



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Not reportable

Case No. CA&R 158/2025

In the matter between:

M[...] J[...]

Appellant

and

THE STATE

Respondent

JUDGMENT

LAING J

[1] This is an appeal against conviction and sentence of the Gqeberha Regional Court on separate charges of rape and sexual assault. The appellant was sentenced to life and six years' imprisonment, respectively.

Background

[2] The complainant, JG, was born on 18 November 2004. The appellant is her father. Their daughter, LG, was born on 17 September 2019.

[3] The complainant's aunt testified that the complainant had fallen pregnant while she had been staying with the appellant. Her mother had left the home by that stage to look for work in the Western Cape. It was only after the child's birth that the aunt discovered from an exchange of phone messages between the complainant and the appellant that he was LG's father. The aunt took the complainant to the police, where she said that the appellant had started having sex with her since she had been 11 or 12 years old. He had several girlfriends during that time.

[4] The complainant testified that she had shared a bed with the appellant after having gone to live with him while she was still very young. She had been at primary school, 'around 11 years [old]', when he had started touching her before inserting his penis into her vagina. It had been a painful experience. The complainant stated that she had never consented to it. She said that the appellant had also, on occasion, taken her hand and placed it on his penis, against her will. Sex took place frequently. The complainant was 14 years old when she fell pregnant. The appellant wanted her to have an abortion, but her aunt resisted. The complainant explained to her aunt, at the appellant's urging, that the father of the child had disappeared. The appellant continued to have sex with her. This finally came to an end in 2023, when she told him that she was tired of it. She never disclosed to anyone what had been taking place because she was afraid of how others would see her and had also been very afraid of the appellant, who had threatened to kill her if she exposed him. He had also threatened to withdraw his support; she was entirely dependent on him. The appellant's girlfriends had visited him at home during their respective relationships, staying with him for a time. At night, however, he would wake up the complainant and take her to the toilet outside, where he used to touch and molest her. This went on continuously. The complainant said that she never consented to having sex with the appellant but later gave in because she was tired of fighting back. The experience had changed her life; she could not trust men.

[5] Under cross-examination, the complainant described how she had lost respect for the appellant. She refused to refer to him as her father, calling him by his first name instead. The complainant strongly refuted the assertion that she had

wanted sex with the appellant from as young as 14 years of age. She also denied that she had ever given her consent, that she had ever agreed to keep the details of her pregnancy a secret, or that she had ever threatened to tell others about her relationship with the appellant. The complainant stated, too, that she had kept the appellant's identity hidden from the police and social workers, in accordance with his instructions, even after LG's birth. If she ever attempted to object to sex with the appellant, then he would remove the items that he had bought for her and disable her phone.

[6] The appellant testified in his own defence. He stated that he was 42 years old and worked as a building constructor. He had eight children, including the complainant. The appellant said that his relationship with the complainant had been very good when she had stayed with him, like that of a father and daughter. He explained that he had subsequently made a considerable amount of money through betting, which he had spent on his family and others. He also lent money to a young woman with whom he later entered a relationship. This led to an adverse reaction on the complainant's part, who subsequently initiated sex with the appellant. He admitted that it was not something normal, but denied having requested her to conceal his identity as LG's father. The appellant went on to recall a phone conversation with the complainant wherein the latter had spoken about their relationship, requesting that it be more romantic. He also spoke about a recent altercation prompted by his having reprimanded her for not focusing on her schoolwork; she had objected, pointing out that she had kept him happy for eight years, to which he had angrily responded that she should leave his house and that he would inform her extended family that the child was his. He knew that it had been wrong to have had sex with his daughter. He denied that he had ever placed her hand on his penis.

[7] During cross-examination, the appellant admitted that he had sex with the complainant, but he insisted that it only started when she was 14 years old. He was adamant that she had wanted sex, but said that he had only had sex with her on two occasions. He conceded that the complainant had been financially dependent on him for food, shelter, and clothing.

Judgment of the court a quo

[8] The court a quo noted that the state's case rested chiefly on the testimony of a single child witness. It found, nevertheless, that JG was trustworthy and that there was consistency in her evidence. This was corroborated by the information apparent from the undisputed contents of a J 88 medical report, her aunt's testimony, as well as (in part) the evidence of the appellant himself. Consequently, the court found that both the complainant and her aunt were credible and reliable witnesses. In contrast, it rejected the appellant's version of events.

