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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO LOCAL DIVISION, THOHOYANDOU**

CASE NO: A04/2025

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 17.02.2026

SIGNATURE:

In the matter between:

BALOYI GEZANI MATIMBA

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

Heard on: 30 January 2026

Delivered: this judgment was handed down electronically by circulation to the parties' legal representatives by email and release on SAFLII. The date and time for hand-down is deemed to be at 14:00 on 17 February 2026.

SEMENYA DJP

[1] The appellant was convicted in the Regional Court, Limpopo sitting at Waterval, pursuant to his plea of guilty on one count of rape in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act¹. The conviction on a charge of robbery with aggravating circumstances followed after a full trial as he had pleaded not guilty. He was subsequently sentenced to life imprisonment as contemplated in section 51(1) of the Criminal Law Amendment Act² on a charge of rape and fifteen (15) years imprisonment in terms of section 51(2) of the same Act on a charge of robbery with aggravating circumstances. The two sentences were ordered to run concurrently. The appellant enjoys automatic appeal in view of the life imprisonment sentence.

[2] The appellant was legally represented by an attorney from the Legal Aid South Africa during his trial. In line with section 112(2) of the Criminal Procedure Act³, the attorney read the contents of a statement prepared in support of the appellant's guilty plea into the court record. The appellant later confirmed that what was read by his attorney was in accordance with his instructions.

[3] It is apposite to quote parts of the contents of the section 112(2) statement and the questions raised by the regional magistrate before he convicted the appellant. The statement, in relevant part, is as follows:

" ... 5.1. I admit that on the 29th day of January 2018 at Nwamatatani Village in the Regional Division of Limpopo I did unlawfully and intentionally commit acts of sexual penetration with a female person, to wit, M[...] E[...] who was at the time 16 years old by inserting my penis into her vagina without her consent.

5.2. On the above-mentioned date I was with Bornwise coming from Majosi village going to my aunt's homestead. While walking I noticed complainant and a boy. I quickly approached both complainant and a boy. Upon reaching complainant and a boy I took out a knife and the boy ran away. I grabbed complainant and forcefully dragged her to a nearby bush. While inside the

¹ 32 of 2007

² 105 of 1997

³ 51 of 1977

bush I forcefully undressed complainant's clothes, to wit, her T-shirt, trousers and panty. I ordered her to lay on the ground which she did obey my instructions. I also undressed my trousers and underwear. I did climb on top of her where I unlawfully and intentionally inserted my penis into her vagina without her consent and have sex with her. I then make up and down movement until I ejaculated inside the complainant's vagina.

5.3. After some time, I again unlawfully and intentionally inserted my penis on the complainant vagina without her consent where I had sex with her. After having sex with complainant for the second time without her consent, I then pulled out my penis, got dressed and left complainant in the bushes..."

[4] It is stated in the charge that the provisions of section 51 (1) of the Criminal Law Amendment Act are applicable on the basis that the complainant was 16 years old when she was raped by the appellant. Part I of Schedule 2 of the Criminal Law Amendment Act prescribes a minimum sentence of imprisonment for life in circumstances where, among others, the victim is under the age of 16 years. The complainant in this case was above that age when she was raped.

[5] After confirmation of the statement by the appellant, the trial court enquired from the prosecutor and the attorney as to which of the jurisdictional facts, as contemplated in Part I of Schedule 2 of the Criminal Law Amendment Act, attracts the invocation of the provisions of section 51(1). The prosecutor and the accused's legal representative stated that the provisions of section 51(1) are applicable since the appellant admitted that he raped the complainant twice.

[6] The appeal court's powers to interfere with the sentence imposed by the trial court is set out to be as follows:⁴

"Ordinarily, sentencing is within the discretion of the trial court. An appellate court's power to interfere with sentences imposed by courts below is circumscribed. It can only do so where there has been an irregularity that

⁴ Bogaards v S 2013 (1) SACR 1 (CC)

results in a failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it. A court of appeal can also impose a different sentence when it sets aside a conviction in relation to one charge and convicts the accused of another."

[7] The facts of this case are comparable to those in **Ndlovu v S**⁵ In that case, the prosecutor charged the accused with rape read with section 51(2). The evidence proved that the victim sustained grievous bodily injuries, which in terms of Part I of Schedule 2, attracts a minimum sentence of life imprisonment, which is a sentence that the court may impose in terms of section 51(1). The trial court convicted the accused as charged. However, she proceeded to impose a sentence in terms of section 51(1). The Constitutional Court overturned the sentence on the basis that the court had no jurisdiction to impose the sentence in that it convicted the accused as charged, namely with rape read with section 51(2).

