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**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: CA & R 43/2025

In the matter between:

NHLANHLA SUCCESS MSANE

Appellant

and

THE STATE

Respondent

Neutral citation: *Msane v The State* (CA & R 43/2025) 15 May 2026.

Coram: WILLIAMS J et TYUTHUZA AJ.

Heard: 27 October 2025.

Delivered: 15 May 2026.

Summary: *Criminal Law – Appeal – Against conviction and sentence on charges of rape as contemplated in s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 – s 51(1) of the Criminal Law Amendment Act 105 of 1997 – Whether court a quo erred in convicting the appellant on evidence of a single witness in a rape case.*

ORDER

- 1 The appeal against conviction and sentence is dismissed.
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JUDGMENT

Tyuthuza AJ

Introduction:

- [1] The appellant, Mr Nhlanhla Success Msane, was charged with two counts of Rape, in contravention of the provisions of section 3 read with sections 1, 2, 50, 56(1), 56A, 58, 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act,¹ read with sections 94, 256 and 261 of the Criminal Procedure Act,² and the provisions of section 51(1) and Schedule 2 of the Criminal Law Amendment Act³ further read with section 120 of the Children's Act.⁴
- [2] It is alleged that on or about 24 August 2019 and at or near Rooisand in the Regional Division of Northern Cape, the appellant unlawfully and intentionally committed an act of sexual penetration with the complainant, to wit, B[...] B[...], by inserting his penis into her vagina and had sexual intercourse with her more than one time without her consent.
- [3] The appellant was legally represented for the duration of the trial and pleaded not guilty to the two counts levelled against him. On 24 May 2021, the appellant was found guilty of both charges and sentenced to 15 years direct imprisonment.

¹ 32 of 2007.

² 51 of 1977.

³ 105 of 1997.

⁴ 38 of 2005.

- [4] The trial court granted the appellant leave to appeal against his conviction and sentence.
- [5] The appellant's notice of appeal is not part of the record, and as such, his grounds of appeal are not apparent *ex facie* the record. At the hearing of the appeal, this issue was raised with counsel for the appellant who indicated that the notice of appeal was indeed not part of the record, but that the grounds of appeal related to the court a *quo* misdirecting itself in finding the appellant guilty on the evidence of a single witness.
- [6] The following facts are not in dispute:
- 6.1. The complainant and the appellant met each other for the first time on the night in question and were chilling at Emperors Lounge ("Emperors") together with friends.
 - 6.2. From Emperors, the complainant boarded the appellant's car to the residence of the appellant's friend (P[...]).
 - 6.3. The complainant left P[...]'s place with the appellant to be taken home.
 - 6.4. The complainant and the appellant eventually ended up at the appellant's place.
 - 6.5. The appellant engaged in sexual intercourse more than once with the complainant.
- [7] What is in dispute is whether the complainant was raped or whether there was consensual sexual intercourse between the appellant and the complainant.

State's case:

- [8] The complainant, B[...] B[...], testified that she is 23 years old. She testified that on that evening, she was picked up by her friend (M[...]) and this friend's boyfriend (P[...]) to go to Emperors. Upon their arrival there, they met with the

appellant, who would frequently come to the three of them and check up on her. She informed P[...] that the appellant's behaviour made her uncomfortable. She said that she did not consume any alcohol at Emperors and was only drinking water. She left Emperors Lounge with the appellant to go to P[...]’s house and chilled there for a while. She informed them that she wanted to go home, since she needed to do laundry in the morning. P[...] asked the appellant to drop her off and she left with him as she did not see any harm in him taking her home.