[9] Addressing the question of consent, the court found that the complainant had been 11 years old when the appellant first committed sexual acts with her. This fact, on its own, was enough to satisfy the court that there had been no consent. The acts continued after the complainant fell pregnant when she was 14 years old and after the child's birth. In holding that the complainant had never consented to having sex with the appellant, the court considered the parties' respective ages and the power that the appellant had over the complainant, including his manipulation and intimidation of her. The court convicted the appellant on both charges.

Issues to be decided and legal framework

[10] On appeal, the primary issue for determination was whether the nature of the sexual relationship between the parties had been consensual. The charge of rape was framed in terms of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 ('SORMA'), read with the relevant portions thereof; the remaining charge of sexual assault was framed in terms of section 5 (1). The absence of consent is an element of both offences. In that regard, sections 1 (2) and (3) are pertinent:

'(2) For the purposes of sections 3 . . . "**consent**" means voluntary or uncoerced agreement.

- (3) Circumstances in subsection (2) in respect of which a person (“B”) (the complainant) does not voluntarily or without coercion agree to an act of sexual penetration, as contemplated in sections 3 and 4, or an act of sexual violation as contemplated in sections 5 (1), 6 and 7 . . . include, but are not limited to, the following:
- (a) where B (the complainant) submits or is subjected to such a sexual act as a result of —
 - (i) the use of force or intimidation by A (the accused person) against B, C (a third person) or D (another person) or against the property of B, C or D; or
 - (ii) a threat of harm by A against B, C or D or against the property of B, C or D;
 - (b) where there is an abuse of power or authority by A to the extent that B is inhibited from indicating his or her unwillingness or resistance to the sexual act, or unwillingness to participate in such a sexual act;
 - (c) . . .
 - (d) where B is incapable in law of appreciating the nature of the sexual act, including where B is, at the time of the commission of such sexual act —
 - (i) – (iii) . . .
 - (iv) a child below the age of 12 years; or
 - (v) . . .’

[11] The provisions of section 57 (1) are also pertinent:

‘Notwithstanding anything to the contrary in any law contained, a male or female person under the age of 12 years is incapable of consenting to a sexual act.’

[12] The state did not rely on either sections 15 or 16 of SORMA which deal with statutory rape and sexual assault. These provisions provide that a person who commits an act of sexual penetration or violation with a child who is 12 years of age or older but under the age of 16 years is guilty of an offence, notwithstanding the

child's consent.¹ Accordingly, for convictions under sections 3 and 5 (1), it was critical for the state to have demonstrated the absence of consent.

[13] There is, of course, a difference between the concepts of consent and submission. This has long been recognized in our case law. In *R v Swiggelaar*,² the erstwhile Appellate Division held that:

'Submission by itself is no grant of consent, and if a man so intimidates a woman as to induce her to abandon resistance and submit to intercourse to which she is unwilling, he commits the crime of rape. All the circumstances must be taken into account to determine whether passivity is proof of implied consent or whether it is merely the abandonment of outward resistance which the woman, while persisting in her objection to intercourse, is afraid to display or realises is useless.'³

[14] SORMA gave statutory effect to the distinction by means of a definition of consent that acknowledges the potential impact of coercion, by several means, on a person's agreement to a sexual act. This allows an examination of not only the complainant's actions in the circumstances but also those of the accused. In their commentary on the legislation in question, Smythe and Pithey observe as follows:

'In practice, much of a rape trial will revolve around testimony as to the victim's unwillingness to engage in acts of sexual penetration with the accused. This focus on non-consent has been identified as one of the most problematic aspects of rape law, focusing attention on the conduct of the victim rather than that of the accused.⁴ The legislature's definition of "consent" in terms of coercive circumstances is designed to reorientate the enquiry towards the conduct of the accused.'⁵

[15] The learned writers submit further that the enquiry into consent should begin by examining the conduct of the accused and the circumstances surrounding the incident. This would determine whether consent was vitiated.⁶ They remark that

¹ Sections 15 and 16 list two exceptions, viz where the perpetrator is 12 years of age or older but under the age of 16 years, or where he or she is 16 or 17 years of age but the age difference between him or her and the complainant is not more than two years.

² 1950 (1) PH H61 (A).

