when it was dark because she indicated that when the incident occurred, the sun had already risen,

and it was 'bright'. It seems unlikely that the appellant would venture to commit a rape when his identity would be unequivocally established by anyone by virtue of the natural light then prevailing and in a dwelling filled with sleeping persons who might be alerted by any sound that might unintentionally be made.

(b) The appellant took her away from where she lay with A[...] without her companion being disturbed or, in fact, without disturbing any of the other occupants of the dwelling. The complainant indicated that the appellant:

'... woke me up, picked me up and took me to the bedroom where A[...] and I sleep.'

However, Ms *Naidu*, who appeared for the State, argued that any shortcomings in the complainant's evidence arose from the fact that the complainant never really woke up and lapsed back to sleep after being roused. This submission was based upon the following extract from the trial record:

'He picked me up and I woke and then I seemed to fall back to sleep and I woke up when he was inserting his penis in my vagina and then I asked him what he was doing and the Phelele knocked.'

The evidence mentioned above arose under cross-examination. Thus, the complainant went from initially being awake to lapsing back to sleep, which did not initially appear to be her version in her evidence in chief. This change raises questions about the accuracy and reliability of her observations and recollections.

(c) The complainant could not consistently describe what the appellant was wearing, as previously mentioned.

(d) The complainant made no mention of the door to A[...]’s room, into which she was taken, being locked and the unexpected arrival, and entrance, of the appellant’s brother playing music and singing adds a surreal element to the scene. The brother must have made some observations about what was occurring in the room or, at the very least, have asked some questions, yet he was not called to testify.

(e) But the single most difficult aspect of the complainant’s evidence was that when Phelele entered A[...]’s room, the complainant stated that she was:

'... lying on the sponge mattress when he was dancing.'

Only one foam mattress was ever mentioned at the trial. It was in the passageway outside the appellant’s mother’s room. How the complainant got there through the same door through which Phelele entered the room is not easy to imagine.

[39] The appellant's mother was incredulous that such events could have allegedly played out in such confined living quarters without someone else being aware of what was happening. That appears to me to be a valid observation.

[40] Mr *Mkumbuzi* stated in his heads of argument that the trial court ought to have drawn a negative inference from the fact that the complainant did not immediately disclose what the appellant had allegedly done to her after the first rape, and even after the second rape. This is a submission of no merit. Reluctance on the part of rape survivors, or at least some of them, to report an incidence of rape at the first opportunity is a firmly recognised fact and this is even more likely to be the case where young children are the victims.

[41] When the rape of an adult occurs, the Supreme Court of Appeal has found it to be a:²

'... humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim.'

The rape of a child is even more appalling and must be utterly confusing to the child when the perpetrator is a trusted person. The power dynamic that exists between an adult and a child may leave the child victim bewildered and afraid of possible consequences if they should speak out. Adult victims are often unable to process what has happened to them and do not always reveal what has happened to them. Even more so when the victim is a young child.

[42] The point taken by Mr *Mkumbuzi*, is, however, not a novel one and has been taken by others before. In *Monageng v S*,³ Maya JA, before her elevation to the position of Chief Justice, had the following to say in relation to a similar argument presented to the Supreme Court of Appeal:

'[23] Much was made by the appellant's counsel of the complainant's apparent ability to act normally after the rape and her delay in reporting it. It has been firmly established in a number of studies on the impact of violence, including rape, against women that victims display individualised emotional responses to the assault. Some of the immediate effects are

² *S v Chapman* 1997 (3) SA 341 (SCA) at 344I-J.

³ *Monageng v S* [2009] 1 All SA 237 (SCA) para 23 and 24.

frozen fright or cognitive dissociation, shock, numbness and disbelief. It is therefore not unusual for a victim to present a façade of normality.

[24] It is further widely accepted that there are many factors which may inhibit a rape victim from disclosing the assault immediately. Children who have been sexually abused, especially by a family member, often do not disclose their abuse and those who ultimately do may wait for long periods and even until adulthood for fear of retribution, feelings of complicity, embarrassment, guilt, shame and other social and familial consequences of disclosure. Significantly, the newly passed Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 provides, in section 59, that -

"In criminal proceedings involving the alleged commission of a sexual offence, the court may not draw any inference only from the length of any delay between the alleged commission of such offence and the reporting thereof."

Raising a hue and cry and collapsing in a trembling and sobbing heap is not the benchmark for determining whether or not a woman has been raped. There was thus nothing unusual about the complainant's behaviour and her explanation for not immediately reporting the appellant is plausible.' (Footnotes omitted)

[43] In a perfect world the complainant would have disclosed what had occurred to her after the first rape. But as we all know, this world is not perfect. The argument advanced by Mr *Mkumbuzi* seeks to impose adult qualities and conduct on a child who lacks the intellectual capacity and maturity of an adult. Besides that criticism of this argument, the inference that we were invited to draw cannot be drawn because of the provisions of s 59 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. To Mr *Mkumbuzi's* credit, he did not dwell much on this issue in argument before us.