[8] In the present case, the trial court had jurisdiction to sentence in terms of section 51(1) in that this is the offence he was charged with. By admitting that he sexually penetrated the complainant more than once, the appellant admitted that the jurisdictional facts on which the sentence of life imprisonment may be imposed do exist. There can be no prejudice on the part of the appellant in this matter. He was fully aware of the sentence that may be imposed on him.

[9] The grounds of appeal, in short, are that the court below misdirected itself by finding that there are no substantial and compelling circumstances that justified a sentence which was lesser than that of life imprisonment, as contemplated in section 51(3) of the Criminal Law Amendment Act. The factors which were placed before the court are, first, that he pleaded guilty to the charge and offered an apology to the victim before the trial could commence. The appellant argues that this is a sign of remorse. Second, he was a first offender at the age of 23. Third, he was not married. Fourth, he went to school up to grade 3. Lastly, that the appellant exhibited qualities of someone who could be rehabilitated.

⁵ 2017 (2) SACR 305

[10] Counsel for the appellant contends that the trial court misdirected itself by overemphasizing the seriousness of the offence the appellant was convicted of. He submitted that the sentence of imprisonment for life is shockingly disproportionate to the offence committed by the appellant, the appellant as a person and the interests of the community.⁶

[11] In **S v Chapman**⁷ the court held that:

"...Rape is a very serious offence, constitution as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim.

The rights to dignity, to privacy, and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilization. Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquility of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives"

[12] The victim in the robbery count is also a female person. The facts in that count are similar to those in the rape count. The victim was walking in the street at about 15:00 when she came across the appellant. The appellant produced two knives and stopped her. He stabbed her with one of the two knives on her left shoulder and left forearm. He tore her T-shirt and bit her on the right forearm. The victim sustained injuries as a result of the attack. In the process of injuring her, the appellant robbed her of a plastic bag carrying two loaves of bread, a pack of danone yoghurt and a packet of simba chips. He also took her R300.00 which she held in cash.

[13] Chapman was decided in 1997. Regrettably, the plight of women remains the same, if not worse than it was then. The complainant in the rape charge was walking

⁶ S v Zinn 1969 (2) SA 537 (A)

⁷ 1997 (3) SA 341 (SCA)

with a male person when she was accosted by the appellant. It seems to me that the appellant believed that the said male person, and not the complainant, deserves to enjoy the freedom of walking in the street, without any apprehension of rape. The facts of this case, in both charges, depicts the appellant as a person who has very little respect for women. The trial court was enjoined to view this fact in a serious way, as it did. The argument raised by counsel for the appellant with regard to the appropriateness of the sentence is found to be without merit.

[14] The submission made by counsel for the appellant that the trial court misdirected itself in failing consider the appellant's remorse as a factor that should have compelled it to impose a lesser sentence, is equally without merit. This fact should be weighed together with the views expressed by the probation officer in the pre-sentence report. According to the probation officer, both victims are traumatized by the incidents. They both suffered physical and psychological harm. The incident of rape affected the academic progress of the rape complainant as she had to repeat a grade. Counsel for the appellant seems to erroneously believe that this suffering could be erased by a mere expression of regret.

[15] Ponnan JA stated as follows on the issue of remorse:

"There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed;

what has since provoked his or her change of heart; whether he or she does indeed have a true appreciation of the consequences of those actions."⁸

[16] The trial court correctly rejected other factors which counsel for the appellant contend justified departure from imposition of minimum prescribed sentence. There is no evidence that the appellant was motivated by his limited standard of education, his age or the unmarried status. These factors are much outweighed by aggravating factors.

[17] It cannot be said that the sentence imposed by the trial court in both counts is vitiated by irregularities that warrant interference with by this court of appeal. The trial court correctly found that there are no substantial and compelling circumstances which justify imposition of a lesser sentence than the sentences prescribed in section 51(1), in count 1 and 51 (2) in count 2. The sentences imposed by the trial court are correct and stand to be confirmed.

[18] In the result I make the following order:

- i. The appeal against the effective sentence of life imprisonment is dismissed.
- ii. The sentence of life imprisonment in count 1 is confirmed.
- iii. The sentence of fifteen years imprisonment in count 2 is confirmed.
- iii. The order in terms of which the two sentences are to run concurrently is confirmed.

MV SEMENYA
DEPUTY JUDGE PRESIDENT
LIMPOPO DIVISION, THOHOYANDOU

I agree.

⁸ Matyityi v S 2011(1) SACR 40 (SCA) at par [13]

**AML PHATUDI
JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, THOHoyANDOU.**

APPEARANCES

For the Appellant: NR Rasivhaga

Instructed by: Legal Aid South Africa, Thohoyandou

For the Respondent: Adv A Madzhuta

Instructed by: Director of Public Prosecutions, Thohoyandou