

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE CIRCUIT DIVISION, EAST LONDON)**

CASE NO.: CC37/2025

In the matter between:

THE STATE

and

A[...] N[...]

Accused

JUDGMENT ON SENTENCE

MOLONY AJ:

- [1] The accused in this matter has been found guilty of one count of rape (in regard to his 74 years old aunt) and one count of robbery with aggravating circumstances.
- [2] A discretionary minimum sentence of life imprisonment is accordingly applicable in regard to the count of rape, whilst the robbery count attracts a discretionary minimum sentence of 15 years' imprisonment, unless this court finds that substantial and compelling circumstances exist which justify the imposition of a lesser sentence.
- [3] It is trite that when determining an appropriate sentence the nature of the crime, the circumstances of the offender and the interests of society must be considered, and that relevant mitigating and aggravating factors must be weighed in order to determine a sentence which is proportionate under the circumstances.
- [4] The accused's personal circumstances, as placed on record by his legal representative, are the following:
- (a) He was born on 17 July 1991 and is currently 34 years old.
 - (b) He is single and has no children.
 - (c) He passed Std 8 at school but left halfway through Std 9 due to financial constraints.
 - (d) After school he did odd jobs for a while (such as gardening, working in shops or washing cars). He would earn a maximum of R500 per week, if it was a good week.
 - (e) He saved his money and attended a course, which permitted him to qualify as a security guard. He began working in this capacity in 2015 in the Western Cape.

- (f) He returned to the Eastern Cape in 2018, in order to assist his parents, and found work as a security guard earning R 4 000 per month.
- (g) At the time of his arrest he was working as a security guard for another company, earning R 6 000 per month.
- (h) Both of his parents are no longer working and receive an old-age grant. His father is ill and is in and out of hospital. The accused believes his father suffers from diabetes and ulcers. His mother suffers from high blood pressure. The accused was financially supporting his parents, as well as looking after them, prior to his arrest.
- (i) He has 4 siblings, 2 of which are older than him, and 2 of which are younger. The older siblings are not in a position to assist their parents financially, and the accused also financially assists the younger 2 siblings, who are unemployed. His family has been suffering since he was incarcerated, as no one else has been able to fulfill his role within the family.

[5] The accused is a first offender and has been in custody since 30 December 2024.

[6] It was submitted on the accused's behalf that the following aspects, cumulatively considered, constitute substantial and compelling circumstances justifying the imposition of a lesser sentence:

- (a) Through his legal representative he expressed his remorse and tendered an apology to the complainant in regard to what he had done to her. This was intended to be an apology for both offences.
- (b) The complainant did not suffer financial loss, as the accused asked his parents to reimburse her. He did this out of his own accord.

- (c) The fact that he had consumed some alcohol on the day in question had a negative influence on his actions and he acted out of character – the fact that he is a first offender demonstrates this.
- (d) His work history and the fact that he looks after his parents and siblings speaks to him being a responsible person, who is capable of rehabilitation.
- (e) The accused has not delayed the matter and has played 'open cards' with the court in regard to the robbery charge.
- (f) A sentence must contain an element of mercy, and I was urged not to 'over punish' the accused.

[7] It was submitted that, as the offences occurred during the same sequence of events, any sentences imposed be ordered to run concurrently.

[8] The state, in submitting that the only appropriate sentences were life imprisonment (in regard to the rape) and 15 years' imprisonment (in regard to the robbery), submitted that:

- (a) The accused was feeling self-pity and was not genuinely remorseful.
- (b) The complainant's money was not immediately returned to her – the accused waited until he had been arrested and then asked his parents to reimburse the complainant.
- (c) The accused took advantage of the complainant, who was a family member, and raped her in her own home. There was therefore a domestic violence element to these offences.
- (d) The accused penetrated the complainant twice (vaginally and anally).

(e) The impact of the crime on the complainant could not be overlooked.

(f) It was aggravating that the accused, who was 33 at the time, raped someone who was 73 years old.

(g) Rehabilitation was unlikely in the absence of remorse.

[9] In considering whether or not there are substantial and compelling circumstances present which justify the imposition of a lesser sentence, I will remain mindful of the guidance provided by the matter of *S v Malgas* 2001 (2) SA 1222 (SCA), in which *inter alia* the following is stated in paragraph 25:

'D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.

E. The Legislature has however deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it, this does not mean that all other considerations are to be ignored.

F. All factors (other than those set out in D above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process.

G. The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ('substantial and compelling') and must be such as cumulatively justify a departure from the standardized response that the Legislature has ordained.'

