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

CASE NO: A18/2021

(1) REPORTABLE: YES/NO

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

(3) REVISED.

DATE: 5/5/2026

SIGNATURE:

In the matter between:

SERIOUS HLENGANI

APPELLANT

and

STATE

RESPONDENT

JUDGEMENT

Coram: TSHIDADA J and SEMENYA DJP *et al*

1. The appellant approached this court disgruntled by a direct life imprisonment sentence imposed on him on 30 November 2017, following his conviction on one count of rape by the learned Regional Magistrate Mudau sitting at Malamulele Regional Court in the Limpopo Regional Division.

2. The appellant was charged with crime of rape in contravention of the provisions of section 3 read with sections 1, 50, 55, 56(1), 56(A), 57, 58, 59, 60 and

61 of the Criminal Law (Sexual Offences and Related Matters) Act, 32 of 2007 read with Section 5 of the Criminal Law (Sexual Offences and Related Matters), Amendment Act 6 of 2012, read with Sections 92, 94, 256, 261 and Section 257 of the Criminal Procedure Act 51 of 1977 read with the provisions of Section 51(1) of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (the Act) as amended.

3. The state alleged that, on or about the 14th day of December 2013 at or near Mahonisi in the Regional Division of Limpopo, the appellant did unlawfully and intentionally commit an act of sexual penetration with a victim, to wit, H[...] S[...], a female aged 13 years, by inserting his penis into her vagina without her consent.

4. The appellant was legally represented throughout the duration of a trial. As already alluded herein, the appellant launched the current appeal only to challenge the life imprisonment sentence he was met with at his trial. This court shall therefore confine itself to the issues raised thereto, without discerning issues that concerned his conviction.

5. As he appeals the sentence, the appellant contends thus:

5.1 The *court a quo* misdirected itself when imposing a sentence of life imprisonment in terms of Section 51(1) of Act 105 of 1997, whereas the appellant was not properly warned by the trial court of the applicability of Section 51(1) of the referred Act.

5.2 The court erred by applying the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997, whereas the appellant was not informed of the circumstances that triggered the applicability of Section 51(1), Part I of Schedule 2.

5.3 For the aforesaid, the appellant averred the sentence was vitiated by irregularity which culminated to an unfair trial.

5.4. The trial court erred by finding that there were no substantial and compelling circumstances justifying imposition of a lesser sentence on the appellant.

5.5. Lastly, the trial court erred in failing to consider the fact that the life imprisonment sentence was unjust and disproportionate to the crime the appellant was convicted of.

6. The appeal record reflects that the State prosecutor formally and verbatim read out to the appellant the charge he was arraigned on paragraphs 2 and 3 of this judgment, as well as the relevant legislation applicable therein. The appellant was provided with the detailed summary of substantial facts giving rise to the charge the State had preferred against him.

7. Prior to the appellant tendering his plea, he accordingly on record confirmed that he fully understood the charge and the relevant law applicable against him.

8. Regardless of the fact that the appellant was informed via a charge sheet, of which a copy was also furnished to his defense counsel, stating the applicability of section 51(1) and Part I of Schedule 2 of the Act, as amended, it appears clearly from the record of the proceedings that the presiding Regional Magistrate again as a matter of law and procedure upraised him of consequential sentence, in the event he was to be found guilty and convicted of the offence as charged.

9. Evidently, the learned Regional Magistrate went on to explain on record to the appellant, a competent verdict to the one he was charged with and the mandatory sentence that may be imposed in terms of Section 51(2), and that the prescribed minimum sentence the court may imposed is 15 years, further that the above provision would also apply in the event the appellant at the end of trial, prior to imposition of sentence was to submit factors and/or personal circumstances that which when considered and taken into account by the court would constitute substantial and compelling circumstances justifying imposition of a lesser sentence other than the one prescribed by the Act.

10. After the detailed explanation by the court, the appellant, according to the trial record confirmed to have fully understood. Of note is that the appellant's legal representative did not either raise any objection nor demonstrated any misunderstanding on firstly, the charge put to the appellant on record by the State

prosecutor, let alone the full explanation by the court on the extent of the charge and consequential sentence that may be imposed on the appellant if found guilty and convicted.

11. The appellant subsequently pleaded not guilty to the offence. His legal representative equally confirmed the plea to be in accordance with the instructions. In his plea explanation, the appellant admitted to having engaged in a sexual intercourse with the complainant, however with consent.

12. At the hearing of this appeal, this court granted condonation on unopposed basis of the late filing of the transcribed trial record, the requisite appeal related documentation and the delayed prosecution of the current appeal.

13. In **S v Sadler**¹ the Appellate Division held that, the appeal court is justified to interfere with the discretion entrusted to the trial court, if the proceedings or sentence is vitiated with irregularity, misdirection or is shockingly inappropriate and that it induces a sense of shock.

14. In the main, the appellant argues that the proceedings *a quo* were vitiated with an irregularity, in that the presiding Regional Magistrate failed to appraise him at the commencement of his trial of the applicability of the provisions of Section 51(1) of the Act, and a possible imposition of life imprisonment sentence upon him if convicted, nor informed him of the circumstances that triggered the applicability of Section 51(1).

15. On perusal of the trial record by this court, the appellant's contentions were found to be incorrect and unfounded in that the appellant was fully informed on no less than two occasions of the applicability of section 51(1) because of the allegation that the complainant was a child. Just to reiterate the charge sheet and summary of substantial facts which his legal representative was placed in possession of, both were unequivocally clear of the charge, the legislation applicable and relied upon by

¹ 2000 (1) SACR 331 SCA

the state and lastly the fact that the appellant was facing a charge of raping a minor girl child of 13 years of age.

