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

**CASE NO: A 129/2023
DPP REF NO: SA 23/2023**

Reportable: **NO**
Circulate to Judges: **NO**
Circulate to Magistrates: **NO**
Circulate to Regional Magistrates **NO**

In the matter between:

PULE ASHLEY MCDONALD MOKOU

APPELLANT

and

THE STATE

RESPONDENT

This Order is made an Order of Court by the Judges whose names are reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her Secretary. The date of this judgment is deemed to be 31 March 2026

CORAM: MILLAR J et REID J

ORDER

The following order is made:

1. The appeal against conviction and sentences on counts 1 and 2 is upheld.
2. The conviction and sentences are set aside and therefore the applicant is acquitted on both counts 1 and 2.

JUDGMENT

REID J (Millar J concurring):

[1] The above order was made an order of court on 26 March 2026.

[2] What follows is the reasons for that order.

Introduction

[3] On 8 February 2023, the appellant was convicted by the Regional Court, Benoni, on one count of kidnapping (count 1) and one count of rape, being a contravention of section 3 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* (count 2).

[4] On 10 February 2023, he was sentenced to five years' imprisonment on count 1, and to life imprisonment on count 2, with the sentence on count 1 ordered to run concurrently with the sentence on count 2.

[5] The appellant appeals against both his conviction and sentence. He is currently out on bail pending the outcome of this appeal. As a result of the life sentence imposed on count 2, the appellant enjoys an automatic right of appeal.

[6] The central issue in this appeal is whether the State proved the guilt of the appellant beyond a reasonable doubt. The appellant contends that the magistrate erred in accepting the version of the complainant, who was a single witness regarding the alleged kidnapping and rape, and that her evidence was not satisfactory in every material respect, nor was it sufficiently corroborated.

Background facts

[7] The incident giving rise to the charges occurred on 14 July 2017. The complainant testified that she was at a golf club with friends. While outside smoking, she encountered the appellant. According to the complainant, the appellant assaulted her and, with the assistance of a friend, Lucky, forced her into the appellant's vehicle. She testified that she was taken to the appellant's house, where she was raped by the appellant and later by Lucky.

[8] The appellant testified in his own defence. He admitted that he knew the complainant and that they had previously had a relationship, or

sexual encounters. He denied assaulting or raping the complainant. His version was that an altercation had occurred at the golf club between the complainant and his girlfriend, N[...] S[...], during which both women sustained injuries. He suggested that they all go to his house so that he could take them for medical attention the following day.

[9] He testified that he spent the night in his bedroom with his girlfriend and never left the room. He stated that the complainant was left in the garage with Lucky.

[10] The defence called N[...] S[...], who testified that she had a physical altercation with the complainant at the golf club, and that the appellant did not assault the complainant.

[11] She also testified that she and the complainant engaged in sexual activity in the presence of the appellant and Lucky whilst in the garage.

Legal principles

[12] The principles governing the evaluation of evidence in criminal cases are well-established. The State bears the onus of proving the guilt of an accused beyond a reasonable doubt. A court does not look at the evidence implicating the accused in isolation; it must consider all the evidence, both for the State and for the defence.

[13] In *S v Van der Meyden* 1999 (1) SACR 447 (W), it was held that the

proper test is whether the evidence establishes the guilt of the accused beyond reasonable doubt. If there is a reasonable possibility that an innocent explanation put forward by the accused might be true, the accused is entitled to an acquittal. This principle was confirmed on appeal by this Court in *S v Gwedlane* 2015 JDR 2623 (GP).

[14] In *S v V* 2000 (1) SACR 453 (SCA), the Supreme Court of Appeal reiterated that there is no obligation upon an accused person to convince the court of his or her innocence. If the accused's version is reasonably possibly true, he or she is entitled to an acquittal, even if the explanation is improbable. A court is not entitled to convict unless it is satisfied not only that the explanation is improbable but that, beyond a reasonable doubt, it is false.

[15] The magistrate *a quo* accepted the version of the complainant, stating that she was "not evasive, hesitant and contradictory in her evidence" and that her evidence was "by and large corroborated by the defence except the question of kidnapping and rape". With respect, I am of the view that the magistrate misdirected himself in this regard materially, for the reasons set out herein.

The complainant's evidence

[16] The complainant's evidence was fraught with difficulties. She admitted to having consumed alcohol on the evening in question. Her memory of

the events was conspicuously deficient. During cross-examination, on numerous occasions she indicated that she “did not know” or “could not remember” what had transpired. The record reveals that she gave such responses on no less than 18 occasions.

[17] The magistrate appears to have overlooked the significance of these deficiencies. When a witness’s memory is so impaired, the reliability of her account is necessarily called into question. The fact that a witness cannot remember crucial details is not a neutral factor; it goes to the very core of the reliability of the evidence.

[18] Furthermore, the version of the complainant regarding the alleged kidnapping at the golf club is inherently improbable. It is common cause that there were numerous people present at the golf club. The complainant testified that she was assaulted and forced into a vehicle, and that the vehicle (which was an automatic vehicle) had to be pushed to start.