³ At 110–11. See, too, more recently, *S v F* 1990 (1) SACR 238 (A), at 249.

⁴ *S v EN* 2014 (1) SACR 198 (SCA).

⁵ D Smythe and B Pithey *Sexual Offences Commentary: Act 32 of 2007* RS 2 (2019) ch2–p8.

⁶ *Ibid.*

South African law now acknowledges that rape is not only a sexual crime, but also a crime involving the coercive exercise of emotional, psychological, economic, social, and institutional power over another person.⁷

[16] The influence of coercive power on a person's agreement to a sexual act was considered in *S v Egglestone*,⁸ where the accused was twice the complainant's age. He was, moreover, her employer, and he had worn her out under continuous pressure to give in to his advances. Mlambo JA found that there had been no consent.⁹ Similarly, in *S v Pretorius*,¹⁰ Cloete AJ found that the failure of the employee of a cleaning agency to object to a client's self-masturbation in front of her did not amount to voluntary or uncoerced agreement to the sexual act in question. She did not leave the premises because she had needed the income to support her children. The accused had abused his position of power or authority.¹¹ In *S v Mugridge*,¹² Erasmus AJA held that a court must have regard to the totality of facts to determine whether acquiescence to certain sexual acts also constituted consent. The learned judge stated that:

‘ . . . in the context of sexual relations involving children, any appearance of consent to such conduct is deserving of elevated scrutiny, with particular attention to be paid to the fact that the person giving consent is a child. The inequalities in the relationship between the child victim and the adult perpetrator are of great importance in understanding the construction, nature and scope of the child's apparent consent to any sexual relations. These inequalities may most likely influence the child's propensity to consent to sexual relations, as “the outcome of forced choices, precluded options, constrained alternatives, as well as adaptive preferences conditioned by inequalities”,¹³ the latter being particularly relevant in the instant matter.’¹⁴

⁷ Op cit, ch2–p10. South African Law Commission. Sexual offence: substantive law (Project 107) Discussion Paper 85 (1999), para 9.4.7.3.1.4, available at <http://www.doj.gov.za/salrc/dpapers.htm> (accessed 5 July 2009).

⁸ 2009 (1) SACR 244 (SCA).

⁹ Paras 23–25.

¹⁰ 2013 (1) SACR 261 (WCC).

¹¹ Para 22.

¹² 2013 JDR 0658 (SCA).

¹³ S W Mills ‘Reforming the law of rape in South Africa’ in C McGlynn and V E Munro (eds) *Rethinking Rape Law: International and Comparative Perspectives* (2010), at 259.

¹⁴ *Mugridge*, para 42.

[17] Our case law reflects an appreciation for the complex nature of a court's enquiry into the absence or otherwise of consent when confronted with charges brought in terms of SORMA. There must be a recognition, firstly, of the distinction between submission and consent; secondly, the conduct of the accused, not only the complainant, must play a role in the enquiry; and, thirdly, the context of the incidents or incidents must be considered, including the coercive influence of emotional, psychological, economic, social, and institutional power structures. To this must be added the need for heightened scrutiny, as described in *Mugridge*, when the complainant is a child. All these factors must be evaluated in totality.

Ad conviction

[18] At the outset, I respectfully disagree with the finding of the court a quo that the appellant was committing sexual acts with the complainant when she had been no more than 11 years old. Her aunt testified that she had informed the police that she had been '11 or 12, therearound'; the complainant herself said that 'I was around 11 years.' The appellant said that she had been 14 years of age. In terms of sections 1 (3) (d) (iv) and 57 (1) of SORMA, 12 years of age is the critical point at which the statutory provision that a child is incapable in law of appreciating the nature of or consenting to a sexual act no longer applies. From the evidence presented, there was sufficient uncertainty about her exact age at the time to have created reasonable doubt that the jurisdictional requirements of the relevant sections of SORMA had been met. It cannot be said, on that basis, that there had been an absence of consent.

[19] Consequently, the enquiry must turn to whether the complainant's apparent submission to the appellant's sexual acts amounted to voluntary or uncoerced agreement. It was undisputed that the complainant had been entirely dependent on him for food, shelter, and clothing. She was a child. No other members of the immediate family were present to take care of her. The complainant's mother had left to seek employment in the Western Cape. Her aunt had initially looked after her, but

subsequently had limited contact because she clashed with her brother, the appellant. The appellant controlled the complainant, instilling fear in her and manipulating her dependency on him to his own advantage, as is apparent from the record:

‘PROSECUTOR: Okay. So you were dependent on the accused for your everyday living. Am I correct?

