

REPUBLIC OF SOUTH AFRICA



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

Case Number: A207/2023

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
	
26 March 2026	
DATE	SIGNATURE

In the matter between:

BRIGHTON SHOVELI

FIRST APPELLANT

SAMKELE MADLALOSE

SECOND APPELLANT

ZOYISELE THUTHUKA

THIRD APPELLANT

JOHN NKOSI

FOURTH APPELLANT

AND

THE STATE

RESPONDENT

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 26 March 2026.

JUDGMENT

Nel AJ (LENYAI J CONCURRING)

Introduction

[1] The appellants were convicted on 10 November 2022 and sentenced accordingly on 21 April 2023, in the Springs Regional Court. The charges related to kidnapping; robbery with aggravating circumstances, read with the relevant provisions of the Criminal Law Amendment Act 105 of 1997¹; Rape - contravention of section 3 of the Criminal Law (Sexual offences and Related Matters) Amendment Act 32 of 2007², read with the relevant provisions of the Criminal Procedure Act 51 of 1977 (the CPA)³, the Criminal Law Amendment Act 105 of 1997 (Minimum Sentences Act) and the Children's Act 38 of 2005⁴; and a charge of attempted extortion.

[2] The appellants were all sentenced as follows:

Count 1: 3 (three) years imprisonment

Count 2: 15 (fifteen) years imprisonment

Count 3: Life imprisonment

Count 4: 1 (one) year imprisonment

[3] The appellants were all legally represented during the course of the trial and pleaded not guilty to all charges preferred against them.

[4] The appellants have lodged an appeal against their respective convictions and sentences. Due to the sentence of imprisonment for life imposed, the appellants had

¹ The Criminal Law Amendment Act, Act 105 of 1997.

² The Criminal Law (Sexual Offences and Related matters) Amendment Act, Act 32 of 2007.

³ The Criminal Procedure Act, Act 51 of 1977.

⁴ The Children's Act, Act 38 of 2005.

an automatic right to appeal if noted, it was accordingly noted and the reason why this matter is now before us.

[5] The Appellant's grounds of appeal against the conviction are in essence, that the court *a quo* erred in finding that the state had proved its case beyond a reasonable doubt; finding that the state witnesses, more particularly the complainant as a single witness, gave evidence in a satisfactory manner; finding that the appellants acted in a common purpose and rejecting the version of the appellants.

[6] With regard to sentence the grounds of appeal could be summarized that the court *a quo* over-emphasized the seriousness of the offence; not attaching adequate weight to the appellant's personal and mitigating circumstances; finding that no substantial and compelling circumstances existed to deviate from imposition of the prescribed minimum sentence and finding that the appellants acted in common purpose.

Background

[7] The events transpired after the complainant in this matter boarded a taxi together with two other woman. The complainant was then assaulted, robbed and raped in the same taxi. Her husband was called during the ongoing events in order to extort money for the release of his kidnapped wife. The Police intervened by stopping a suspicious taxi and found the complainant half naked in a compromising position being held down on the floor of the taxi by a male person. When questioned by the police some of the suspects fled on foot and others in the taxi which only stopped after the police shot at the tyres of the vehicle. The presence of the four appellants in the taxi during the course of the events as well as their subsequent arrest is not in dispute, however their respective actions, conduct and intentions are.

Analysis and applicable legal principles

[8] The trial court bears the task of analysing and evaluating evidence. A court of appeal is limited in its ability to interfere with the trial court's conclusions, and may not do so simply because it would have come to a different finding or conclusion.

[9] The above principle was laid down in *Rex v Dhlumayo and another*⁵ where the court dealing with the appeal court's powers stated that:

"Ordinarily the appellant in a criminal appeal has to satisfy the appellate court that the verdict was wrong, at least to the extent that the trial court should have had a reasonable doubt as to his guilt...

Where there has been no misdirection on fact by the trial Judge, the presumption is that his conclusion is correct; the appellate court will only reverse it where it is convinced that it is wrong."