[19] In these circumstances, it is improbable that no one observed the incident or that the complainant, who was with her friends, would not have called for help. Her friends did not testify, and no explanation was given for their absence or why they did not become suspicious when the complainant vanished.

[20] The complainant testified that she had her cell phone with her. She

used it the next morning to send a voice note to her friend. Yet she offered no explanation as to why she did not contact the police or her friends shortly after the alleged kidnapping, especially considering that she testified that she was alone in the toilet at the appellant's house and had ample opportunity to do so.

- [21] Another significant factor is that the complainant received money from the appellant's brother the day after the incident. It is common cause that the amount of money is significant, being R23,000. The evidence regarding this payment was contradictory. The complainant and the witness Phumza gave materially different accounts of the circumstances surrounding the payment. The magistrate *a quo* ought to have found that this gave the complainant a possible motive to falsely accuse the appellant, particularly given that the appellant is a businessman of means.

Corroboration

- [22] The magistrate *a quo* found that the complainant's evidence was corroborated by other State witnesses. However, with respect, this conclusion is not supported by the evidence.
- [23] The witness Phumza testified that she received a voice note from the complainant asking to be fetched. She found the complainant with swollen eyes. This evidence does not corroborate the identity of the

perpetrator or the fact of rape. It merely confirms that the complainant was distressed.

[24] The witness S[...] M[...] testified that the complainant came to her house and said she had been raped. Again, this does not constitute corroboration of the allegations against the appellant; it is evidence of a complaint, which evidence cannot be used as truth of the allegations.

[25] The objective medical evidence does not corroborate the complainant's version. The medical examination did not reveal injuries that were necessarily consistent with rape, nor did it exclude the possibility that the injuries sustained were the result of the altercation between the complainant and the appellant's girlfriend, as contended by the defence.

[26] The complainant testified that she was forced to consume half a tablet. This was never mentioned to the medical examiner, and no toxicological evidence was presented to confirm this claim. If such an event had occurred, it is likely that it would have been detected.

The defence version

[27] The magistrate rejected the version of the appellant and his witness, N[...] S[...]. However, in doing so, he failed to apply the correct legal test. The question is not whether the court believes the accused, but whether there is a reasonable possibility that his version may be true.

[28] The appellant's version was consistent. He testified that there was an altercation between the complainant and his girlfriend, that they all went to his house, and that he spent the night with his girlfriend. His evidence was corroborated by the medical findings on his girlfriend, which showed that she had sustained injuries consistent with a physical altercation.

[29] The evidence of N[...] S[...], while in parts improbable, was nonetheless consistent with the appellant's version that he did not rape the complainant and that he was not present when any alleged rape occurred. The fact that she gave evidence that may have been self-serving does not render the appellant's version false.

[30] The magistrate *a quo*'s rejection of the defence version was not based on a proper consideration of the principles as set out in *S v Van der Myden* and *S v V*. He appears to have approached the matter on the basis that the appellant had to convince the court of his innocence. That is a material misdirection.

Conclusion on conviction

[31] The evidence of the complainant was unreliable. She was intoxicated, her memory was poor, and her account contained inherent improbabilities. The objective medical evidence did not support her version, and her conduct after the incident, including accepting money

and consuming alcohol and food at the appellant's home, was inconsistent with that of a person who had been brutally raped.

[32] The complainant testified that the morning after the kidnapping and rape, she intended to take part in a protest march. This is also not consistent with a person who has been kidnapped, assaulted and raped the previous evening.

[33] The magistrate ought to have found that the State did not discharge the onus of proving the appellant's guilt beyond a reasonable doubt. The version of the appellant, that there was an altercation between the complainant and his girlfriend and that he was not involved in any rape, can be reasonably possibly true. The appellant is therefore entitled to the benefit of the doubt.

[34] In light of this finding, it is not necessary to consider the appeal against sentence.

[35] However, for completeness, I note that even if the conviction were to stand, the magistrate's failure to articulate why he convicted the appellant under section 51(1) of Act 105 of 1997, and the absence of evidence that the appellant acted in common purpose or inflicted grievous bodily harm, would have rendered the sentence of life imprisonment inappropriate. There is no indication on the record

whether Lucky was similarly charged with rape, had the appellant been found guilty of acting in common purpose with Lucky in raping the complainant.

Finding

[36] For the reasons set out above, I find that the magistrate *a quo* committed a material misdirection in finding the appellant guilty on kidnapping and rape.

[37] In the result, the convictions and subsequent sentences are to be set aside.

Order

[38] The following order is proposed:

- (i) The appeal against conviction and sentences on counts 1 and 2 is upheld.
- (ii) The conviction and sentences are set aside and therefore the applicant is acquitted on both counts 1 and 2.

FMM REID
JUDGE OF THE HIGH COURT
GAUTENG NORTH DIVISION

PRETORIA

I agree

**A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG NORTH DIVISION
PRETORIA**

DATE OF APPEAL:	26 MARCH 2026
DATE OF JUDGMENT:	26 MARCH 2026
REASONS:	31 MARCH 2021

Appearances:

For the appellant: **Adv. M. van Wyngaard**

For the respondent: **Adv. S. Lalane**