JG: Yes — and that is what he also used to threaten me sometimes.

PROSECUTOR: What would he say?

JG: He would say that if I do not do what he says, he is going to take everything that he has bought for me and every cent that he has spent on me.’

[20] The full extent to which the complainant was dependent on the appellant emerges from the following exchange:

‘JG: I never ever gave consent. From the beginning, I was just doing what he would say because if I [did] not do what he would say, the clothes would be taken away. And there was a time when I had to run to the shop barefoot because he took the flops.

MS C:¹⁵ Flip-flops?

JG: The flip-flops that he bought for me, because I did not want to do what he said.’

[21] A similar exchange occurred later:

‘MS C: In essence, ma’am, I am going to put to you that my client will say that he had sex with you and it was all consensual.

JG: No, it was not consensual.

MS C: And he will say that at no stage did you ever object to him having sex with you.

¹⁵ It is unnecessary to reveal the name of the appellant’s legal representative.

JG: I did object a few times and when I did, [the appellant] would take everything that he has bought, up to a cellphone that he bought for me, and he put in a pin of his own on the phone so that I could not access the phone.'

[22] There was complete and utter dominance by the appellant over the complainant, from necessities to the smallest items of clothing. The deprivation of access to and use of her cellphone, moreover, would have placed her under severe pressure to have cooperated. For an adult, there would possibly have been the skills or coping mechanisms required to have endured and adapted to the situation, without yielding entirely to the appellant, but this would have been a bridge too far for a child. The appellant's control over the complainant would explain any appearance of submission on her part. There was little, if anything, she could have done to alter her plight. She was very afraid of the appellant. He had threatened her, saying that he did not fear prison and that he would wait for her at the school gate to kill her if she told anyone about what was going on.

[23] The context in which the sexual acts took place was characterised by an extreme power imbalance. The appellant enjoyed a hierarchy established on numerous factors: his status as a male, an adult, a parent; his position as the main, if not sole, source of financial support for the complainant; and the emotional and psychological leverage that he would have had over her once their child, LG, was born. This must be viewed in the almost complete absence of a mother figure, apart from the role played by the complainant's aunt — to the extent that this had even been possible, considering her estrangement from the appellant. There were, moreover, no close siblings to whom the complainant could have turned. It was within this context that the complainant, in the end, simply seems to have given in to the will of the appellant. This much is evident from the record:

'JG: He would touch me constantly, take me outside, touch me, molest me, and then bring me back in. That is how the cycle continued, going on and on and on.

PROSECUTOR: You say you did not give him permission to have sexual intercourse with you. Is that correct?

JG: No, I did not, but later on I just left it *because I was tired of fighting back*.¹⁶

[24] It cannot be said, in any way, that complainant's submission to the appellant was accompanied by voluntary and uncoerced agreement. The parties' conduct, the many and varied power structures that informed the context, and the fact that the complainant was a child, all demonstrate conclusively the absence of consent. I am satisfied that there was no misdirection on the part of the court a quo regarding its conviction of the appellant.

Ad sentence

[25] The appeal regarding sentence was focused almost exclusively on the charge of rape rather than that of sexual assault. The former attracted the minimum sentencing provisions contained in section 51 (1) of the Criminal Law Amendment Act 105 of 1997 ('CLAA'). The state relied, in this regard, on the age of the complainant, the fact that she had been in a domestic relationship with the appellant,¹⁷ and that she had been raped on two or more occasions.

[26] Counsel for the appellant referred to *S v Malgas*,¹⁸ which continues to serve as a reliable set of compass bearings in relation to how the minimum sentencing provisions must be applied. Terblanche summarises the essence of the decision as follows: (a) the prescribed sentences are the starting point; (b) if a departure therefrom is called for then the court should not hesitate to depart; (c) for purposes of determining whether a departure is called for, a court must weigh up all considerations that are traditionally relevant to sentencing; and (d) there must be a departure when the prescribed sentence would be unjust.¹⁹

¹⁶ Emphasis added.

¹⁷ As envisaged under section 1 of the Domestic Violence Act 116 of 1998.

¹⁸ 2001 (1) SACR 469 (SCA).