[10] In *Pistorius v S*⁶ Boshielo JA at paragraph 30 held that:

"It is a time-honoured principle that once a trial court has made credibility findings, an appeal court should be deferential and slow to interfere therewith unless it is convinced on a conspectus of the evidence that the trial court was clearly wrong. *R v Dhlumayo & another* 1948 (2) SA 677 (A) at 706; *Kebana v S* 2010 (1) All SA 310 (SCA) para 12. It can hardly be disputed that the magistrate had advantages which we, as an appeal court, do not have of having seen, observed and heard the witnesses testifying in his presence in court. As the saying goes he was steeped in the atmosphere of the trial. Absent any positive finding that he was wrong, *this court* is not at liberty to interfere with his finding."

[11] From the above, it is clear that the court of appeal's powers are confined, only to the extent when the trial court has misdirected itself in its factual findings. This is so because the trial court has the advantage, which the appeal judges do not have in seeing and hearing witness being confronted and evaluated in the atmosphere of the trial. Not only has the trial court the opportunity of observing the demeanour, but also their appearances and personality.

[12] Arguments presented on behalf of all of the appellants aligned with the contention that the state had failed to prove the case beyond a reasonable doubt on the evidence of a single uncorroborated witness; insufficient evidence presented to

⁵ *Rex v Dhlumayo and another* 1948 (2) SA 677 (A) at 705.

⁶ *Pistorius v S* 2014 (2) SACR 314 (SCA).

sustain the conviction on the charges and that the court *a quo* wrongly applied the doctrine of common purpose.

[13] It was further argued that the court *a quo* faulted in not accepting the versions of the respective appellants as reasonably possibly true.

The state's case

[14] The complainant's version that she was in the taxi together with the 4 appellants is undisputed and accepted as part of the appellant's versions.

[15] Mrs. Matlakala testified that on 12-13 November 2019 she was on board the taxi with two other ladies who were on their way to Durban, while she was on her way to Kinross. The second Appellant was driving the taxi. After driving for a short while, their handbags were demanded by the first Appellant. The other two ladies were then dropped off. Mrs Matlakala was strangled and robbed of her handbag, jewellery, cell phone, smart phone, R5000 cash, a power bank, a charger and a router. These items were taken from her by the first Appellant and handed to the fourth Appellant.

[16] There was also an attempt to access her bank account at an ATM without success which led to her husband being called to pay money for her release, if not she would be raped and killed.

[17] The complainant further testified that she was physically assaulted by the first, third and fourth appellants, whereafter the fourth appellant told her to undress her lower body and lie down. The fourth Appellant then proceeded to hit her with an iron rod he had in his possession. The same instrument was then used to penetrate her vaginally. The Police stopped their vehicle and the appellants were all arrested after they tried to escape.

[18] Mrs. Matlakala never disclosed any details of the rape to the Police, her husband or the medical doctor who examined her. She testified that she was ashamed of what had happened to her. She self-treated the vaginal injury.

[19] Doctor Ntshangase, a medical doctor in private practice testified that he examined Mrs Matlakala on 13 November 2019. Mrs Matlakala presented with a history of being assaulted by a group of four guys while on board a taxi. She reported

that her belongings were taken, she was kicked and beaten with a steal pipe. She had suffered multiple injuries to her face and body. He testified that he did not complete the gynaecological section because nothing in that regard was reported to him.

[20] Mr. Joseph Mahlalela, the husband to the complainant, testified that he believed that after receiving the phone call that something had happened to his wife. He realized that she was kidnapped and testified that an amount of money was demanded by her kidnappers. He then involved Mr. Elvis Dlodlu to assist him.

[21] Mr. Elvis Dlodlu testified that he assisted Mr. Mahlalela to talk to the kidnappers and negotiate the payment. The amount of R5 000 suggested was not enough and R10 000 was required by the kidnappers, they also threatened to shoot Mrs Matlakala in her private part if they did not receive the money as demanded quickly. According to him they specifically stated that they would not rape the complainant, but they will shoot her. On his way to an FNB ATM, before he could transfer the money, he received a call from one Constable Malinga who reported that Mrs Matlakala had been found.