16. The above stated was again explained and emphasized to the appellant on record by the Regional Magistrate before he could plead to the charge. Lastly, his legal representative also confirmed his client understood the charge and the related law against him and further that they both knew and understood what they pleaded to, hence the legal representative raised no objection of any nature whatsoever.

17. What should be found astounding on the appellant's part is that he filed no appeal against his conviction which was pronounced against him by the trial court as charged in terms of the same section 51(1) of the Act.

18. On the documents filed of record, undoubtedly, it cannot be gainsaid that the appellant understood that he was convicted on a rape charge of a minor in terms of Section 51(1).

19. During argument of this appeal, Mr Rasivhaga on behalf of the appellant admitted that the referred and relevant portions of the record, indeed glaringly evinced the contrary of what the appellant averred and alleged against the trial court.

20. Counsel for the appellant when taken through the sections dealing with and addressing the appellant's contentions against the trial court, counsel immediately and rightly so, conceded and confirmed that the trial court had properly warned the appellant of the first issue complained about herein this appeal and took the matter no further.

21. The concession inadvertently confirmed the fact that no case was made out for this court to find otherwise against the learned Regional Magistrate in so far as that ground of appeal was concerned.

22. The court therefore finds no errors nor misdirection on the part of the sentencing court. I further find no basis or ground for the appellant to rely on the

finding held in **S v Legoa**², hence the appeal on above considered ground stands to fail and be dismissed.

23. The appellant further argued that the trial court seemed to have imposed a disproportionate and shocking sentence upon him and failed to take into account all the mitigating factors presented on his behalf for the purpose of imposing an appropriate sentence upon him.

24. It is trite law that sentencing falls and resides within the discretion of a trial court. The appeal court's right to interfere with sentences imposed by the trial court is limited to instances where the court a quo materially misdirected itself or committed a serious irregularity in evaluating all the relevant factors regarding sentence, see **S v Pillay**³.

25. The appellant submitted in mitigation of sentence that he was at the time of commission of offence an unmarried male of 29 years of age residing alone at his RDP allocated house and aged 33 at the time of hearing of the current appeal. He submitted that he was self-employed selling self-grown vegetables which earned him approximately R2000 per month. He was using part of the money to buy food and take care of his 58-year-old sickly mother. The appellant, however, did not elaborate whether his mother is not a recipient of social grant fund, neither did he indicate if he had siblings who could take care of their mother during his absence.

26. The appellant further disclosed that he was not a first offender, but an ex-convict on a count of assault which is already more than 10 years old and prayed that this court should not take it into account due the period of time that has lapsed without him coming into conflict with the law.

² 2003(1) SACR 13 (SCA) - The court unanimously held that it was highly unfair for the court to impose the penal provisions prescribed on the Criminal Law Amendment Act when the appellant was only informed about it after conviction. The sentence imposed was set aside and the matter was remitted back to the trial court to consider the sentence afresh

³ 1977 (4) SA 531 at 535E

27. The court however in **S v Khumalo**⁴ held that, punishment must fit the criminal as well as crime, be fair to society and be blended with a measure of mercy according to the circumstances of each case.

28. However, in **S v Malgas**⁵ the court held that the court should not deviate from imposing prescribed sentences for flimsy reasons presented by an accused person in an endeavor to plead for a lenient sentence.

29. When considering the aggravating and mitigating factors presented by both the state and defence, this court is satisfied that the trial court correctly took into account all the relevant factors, and appropriately found the aggravating circumstances outweighing the mitigating factors by far, to the extent that the appellant's mitigating circumstances were found not to be substantial and compelling so as to justify deviation from compliance with the provisions of the Act, thus prompting imposition of a lesser sentence than the one prescribed in the Act on the appellant.

30. The gravity and seriousness of an offence of rape similar to the current matter was re-affirmed by the Supreme Court of Appeal in a matter of **S v Rhode**⁶. The appellant mitigating factors presented before the trial court, in my view, were indeed not exceptional to those of an ordinary general citizenry of the republic.

31. This court in conclusion finds no misdirection or any form of irregularity allegedly committed by the trial court herein, inducing this court to interfere with the sentence imposed on the appellant by the trial court. Consequently, the appellant's appeal on sentence stands to fall on all accounts, for no case has been made out by the appellant for this court to up-set and set-aside the sentence imposed. As a result and having regard to all factors inherent in this matter, the sentence imposed by the trial court stands to be confirmed.

32. Under the circumstances, the following order is granted:

⁴ 1973 (3) SA 697 A

⁵ 2001 (1) SACR 469 SCA

⁶ 2021 (2) SACR 565 (SCA)

32.4. The appeal on sentence is hereby dismissed.

T.C. TSHIDADA
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION OF THE HIGH COURT

I agree,

MV SEMENYA
DEPUTY JUDGE PRESIDENT,
LIMPOPO DIVISION OF THE HIGH COURT

APPEARANCES

FOR THE APPELLANT: MR RASIVHAGA
INSTRUCTED BY: LEGAL AID SOUTH AFRICA, THOHOYANDOU

FOR THE RESPONDENT: ADV S MUAVHA
INSTRUCTED BY: NDPP, THOHOYANDOU

DATE OF HEARING 22 AUGUST 2025

DATE OF JUDGEMENT : 05 MAY 2026