¹⁹ S S Terblanche *A Guide to Sentencing in South Africa* 3 ed (2016), at 76-8

[27] Shortly afterwards, in *S v Dodo*,²⁰ the Constitutional Court emphasised the concept of proportionality regarding the period of incarceration to be imposed for the offence committed. The court held that the term, 'offence', consisted of all the factors relevant to the nature of the crime itself, as well as the personal and other circumstances relating to the offender. To justify the deprivation of his or her freedom, it had to be shown that the period of incarceration was reasonably necessary to curb the offence and punish the offender. The length of punishment must be proportionate to the offence.²¹ In *S v Vilakazi*,²² several years later, the Supreme Court of Appeal reiterated the importance of the principle. The punishment imposed must be proportionate to what the offender deserved, no less and no more. The court stated that a prescribed sentence cannot be assumed, *a priori*, as proportionate in a particular case, and must be determined upon consideration of the circumstances. The essence of *Malgas* and *Dodo* was that disproportionate sentences must not be imposed; courts were not vehicles for injustice.²³ The court went on to hold, however, that:

'In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of "flimsy" grounds that *Malgas* said should be avoided.'²⁴

[28] The decision of the Supreme Court of Appeal in *S v Abrahams*²⁵ is often cited in cases such as the present to justify the implementation of the proportionality principle. In that regard, Cameron JA observed that some rapes were worse than others. A life sentence should be reserved for cases devoid of substantial factors compelling the conclusion that such a sentence was inappropriate and unjust.²⁶ The

²⁰ 2001 (1) SACR 594 (CC).

²¹ Para 37.

²² 2009 (1) SACR 552 (SCA).

²³ Para 18.

²⁴ Para 58.

²⁵ 2002 (1) SACR 116 (SCA).

²⁶ Para 29. See, too, *S v Swartz and Another* 1999 (2) SACR 380 (C), at 386*b-c*.

decision was referred to in *S v Mahomotsa*,²⁷ mentioned by counsel for the appellant, where Mpati JA indicated that the lack of violence in the commission of a rape was a factor that could be considered in deciding whether substantial and compelling circumstances were present.²⁸ The learned judge stated further that, even in cases that fell within the categories stipulated under the CLAA, there were bound to be differences in their degrees of seriousness. Rape cases were always serious, but some would be more serious than others.²⁹

[29] There are undoubtedly differences between one case of rape and the next. The danger of implementing the CLAA as a blunt instrument should not be underestimated. The prescribed sentences can be imposed without proper recognition of the complexity of the matrix in which the accused's personal circumstances, the nature of the crime, and the values of the community are situated.³⁰ Nevertheless, the facts of the present matter are especially egregious. Incestuous rape is located close to the extreme margin on any scale of seriousness that can possibly be applied.

[30] In *Abrahams*, Cameron JA said as follows:

‘ . . . rape within the family has its own peculiarly reprehensible features, none of which subordinates it in the scale of abhorrence to other rapes . . . The rapist may think the home offers him a haven for his crime, with an accessible victim, over whom he may feel . . . he can exercise a proprietary entitlement . . . [A] family victim may moreover for reasons of loyalty or necessity feel she must conceal the crime. A woman or young girl may further internalise the guilt or blame associated with the crime, with lingeringly injurious effects. This is particularly so when the victim is the rapist's own daughter, and the more so when the daughter is of tender years.’³¹

[31] The learned judge went on to remark that the fact that family rape also involves incest complicates its damaging effects. Incest is still a crime; deep social

²⁷ 2002 (2) SACR 435 (SCA).

²⁸ Para 17.

²⁹ Para 18.

³⁰ See *S v Kleinveld* (unreported, case no. CC 16A/2025, Eastern Cape Division, Makhanda), 31 October 2025.