- [9] Whilst travelling, she noticed that the appellant turned left when he was supposed to turn right to get to her place. She cautioned him that he had taken the wrong turn and he responded that it is fine, he just wanted to talk to her, and told her that his name is Sipho. She saw him take the turnoff to Voyisanto and asked him why he was going there, and he responded, “you will see”. She could see that the appellant was drunk and that he was speeding. It turned out that the turn to Voyisanto would lead to the appellant’s place of residence. When they arrived at his place, she stayed in the car whilst he went inside. He came back and requested her to come inside. When she questioned why he was not taking her home, he again said that he wanted them to talk. She eventually, reluctantly so, entered his home. He offered her a chair, and he went outside for a while.
- [10] Upon his return, he asked her to come sit with him in his bedroom because it was cold where she was sitting. Upon her asking, he assured her that he did not want to have sex with her and even questioned why he would even want to do that. He told her that he only wanted to talk to her, and she believed him given the sincere look in his face and how calm he was. She went into his bedroom, took off her boots and went to sit on the bed. He was lying on the bed, and she thought he was asleep. She was wearing a denim jacket and jeans with a tight underneath. She took off her boots and got into bed fully dressed. She was still under the impression that the appellant was sleeping.
- [11] The appellant however then started kissing her, biting her lower lip, and because it was uncomfortable and painful, she started pushing him away. He then started “messaging” with her clothes and tried to undress her. She was

wrestling with him for over an hour to prevent him from undressing her. She asked him not to take her clothes off, and he told her he won't do anything to her. She eventually stopped fighting him as she was tired, and he ended up removing her denim and tights, got on top of her and then penetrated her vagina with his penis. She testified that she felt helpless because she was fighting with him not to do it, she had lost all the strength to fight him off, and he ended up doing it.

- [12] She further testified that after he was done with her, he went out, came back, got into bed and slept. She had asked him to take her home, but he said no and told her that he would set an alarm for her and that he wanted to rest. She testified that she was okay with this because she thought maybe he could not drive or something. She testified that her phone was off as it had run out of battery. She just sat on the bed because she could not believe what had happened, and was trying to digest the event. She did not sleep. She tried to wake him up, but he did not. She later testified that she was crying the whole night. He woke up when the alarm went off. He opened her thighs, got on top of her and penetrated her vagina again. She again was helpless and just kept quiet. After he was done, he went outside again, came back, and she asked him to take her home. She got dressed, and then he took her home. According to her, when she got home, she started doing her laundry and took a bath as she was not planning on telling anyone about what had happened. Nonetheless, she phoned a friend and told her what had happened that night. Her friend then told her that it was rape and she must go to the police, but she refused. She then phoned her friend M[...], with whom she had been the previous night and asked her to come see her. M[...] and P[...] arrived at her place around 12:00. They sat in the car, and she told them what had happened. P[...] was a bit confused and asked her if she wanted to go to the police station, but she said no, she will be fine. She testified that she did not want to involve anyone. She eventually decided to open a case against the appellant on Monday.

- [13] M[...] V[...] D[...] H[...] testified that she and her boyfriend P[...] fetched the complainant in Rooisand, and they went to Emperors. She testified that, having been there a while, the complainant informed her that she wanted to

leave, but M[...] asked her to chill for a while. She testified further that she left Emperors with P[...], whilst the complainant left with the appellant to P[...]’s place, where they sat for a while. She testified that when they went to sleep, the appellant offered to take the complainant home. In the morning, she woke up to a message from the complainant in which she said she is not okay. M[...] then requested P[...] to accompany her to the complainant’s place, and P[...] and another friend of his went with her. She testified that when they arrived at the complainant’s house, the complainant got into their vehicle and informed them about what had transpired. The complainant informed them that they were sitting in the lounge of the appellant when he asked her to come to the bedroom, where he undressed her, put on a condom and then started having sexual intercourse with her. He again had sexual intercourse with her that morning before taking her home at 06:00. She testified that the complainant was crying when she told them about the incident. The complainant was asked if she wanted to open a case, but she said that she would get back to them. She testified that the complainant told them that she informed the appellant that she did not want to have sex with him, but did not tell them that she fought him off for over an hour. She further testified that the complainant’s boyfriend, Victor, had also been at Emperors that evening with other females and that that had prompted the complainant to want to leave.