- [10] In this regard the following passage from the matter of *S v Dyantyi* 2011 (1) SACR 540 (E) at paras 21 – 23 is apposite:

‘[21] To conclude on this point, I believe that I should also remind myself of what was said in *S v Holder* 1979 (2) SA 70 (A) at 81B, when Rumpff CJ made what I consider to be a telling point, which is that a sentencing court should take cognisance of the times in which sentencing takes place. Much has been said by communities in all walks of life in this country in relation to crimes such as rape in particular, and abuse of women and children in general. One can thus safely say that all right-thinking members of the public view such crimes with revulsion. Taking this factor into account therefore enjoins this court to view crimes such as rape in an extremely serious light and, consequently, when it comes to punishment, courts must, after taking due cognisance of all relevant factors, impose sentences that reflect the revulsion of society at the commission of such crimes. This is, however, not to say that the courts should abdicate their sentencing discretion and allow themselves to be swayed by public opinion; it is, rather, more to say public interest dictates that the concerns of society and society's disapproval of certain crimes should receive some recognition in the sentences that courts impose, especially those offences that strike at the very heart of the values and ethos of our Constitution.’

- [11] In the matter of *Director of Public Prosecutions Eastern Cape v Coko* 2024 (2) SACR 113 (SCA) at paragraph 6, it was stated that:

‘Regrettably, 26 years since the decision of this court in *Chapman*, the scourge of rape has shown no signs of abating. On the contrary, rape is not only rife, but has also reached pandemic proportions. And, sadly, it is women and children, being the most vulnerable in society, who bear the brunt of this scourge.’

- [12] Part I of Schedule 2 of Act 105 of 1997 specifically includes the rape of an older person, as defined in section 1 of the Older Persons Act 13 of 2006, as one of the offences in terms of which a discretionary minimum sentence of life imprisonment is applicable. An ‘older person’ is defined in the Older Persons Act as someone who is 65 years or older, in the case of a male, and 60 years, or older, in the case of a female.

- [13] The complainant in this matter is elderly and she was, and is, particularly vulnerable. The accused utilized physical force in order to ensure that she could not scream and remained compliant. To add insult to injury, the accused is the complainant's nephew, and so was a family member that she loved and trusted. The incident in question occurred in the sanctity of the complainant's own home, which is meant to be a safe space.
- [14] In regard to the aspect of remorse, the matter of *S v Matyityi* 2011 (1) SACR 40 (SCA) at paragraph 13 provides the following guidance:
- ‘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; and whether he or she does indeed have a true appreciation of the consequences of those actions.’
- [15] Having said the above, it would be inappropriate to over-emphasize the interests of the community and to ignore the cumulative effect of all of the relevant factors which must be considered.
- [16] It cannot be overlooked that the accused, at the age of 34, is a first offender who attempted to better himself in order to gain employment as a security guard, in the Western Cape. He then moved back to the Eastern Cape to take care of his family. He was, until the night in question, to be considered as being a responsible and productive member of society. Given the aforementioned, I accept as mitigating that having imbibed a certain amount

of alcohol on the day in question, the accused's conduct was out of character, and that, what occurred was ultimately more opportunistic than planned.

[17] Whilst he pleaded not guilty in regard to the offence of rape I accept that, given the obvious issues this has caused within his family, the self-evident shame which follows such a conviction (both to the offender and their family), to some extent motivated his apology. The fact that the accused's mother had to be admonished to remain silent whilst the complainant testified evidences the fractured family dynamic referred to by the accused's legal representative. Given these considerations, I accept that the accused is in fact remorseful for what he has done, and is capable of rehabilitation.

[18] I am therefore persuaded that substantial and compelling circumstances exist, which would render the imposition of the relevant minimum sentences disproportionate.

[19] The offences in question nonetheless call for lengthy terms of imprisonment. I am satisfied, given that the offences in question occurred consecutively during the course of one incident, that it would be appropriate for the sentences to run concurrently.

[20] I accordingly impose the following sentences:

(a) In regard to the RAPE conviction, the accused is sentenced to 20 years' imprisonment.

(b) In regard to the conviction of ROBBERY WITH AGGRAVATING CIRCUMSTANCES, the accused is sentenced to 13 years' imprisonment.

(c) The above-mentioned sentences are to run concurrently.

N MOLONY

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the State : Mr Mgenge

**Instructed by : Director of Public Prosecutions
Makhanda**

For the Defence : Mr Nomlala

**Instructed by : Legal Aid South Africa
East London**

Heard: 09, 10, 11 & 12 March 2026

Delivered: 13 March 2026