[22] Sergeant Malope attached to the SAPS flying squad stopped a suspicious taxi at 8:30 pm. The fourth Appellant was the driver of the taxi who acted suspiciously when he requested to search the taxi. His investigation of the taxi revealed a female that was half naked on the floor of the taxi with a male person who was pressing her down. He initially thought that they were having sexual intercourse but on second thought realized that perhaps they were raping the lady because she had raised her hand and shook it.

[23] According to Sergeant Malope, the fourth appellant, realizing what had been observed by the Police, ran away into the bushes while one of the other males ran towards the driver's seat and drove off. Sergeant Malope discharged his fire-arm in order to stop the vehicle whereafter the taxi was pursued for a distance of about 5 kilometres before it veered off the road because of damage to the wheels caused by further shots fired at the vehicle. Subsequently all four appellants were arrested.

The appellant's case

[24] The appellants' versions is simply a denial of any form of kidnapping, assault, rape or extortion of money from the complainant and her husband. Apart from admitting that the complainant was picked up and transported in the taxi which was later stopped by the Police, they deny all other allegations.

[25] The first Appellant's evidence was that the complainant was picked up on route to Delmas. She requested a re-route to the airport for a luggage pick-up. She and the fourth appellant had discussions in that regard and an agreement was reached. Due to the payment made not reflecting an argument started between them. The complainant called her husband, and he had a discussion with the fourth appellant about money. Next thing there was a vehicle flickering lights behind them. They stopped, shots were fired and the fourth appellant ran away. The third Appellant took charge and drove the vehicle from that point, but further shots were fired, the tyre burst and the vehicle veered off the road. The first and the second Appellants then jumped from the taxi. He denied any robbery of the complainant.

[26] The second Appellant's version was that he was the driver of the taxi. Somewhere along the road he was told to stop by the fourth appellant which he did and the fourth appellant took over as the driver. He confirmed the discussion and misunderstanding about the money payable as well as the telephonic conversation between complainant's husband and the fourth appellant. Along the road they were then stopped by the Police. After being stopped by the Police, he and the first appellant jumped out of the moving vehicle. He denied witnessing or taking part in any assault or rape on the complainant.

[27] The third Appellant's version was that they picked up a hitchhiker. He also gave a version about the arrangements to go to the airport and discussions about payment that was made followed by a vehicle flickering lights at them, being stopped by the Police, shots being fired and he taking control to drive away in the taxi. After losing control of the vehicle due to the tires being damaged by the gunfire, the vehicle was forced to a halt and he left the scene and was only later arrested.

[28] The fourth Appellant's version was that they were on their way to his girlfriend in Delmas. He was asleep and was woken up by the first appellant. It was explained to him that there was a lady in the vehicle that needed help. After a discussion they

came to an agreement that he would assist her upon payment of R500. Payment was to be made into his account via transfer but it was not successful. There were some discussions going back and forth about the payment of the money and he ended up talking to a male person who said that he would request a friend to make a payment into his E-wallet. While this happened a vehicle came from behind and flicked his lights. They were shortly afterwards stopped by the Police. After he presented his driver's licence shots was fired, he became confused and ran away.

Evaluation of the evidence

[29] The evidence of the complainant in this matter is that of a single witness and thus subject to the cautionary rules applicable to single witnesses⁷.

[30] The evidence of complainants in matters of a sexual nature is however not to be subjected to the same scrutiny as stipulated in the Sexual Offences and Related Matters Amendment Act. Section 60 clearly prohibits a cautionary approach in criminal proceedings involving the alleged commission of a sexual offence pending before that court based only on the nature of the sexual act.

[31] However, apart from some circumstantial evidence offered by the other witnesses called by the state, they could not really provide any support for her evidence on the rape charge.

[32] From the evidence of the complainant it is evident that she decided not to tell anyone about the rape encounter. The reason therefore as explained during her testimony, was that she was ashamed, resulting in the rape not being recorded in her statement to the Police, not reported to her husband and also not reported to her doctor who performed the medical examination.