- [14] The J88, completed by Dr N van der Schyff when he examined the complainant on the afternoon of 27 August 2019, was handed in as exhibit “C”. According to the J88, there were no injuries on her body and no condom was used during the alleged sexual offence. It further records an “alleged sexual assault on Saturday 24/08/2018 at 02:00 by one male.”

Appellant’s case:

- [15] The appellant, in essence, denied raping the complainant. He testified that on the day in question, he had phoned his friend P[...] to enquire what he was doing. P[...] told him that he was with his girlfriend, and the appellant then asked to be hooked up. P[...] informed him that he would ask his girlfriend to invite her friend to come along and to meet him. P[...] phoned him later to say that his girlfriend’s friend had agreed to meet up with him. He met up with

them at Emperors Lounge, where P[...] introduced him to his girlfriend and the complainant. According to him, he and the complainant were conversing, and she was in a jovial mood. When he asked her what she wanted to drink, she said she would be drinking water. He continued to converse with the complainant for the rest of their time at Emperors Lounge. He was never told that she was uncomfortable with his attention. He continued to consume alcohol with P[...] and M[...]. The complainant told him that she is uncomfortable, and he could see that her mood was changing, and when he asked her why that is, she informed him that she sees her boyfriend flirting with other ladies in her presence. He testified that she had consumed alcohol at that stage and, after a few beers, she seemed to no longer be uncomfortable. They left Emperors at about 02:00 am, and when he offered to give her a ride in his vehicle to P[...]’s place, she agreed. They were at P[...]’s place for a few minutes when P[...] asked him to take the complainant home. He testified that before they left P[...]’s house, he asked the complainant if they could sleep over at his place, and she agreed voluntarily. According to him, they both disembarked the vehicle when they arrived at his place, and they went inside and sat in the living room. The complainant asked him to switch on the heater as she was getting cold. He switched on the heater and the TV. The complainant informed him that she was tired and wanted to sleep. He pointed to his bedroom, and she went in and got undressed. When he got to the bedroom, he found the complainant half-naked in bed, and they started kissing, which led to consensual sexual intercourse. He testified that he had used a condom.

- [16] He testified that the complainant enjoyed the sexual intercourse and that there was no fighting. After having intercourse and before falling asleep, the complainant asked him to set the alarm for 06:00 because she wanted to do laundry in the morning. He further testified that after they had woken up that morning, they had a second round of consensual and protected sexual intercourse. The appellant’s testimony is that on the same day, he received a call from P[...], who told him that M[...] had communicated with the complainant and the complainant had asked to meet up with her. P[...] drove his girlfriend to the complainant, who informed them that the appellant had done something bad to her, but was not specific as to what was done. He

further testified that on Sunday, 25 August 2019, he received a call from Victor, the complainant's boyfriend, who informed him that the complainant had told him that the appellant had forced himself on her. He informed Victor that they had had consensual sexual intercourse, but Victor continued by threatening him and telling him that the complainant will be opening a case against him if he does not pay her for what he had done. He ended the phone call and immediately phoned P[...] to ask him to call the complainant and arrange for them to meet. The complainant informed P[...] that she is at Victor's place and that they could come over to his place. After work, he went to Victor's place, accompanied by a colleague and P[...]. Victor did all the talking, and the complainant kept quiet. Victor informed the appellant that the complainant is traumatised and that he must pay the costs of a counselling session with a private psychologist. The appellant refused because, in doing so, it would be an admission of guilt for something that he had not done and which could incriminate him.