[44] In *ICM v The State*,⁴ the Supreme Court of Appeal made the following observations on child witnesses:

'With regard to the complainant's age the legal position is that a court considering the evidence of a child, must be satisfied that the child is a credible and reliable witness. The credibility assessment relates to the child's honesty whilst reliability relates to the child's cognitive ability or brain development. The child's cognitive ability is assessed by having regard to factors such as his or her ability to encode, retain, retrieve and recount information or an event. The "intimidating and bewildering atmosphere" under which the child testified

⁴ *ICM v The State* [2022] ZASCA 108 (*ICM*) para 23.

should also be factored in. As with any other witness, the child witness' testimony should be evaluated in the light of the totality of the evidence.' (Footnote omitted.)

[45] The criteria mentioned in *ICM*, as a general proposition, were present in the complainant's narration of events relating to the first count. On that count, her evidence was clearly the truth and was not seriously challenged by Mr *Mkumbuzi* before us. Her ability to recall what happened on the second occasion was less impressive. I do not, however, lay that failing at her door, for, in my view, she was poorly led by the public prosecutor. Issues that could easily have been clarified were not and were left unexplained. I must not be understood to be saying that the second rape did not occur. I suspect very much that it did. However, our system of law requires proof beyond a reasonable doubt. We would not be true to that system if we were to find persons guilty merely on the suspicion, even a strong suspicion, that they had committed a crime.

[46] I mentioned at the commencement of this judgment that the outcome of an appeal may swing on fine margins. In this instance, it seems to me that the fine margins have accreted to the benefit of the appellant insofar as count two is concerned.

Analysis: sentence

[47] Mr *Mkumbuzi* submitted in his heads of argument that the sentence of life imprisonment imposed on the first count of rape induces a sense of shock and that the seriousness of the offence was over emphasised by the regional magistrate. He argued before us that what had happened to the complainant was not the worst type of rape and that it was possible to imagine worse violations.

[48] The difficulty with that proposition is that what the appellant did to the complainant was not imaginary, but very real. While there may not have been horrific physical injuries to the complainant, there is no doubt that she was injured, as her victim impact statement reveals:

'By now I feel sad when someone asks me I feel sad. I feel like kill the person who did this to me. When I sitting and thinking it comes in my mind. I always look at YouTube (sic) for funny

videos to forget. I respected him but he betrayed me. I hate him for what he did to me and also denie (sic) that he raped me. I feel different from other children now. I am sad.'

[49] That is a heart-breaking statement, riddled with despair, to come from a child.

[50] People who rape children must brace themselves for severe sentences if convicted. Mr *Mkumbuzi* proposed a sentence of 25 years' imprisonment as an alternative to the sentence imposed upon the appellant. I cannot agree. There were no substantial or compelling circumstances presented to the regional magistrate. The appellant's age is insufficient to justify a departure from the prescribed minimum sentence.

[51] In *Maila v S*,⁵ the Supreme Court of Appeal stated the following:

'Taking into account *Jansen, Malgas, Matyityi, Vilakazi* and a plethora of judgments which follow thereafter as well as regional and international protocols which bind South Africa to respond effectively to gender-based violence, courts should not shy away from imposing the ultimate sentence in appropriate circumstances, such as in this case. With the onslaught of rape on children, destroying their lives forever, it cannot be "business as usual". Courts should, through consistent sentencing of offenders who commit gender-based violence against women and children, not retreat when duty calls to impose appropriate sentences, including prescribed minimum sentences. Reasons such as lack of physical injury, the inability of the perpetrator to control his sexual urges, the complainant (a child) was spared some of the horrors associated with oral rape, which amount to the acceptance of the real rape myth, the accused was drunk and fell asleep after the rape, the complainant accepted gifts (in this case, sweets) are an affront to what the victims of gender-based violence, in particular rape, endure short and long term. And perpetuate the abuse of women and children by courts. When the Legislature has dealt some of the misogynistic myths a blow, courts should not be seen to resuscitate them by deviating from the prescribed sentences based on personal preferences of what is substantial and compelling and what is not. This will curb, if not ultimately eradicate, gender-based violence against women and children and promote what Thomas Stoddard calls "culture shifting change".' (Footnote omitted.)

I agree with these sentiments.

⁵ *Maila v S* [2023] ZASCA 3 para 59.

[52] Children are powerless against adults, and the courts must endeavour to protect them through the imposition of proper sentences that will deter others of like mind. The appellant defiled an innocent and defenceless child to satisfy his lust. To my thinking, he received a just and proportionate sentence on count one.

Conclusion

[53] I conclude that it would be unsafe to allow the appellant's conviction and sentence on count two to stand and to that extent, the appeal should be allowed. In the view that I take of the matter, the conviction and sentence on count one is sound and should not be disturbed.

Order

[51] I would accordingly propose the following order:

1. The appeal against the conviction and sentence on count one is dismissed and both conviction and sentence are confirmed.
2. The appeal against the conviction and sentence on count two is upheld and:
 - (a) The finding of guilty is set aside and is replaced with a finding of not guilty.
 - (b) The sentence of life imprisonment is set aside.

MOSSOP J

I agree:

HLATSHWAYO J

APPEARANCES

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