[33] The lack of supporting medical evidence as well as the absence of any report about the events that transpired, leads to the conclusion that the state was not able to prove the charge of rape (C/s 3 Act 32 of 2007) beyond a reasonable doubt.

⁷ See: S v Sauls 1971 (3) SA 172 (A).

[34] The state however did succeed to prove the elements of a lesser offence to wit assault with the intent to do grievous bodily harm which is a competent verdict to the preferred charge in terms of section 261(1)(a) of the Criminal Procedure Act⁸.

[35] The objective medical evidence did support the injuries on the complainant and the evidence of sergeant Malope regarding the circumstances under which the complainant was found.

[36] The court *a quo* undertook a detailed analysis of the complainant's evidence and reminded itself extensively of the caution required when dealing with the evidence of single witnesses. The court discussed the impression the complainant made upon it and how she maintained her version throughout and why the lack of the report about the rape should not taint her testimony before the court.

[37] The court *a quo* carefully considered the all evidence presented in the state's case with its inconsistencies and found it to be clear, coherent and satisfactory in all material respects and proof beyond a reasonable doubt to sustain a conviction.

[38] The regional magistrate found that the appellants were not just a random group of friends on their way somewhere but that they were a cohesive group with a specific common intent.

[39] The trial court critically and comprehensively examined the respective versions offered by the appellants; the inherent probabilities of the case were considered on the conversation, route taken, payment agreement and calls made to the complainant's husband, and rightfully rejected it as vague, sketchy, improbable and false.

[40] There can be no misdirection found in the trial courts analysis, evaluation and rejection of the appellants' version.

Common Purpose

[41] A person is regarded to be perpetrator to a crime although his own conduct does not comply with that required in the definition of the crime, if he acted together

⁸ Criminal Procedure Act, Act 51 of 1977.

with one or more persons and the conduct required for a conviction is imputed to him by virtue of the principles relating to common purpose⁹.

[42] Conduct by a member of the group of persons having a common purpose which differs from the conduct envisaged in the said common purpose may not be imputed to another member of the group unless the latter knew that such other conduct would be committed, or foresaw the possibility that it might be committed and reconciled himself to that possibility¹⁰.

[43] There was no evidence of a prior agreement between appellants, which would be difficult to prove because the offence was committed after the complainant entered the taxi. However, a finding that a person acted together with another in a common purpose is not dependent upon proof of a prior conspiracy. Such a finding may be inferred from the conduct of the participants. The State was therefore required to prove that the appellants had actively associated themselves with the execution of the common purpose. The concept of active association is wider than that of agreement, since it is seldom possible to prove a prior agreement. Consequently, it is easier to draw an inference that a participant associated himself with the perpetrator¹¹.

[44] The appellants were at all times present in the taxi during the commission of the various offences. Not only did they participate in the furthering of the common goal by actively participating, but also at no stage did any of them dissociate themselves from the criminal acts directed at the complainant. The evidence suggest that the vehicle stopped on more than one occasion. At no point did any of the appellants, when the opportunity presented itself, choose to leave the vehicle.

[45] In *S v Tshabalala*¹² the Constitutional Court held that:

“The object and purpose of the doctrine is to overcome an otherwise unjust result which offends the legal convictions of the community, by removing the element of causation from criminal liability and replacing it, in appropriate

⁹ *Snyman, Criminal Law, 7th Edition p.222*

¹⁰ *Snyman p 225.*

¹¹ *Snyman p 229*

¹² *Tshabalala v The State; Ntuli v The State [2019] ZACC 48*

circumstances, with imputing the deed (actus reus) which caused the death (or other crime) to all the co-perpetrators.¹³

[46] The Court *a quo* found that the appellants had actively associated themselves with the execution of the common purpose. The court made a factual finding that the appellants were guilty of all the respective offences on the basis of common purpose. Thus, these factual findings must remain undisturbed, and this Court cannot make a determination to the contrary.