- [17] Mr P[...] M[...] (P[...]) was also called to testify. He confirmed that the appellant is his friend and that he had received a phone call from him on the day in question, and that he had met with him at Emperors Lounge. On their arrival at Emperors, they found the appellant sitting at a table, and they joined him. The complainant's demeanour changed when she noticed a guy sitting in the company of girls. She then said she is no longer going to drink alcohol and will drink water instead. Victor came walking over to their table, poured himself a shot without talking to them, only spoke to the complainant, and thereafter left to go and sit at the table he had come from. P[...] wanted to talk to him, but the appellant said he should leave him, and explained that the appellant had been sitting with him before P[...], M[...] and the complainant arrived. After Victor left, the complainant told them that she wanted to leave, but M[...] asked her to stay. The complainant started drinking two or three "dumpsies". P[...] further testified that they left Emperors around 02:00 to go to his place, and the appellant had asked the complainant to ride with him, to which she agreed. Not long after arriving at his place, he asked the appellant to give the complainant a lift to her residence. He disputed that the complainant had approached him to express discomfort with the attention she was receiving

from the appellant. According to P[...], the complainant and the appellant were talking and there was no problem.

[18] The following day, his girlfriend asked him to take her to the complainant's home because the complainant had phoned her to say that she was not okay. He further testified that he went with a friend and his girlfriend to the complainant's place. When they got there, they found her standing by another car talking to the occupants thereof before coming to his car and getting in. In the car, she stated that she did not like what had happened last night and that the appellant had not treated her well. She explained that the appellant had tried to kiss her, that she had pushed him away, but that they ended up kissing and that the appellant had taken off her jeans and had sex with her. She made no mention of a condom. He testified that he was shocked by what the complainant told them. He explained that the complainant looked sad whilst telling them what happened. He asked her what they should do, and she replied that she would be fine and that she did not want to do anything about the issue. He further testified that the appellant had phoned him the next day, and told him that Victor had phoned him and said that he had raped the complainant and that he should go see him. He went with the appellant to Victor's place, where Victor ordered the complainant and the appellant not to talk. Victor told the appellant that the complainant is traumatised and needs counselling and that the appellant must fund it. The appellant refused, saying he could not pay for something he did not do. During cross-examination, he testified that:

- 18.1. the complainant's mood had changed the minute they walked into Emperors Lounge because she had seen her boyfriend, and thus she was not jubilant and laughing;
- 18.2. he enquired from the complainant whether she wanted a drink;
- 18.3. he had initially bought drinks for his girlfriend and water for the complainant;
- 18.4. the complainant later consumed some of the alcoholic drinks initially bought for his girlfriend;
- 18.5. on one occasion, he had seen the complainant and the appellant talk;
- 18.6. he did not see the complainant and the appellant touching or hugging;

- 18.7. the appellant did not ask him to bring a friend so that he could be “hooked up”; rather, the complainant had been asked to come keep M[...] (P[...]’s girlfriend) company so that she is not bored while the appellant and P[...] talk;
- 18.8. on Saturday, the complainant did mention that the appellant had raped her; and
- 18.9. Victor did not mention anything about money.

Analysis:

- [19] It is trite that a court of appeal will refrain from interfering with the decisions of a trial court unless there is a clear indication that the trial court has misdirected itself, either in its findings or in its application of the law. For the appeal to succeed, the appellant must satisfy this Court, on sufficient grounds, that the trial court had erred in accepting the State’s evidence and in rejecting the appellant’s version as not being ‘reasonably possibly true’. This requires demonstration of a material misdirection or an error in the trial court’s reasoning or assessment of the evidence. There are long-standing principles that guide courts dealing with appeals against findings of fact. Unless the trial court’s decision is shown to be demonstrably and materially incorrect, its findings are presumed to be correct. These findings will only be set aside if the record of evidence reveals them to be clearly wrong.⁵
- [20] In a criminal trial, a court’s approach in assessing evidence “is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused’s guilt.”⁶
- [21] The appellant’s version is premised on the assertion that sexual intercourse did occur between him and the complainant, but that it was consensual.

⁵ *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645E-F; *S v Monyane and Others* 2008 (1) SACR 543 (SCA) para 15; see also *S v Francis* 1991 (1) SACR 198 (A) at 204C-E.

⁶ *S v Chabalala* 2003 (1) SACR 134 (SCA) para 15.