³¹ Para 23 (b).

and religious inhibitions and stigma surround it. Rape, in such circumstances, exploits and perverts the bonds of love and trust that the family is meant to nurture.³² In *S v Marx*,³³ Cameron JA dealt with a similar matter and analysed the phenomenon of domestic sexual predation. The familial predator, as it was termed, exploits the opportunities that intimate engagement offers and the physical spaces that the home affords to prey upon his victim. He uses the ties that bind, both emotional and material, to secure compliance and concealment.³⁴

[32] The Supreme Court of Appeal, in *S v PB*,³⁵ was confronted with similar facts as those in the present matter. The appellant, a 38-year-old man with previous convictions, had raped his 12-year-old daughter. A life sentence was imposed. The court, per Bosielo JA, reiterated the correct approach to an appeal against a sentence given under the CLAA. It was a different scenario to sentences imposed under the ordinary sentencing regime. Quoting *Malgas*,³⁶ the learned judge confirmed that prescribed sentences could not be departed from lightly or for flimsy reasons. A proper inquiry on appeal was whether the facts that were considered by the sentencing court were substantial and compelling.³⁷ Bosielo JA found that the incestuous nature of the rape, the respective ages of the parties, the appellant's commission of previous sexual acts with the complainant, and the emotional and psychological suffering that she had endured gave rise to seriously aggravating circumstances that had to be accorded proper weight. There was no basis upon which to justify a departure.³⁸

[33] More recently, in *S v KTK*,³⁹ the court considered an appeal involving incestuous rape. The appellant had raped his 14-year-old daughter, resulting in the birth of a child. A life sentence was imposed. Mossop J held that the seriousness of the rape was compounded and exacerbated by the fact that the appellant was the biological father of the complainant. The learned judge stated that his conduct was

³² Para 23 (c).

³³ 2005 JDR 1126 (SCA).

³⁴ Para 203.

³⁵ 2013 (2) SACR 533 (SCA).

³⁶ *Malgas*, para 9.

³⁷ Para 20.

³⁸ Para 24.

³⁹ 2025 JDR 2370 (KZP).

‘disgraceful and shameful and entirely deserving of the minimum sentence prescribed by law.’⁴⁰

[34] In the present matter, the court a quo acknowledged the appellant’s age and the fact that he had eight children. It correctly recognized, however, that he was not the primary caregiver and that the minor children enjoyed the support of their various mothers. The appellant’s previous convictions on charges of rape and assault with intent to do grievous bodily harm were properly considered. The court remarked that the sentences imposed had clearly failed to deter him from reoffending, and that there was little to no chance of rehabilitation. It dealt with the many aggravating factors that were present, discussing at some length the parent-child relationship and the damage inflicted thereon, as well as the emotional and psychological scars that the complainant would bear for the rest of her life. There had been a severe abuse of trust. The appellant had, moreover, demonstrated no remorse. Accordingly, the court found that the aggravating factors were overwhelming and far outweighed the mitigating factors, including the appellant’s personal circumstances. There were no substantial and compelling circumstances to justify a departure from the prescribed sentence.

[35] A court of appeal will not interfere lightly with the trial court’s exercise of its discretion.⁴¹ Du Toit observes that:

‘A court of appeal will not, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court...’⁴²

[36] Case law supports the cautious approach. In *S v Bogaards*,⁴³ Khampepe J held that:

⁴⁰ Paras 14 and 21.

⁴¹ This is a well-established principle. See *S v Romer* 2011 (2) SACR 153 (SCA); *S v Hewitt* 2017 (1) SACR 309 (SCA); and *S v Livanje* 2020 (2) SACR 451 (SCA).

⁴² E du Toit (et al) *Commentary on the Criminal Procedure Act* RS 66 (2021), ch30-p42A.

⁴³ 2013 (1) SACR 1 (CC).

'It can only do so [i.e. interfere with the sentence imposed] where there has been an irregularity that results in the 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.'⁴⁴

[37] Having considered the facts of the matter and the investigation by the court a quo into the presence or otherwise of substantial and compelling circumstances, I am satisfied that there is no reason to interfere with the sentence imposed for conviction on the charge of rape. To do so would be to risk the trivialization of the case. The appellant abused and manipulated his power over the complainant for more than a decade, perverting the father-daughter relationship and ensuring that succeeding generations would be tainted by the shame that accompanies incest.

[38] Counsel for the appellant made no submissions regarding the sentence imposed for conviction on the charge of sexual assault. Similarly, having considered the facts and the approach taken by the court a quo, I am satisfied that there was no misdirection. There is no basis upon which to interfere.

[39] Consequently, I would make the following order:

The appeal against sentence is dismissed.

JGA LAING
JUDGE OF THE HIGH COURT

I agree.

⁴⁴ Para 41.

R KRÜGER
ACTING JUDGE OF THE HIGH COURT

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