Conclusion

[47] The court *a quo* distinctly made the finding that aggravating circumstances were not proved beyond a reasonable doubt and accordingly convicted the appellants on robbery.

[48] On the charge of rape the court already referred to the lack of evidence to support a conviction.

[49] It follows that the appeal on count 3 should succeed and the conviction on the count of Rape (C/s 3 Act 32 of 2007) be replaced with a conviction on the competent verdict of assault with the intent to do grievous bodily harm in terms of Section 261(1)(a) of the Criminal Procedure Act.

[50] The convictions on count 1, 2 and 4 is confirmed.

Sentence

[51] Sentencing falls primarily within the discretion of the trial court and the court sitting as court of appeal will not lightly interfere with that discretion.

[52] In *S v Pieters*¹⁴ it was held that interference on appeal is justified where the sentencing court committed a material misdirection or where the sentence imposed is disturbingly inappropriate.

[53] On the count of robbery with aggravating circumstances (count 2), the court *a quo* disregarded its own finding that the conviction was only on a count of robbery and

¹³ Par 56

¹⁴ *S v Pieters* 1987 (3) SA 717 (A)

that aggravating circumstances were not proved. The court thus misdirected itself and proceeded to impose sentence in terms of the Criminal Law Amendment Act 105 of 1997.

[54] It follows that the appeal regarding sentence on count 2 must succeed and the appellants be sentenced on a count of robbery. The sentence imposed on count 2 is set aside and will be replaced with a sentence on robbery.

[55] With regard to sentence imposed on count 3, the appellants argued that the sentence of life imprisonment was inappropriate because the court failed to properly consider the appellants personal circumstances and deciding that no substantial and compelling circumstances existed to justify the imposition of a lesser sentence.

[56] The argument however falls away since the conviction is on a lesser charge and competent verdict to the charge of rape. It follows that the appeal with regard to sentence on count 3 must succeed and the appellant will be sentenced on a count of assault with the intent to do grievous bodily harm.

[57] All the necessary information to properly consider sentence is on record. It would serve no purpose to send the matter back to reconsider sentence afresh based on the findings of this court. This court will then summarily proceed with sentence on counts 2 and 3.

Order:

[58] Under the circumstances the following order is made:

1. The appeal regarding count 1 and 4 is dismissed.
2. The appeal regarding count 2 and 3 is upheld and the sentence is set aside and replaced as follows:
 - (a) On count 2 – Robbery, the appellants are each sentenced to a period of 6 (six) years imprisonment.
 - (b) On count 3 – Assault with the intent to do grievous bodily harm, the appellants are each sentenced to a period of 5 (five) years imprisonment.

3. The sentence is antedated to 21 April 2023, being the date when the appellants were originally sentenced.

[59] *Obiter remark:* The state conceded during argument on appeal the obvious fact flowing from the cross-examination of the complainant, that the charge of rape of the complainant was not supported or contained in any official statement under oath. The charge originated from a report to a witness who was not called during the course of the extended trial. Prosecution on such serious charges simply cannot be instituted if not based on any supporting affidavits or statements and must be condemned.

[60] This judgment must be brought to the attention of the Director of Public Prosecutions, Gauteng Division, Pretoria.



PW NEL AJ
ACTING JUDGE OF THE HIGH COURT
PRETORIA

I concur and it is so ordered.



MMD LENYAI J
JUDGE OF THE HIGH COURT
PRETORIA

Date of Hearing: 17 February 2026

Date of Judgment: 26 March 2026

Appearances:

For the First Appellant:
Instructed by:

Advocate: Mrs. Van Wyk L.A
Legal Aid South Africa

For the Second and Third Appellants:
Instructed by:

Advocate: Mr. Mathebula
Mashaba Believe Attorneys Inc

For the Fourth Appellant:
Instructed by:

Advocate: Mrs. Makoko
Legal Aid South Africa

For the Respondent:
Instructed by:

Advocate: Mr. Masekoameng
The Director of Public Prosecutions, Pretoria