“Given the conflicting accounts presented before the court, a credibility assessment was required to determine which version to accept, taking into consideration the totality of the evidence.”⁷

[22] The complainant was a single witness implicating the appellant in the rape, therefore, her evidence called for a cautionary approach before it could be accepted. It is trite law that the evidence of a single witness must be approached and evaluated with the necessary caution. However, the exercise of such caution should and ought not to displace the exercise of common sense.⁸ All the contradictions, inconsistencies and probabilities must be weighed up to arrive at a conclusion on whether the state has proven its case beyond a reasonable doubt.⁹

[23] In *S v Mahlangu and Another*¹⁰, the Supreme Court of Appeal explained that section 208 of the Criminal Procedure Act¹¹ (“the CPA”) provides that an accused can be convicted on the evidence of a single witness. It held as follows:

“The court can base its finding on the evidence of a single witness, as long as such evidence is substantially satisfactory in every material respect, or if there is corroboration. The said corroboration need not necessarily link the accused to the crime.”

[24] From the record, it is clear that the court *a quo* considered the fact that the complainant was a single witness and referred to relevant legal authorities relating to the cautionary rule. The court found that there were no contradictions elicited during cross-examination, “other than what was not said in the police statement”. The court *a quo* found further that the complainant made a very good impression, and was clear and consistent in all material respects. It found that her evidence was corroborated by her friend, M[...], “to a large extent”. The court *a quo* further found that the appellant’s evidence

⁷ *Sediane v S* (A167/2024) [2025] ZAFSHC 151 (29 May 2025) para 13.

⁸ *S v Artman and Another* 1968 (3) SA 339 (A) at 341A-C.

⁹ *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G; *Ncango v S* [2019] JOL 41006 (FB) para 22.

¹⁰ 2011 (2) SACR 164 (SCA) para 21.

¹¹ Section 208 of the Criminal Procedure Act 51 of 1977 provides that: “An accused may be convicted of any offence on the single evidence of any competent witness.”

was not corroborated by P[...], and found P[...] to be a terrible witness, who caused damage to the appellant's case. The court a *quo* found that P[...] was trying to save his friend.

[25] The appellant contends that the court a *quo* ignored the contradictions and factors which made the complainant a bad witness, and as such, ought not to have convicted the appellant solely on her evidence. The appellant avers that the contradictions and improbabilities in the evidence of the complainant militate against the complainant's evidence, and ought to have resulted in the court a *quo* rejecting the complainant's evidence. The appellant points out the following contradictions and factors which the court a *quo* ought to have considered:

- 25.1. the complainant's version relating to the fact that she voluntarily went to the appellant's bedroom, sat with him, took off her boots and loosened the buttons of her jeans;
- 25.2. the fact that she agreed to go to the bedroom because she did not think that he would want to have sex with her without her agreeing to it;
- 25.3. her testimony that she thought the appellant was sleeping and drunk, while also saying she fought with him for more than an hour;
- 25.4. the fact that the J88 did not indicate any injuries despite the complainant saying she fought the appellant off for more than an hour; and
- 25.5. her testimony that she did not see the appellant put on a condom but had told her friend that he did put on a condom.

[26] In opposing the appeal, the respondent contends that the complainant was a single witness regarding the sexual penetration and that the court a *quo* was alive to the provisions of section 208 of the CPA, and as such, approached the complainant's evidence with the necessary caution. It is also the respondent's contention that the court a *quo* was satisfied with the evidence of the complainant and found her to be a credible witness, despite the presence of contradictions.

[27] In respect of the appellant's criticism that relates to the lack of injuries on the J88, the respondent submits that there was a struggle between the

complainant and the appellant to pull the complainant's clothes off, but not a fight consisting of punches or slaps. That the complainant was merely fending off his hands while he attempted to undress her. This is consistent with the trial court's acceptance of the complainant's version that she did not consent to sexual intercourse with the appellant. The respondent submits that it is not sufficient for the appellant to aver that the complainant submitted to sexual intercourse, as what is required is active consent and not mere submission. The respondent argues that the complainant never testified to having consented to sexual intercourse with the appellant.

[28] In evaluating the totality of the evidence before it, the court *a quo* correctly regarded the complainant's version as reliable and found her to be a credible witness. It correctly found that the State proved its case beyond reasonable doubt. It is clear from the evidence that the appellant's version was not "reasonably possibly true". Where contradictions existed between the complainant's evidence and her statement made to the police on 27 August 2019, these contradictions are immaterial. What is clear from the police statement, and confirmed by the complainant's testimony in court, is that:

- 28.1. they were at Emperors together;
- 28.2. she was not entertaining him at Emperors;
- 28.3. they left Emperors for P[...]’s place;
- 28.4. she had asked P[...] to take her home;
- 28.5. P[...] had, in return, asked the appellant to take her home;
- 28.6. P[...] had assured the complainant that the appellant would take her home;
- 28.7. the appellant, instead of taking her home, changed the route;
- 28.8. the appellant assured the complainant that he would not do anything to her; she pushed him away; she tried to stop him and she felt helpless throughout the ordeal.

[29] We are of the considered view that the court *a quo* correctly rejected the evidence of the appellant. The evidence of P[...] is consistent with the State's case in that he testified that the complainant informed them that she pushed the appellant away and that she did not want to have sexual intercourse with him. During cross-examination, it became clear that P[...] had tailored his

evidence and was influenced to testify in favour of his friend, the appellant. His evidence demonstrated that the appellant's version of events was not truthful in all respects.

- [30] There appears from the evidence to be no reason why the complainant would have lied to her friends, her boyfriend, the doctor, the police and the court *a quo* regarding what had happened. The complainant did not know the appellant prior to the incident. The appellant was a friend to someone she knew and trusted, and on his reassurance, she was comfortable to travel with the appellant and trusted him to take her home. There appears to be no reason for falsely implicating the appellant in such a serious crime. The fact that she went to his house, sat on his bed, loosened her jeans, did not fight him off when he sexually penetrated her for the second time in the morning, and the fact that she stayed at his place until he took her home at 06:00, does not take away from the fact that she did not give the appellant permission or consent to have sexual intercourse with her.
- [31] We have considered the evidence and the findings of the court *a quo*, and we are satisfied that the court *a quo* has not erred or misdirected itself in convicting the appellant of the offence as charged, thus the appeal against conviction cannot succeed.
- [32] As alluded to above, the appellant was charged with rape read with the provisions of section 51(1) of the Criminal Law Amendment Act, thus the rape falls within Part I of Schedule 2 and a minimum sentence of life imprisonment must be imposed unless the court is satisfied that substantial and compelling circumstances justify the imposition of a lesser sentence of imprisonment.
- [33] It is trite that in considering a sentence, the court must have regard to the seriousness of the offence, the personal circumstances of the offender and the interests of society, and these must be balanced with the factors that may constitute substantial and compelling circumstances that warrant deviation from the prescribed sentence.¹² It is clear from the record that the court *a quo*

¹² See *S v Zinn* 1969 (2) SA 537 (A) at 540G.

applied its mind to the considerations above, which have come to be known as the *Zinn* triad.

[34] It is common cause that the court *a quo* has a discretion to determine what constitutes compelling and substantial factors to warrant its departure from the prescribed minimum sentence. The trial court has imposed a sentence of 15 years direct imprisonment in the exercise of its discretion. This Court is content that the trial court did not err or misdirect itself and thus there exist no reasons that warrant the tampering with the sentence imposed by the court *a quo*.

[35] In the result, the following order is made:

1. The appeal against the conviction and sentence is dismissed.

T TYUTHUZA
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

I concur

CC WILLIAMS
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Appellant:

Adv J.J. Schreuder

Instructed by:

KBVS Attorneys

For the Respondent:

Adv R. Steyn

Instructed by:

The Director of Public Prosecutions.