

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED.
.....	
9/3/2026	SIGNATURE.....
DATE	

CASE NUMBER: A20/2025

Court a Quo Case No: MRC 121/2016

In the matter between:

BAFANA MACDONALD MPUTLA

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

Ströh AJ

On appeal from Mokerong Magistrate's Court, District of Mahwelereng, Limpopo (MRS VOSTER sitting as court of first instance):

[1] The appellant was charged with five counts in the Magistrate Court of Mokerong. The first count was contravening Section 3, read with Section 1 (2), 50, 56(1), 56 (a), 57, 58. 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (rape), read with Section 94, 256 and 261 of the Criminal Procedure Act 51 of 1977 and read with Section 51(2)(b) and schedule 2 of the Criminal Law Amendment Act 105 of 1997 ("the CLAA").

[2] Second count was contravening Section 3, read with Section 1 (2), 50, 56(1), 56 (a), 57, 58. 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (rape), read with Section 94, 256 and 261 of the Criminal Procedure Act 51 of 1977 , read with Section 51(1) Part 1 and schedule 2 of the Criminal Law Amendment Act 105 of 1997 ("CLAA"), and further read with Section 120 of the Children's Act 38 of 2005.

[3] Third Count was contravening Section 3, read with Section 1 (2), 50, 56(1), 56 (a), 57, 58. 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (rape), read with Section 94, 256 and 261 of the Criminal Procedure Act 51 of 1977 , read with Section 51(1) Part 1 and schedule 2 of the Criminal Law Amendment Act 105 of 1997 ("CLAA").

[4] Fourth Count was contravening Section 3, read with Section 1 (2), 50, 56(1), 56 (a), 57, 58. 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (rape), read with Section 94, 256 and 261 of the Criminal Procedure Act 51 of 1977 , read with Section 51(1) Part 1 and schedule 2 of the Criminal Law Amendment Act 105 of 1997 ("CLAA"), and further read with Section 120 of the Children's Act 38 of 2005.

[5] Count Five was robbery read with provisions of Section 51(2), 52(2), 52(a) and 52(b) of the Criminal Law Amendment Act 105 of 1997.

[6] The appellant was convicted in the regional court in respect of count 1(one) for rape of the complainant/victim and was sentenced to 10 (ten) years imprisonment in terms of Section 51(2) of the CLAA, in respect of count 2 (two) for rape of complainant/victim who was under 16 years of age and sentenced to life imprisonment in terms of Section 51(1) of the CLAA, in respect of count 3(three) for rape of complainant/victim when accused rape the victim/complainant more than once and sentenced to life imprisonment in terms of Section 51(1) of the CLAA and in respect of count 4(four) for rape of complainant/victim who was under 16 years of age and sentenced to life imprisonment in terms of Section 51(1) of the CLAA. In respect of count 5 the appellant was found not guilty and discharged.

[7] In terms of Section 309 of the Criminal Procedure Act 51 of 1977("The Act"), as amended by Sections 10 and 11 of the Judicial Matter Amendment Act 42 of 2013, the appellant has an automatic right of appeal to the Full Bench of this court against his conviction and sentence of life imprisonment. Leave to appeal against his conviction and against his life imprisonment is on this basis.

[8] In the Notice of Appeal, the appellant noted an appeal against the conviction and sentence for the four counts of rape. However, in the appellant's heads of argument filed on the 29th August 2025 in paragraph numbered 2 (two) the appellant submitted and this Court quote: *"...we have perused the record and it is our submission that we are unable to fault the Learned Magistrate on conviction on count 1;2;3 and 4, however, this Honourable Appeal Court may in the interest of Justice consider conviction..."*

[9] In *S v Chapman* the Chief Justice I Mahomed, HJO Van Heerden and PJJ Olivier Judges of Appeal stated and this Honourable Court quote:

"Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim. The rights to dignity, to privacy, and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilisation. Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity

*of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives."*¹

[10] The appeal before this court lies against the sentence of life imprisonment imposed. The grounds for the appeal are herewith summarised: Imprisonment of life imposed is harsh and disproportionate under the circumstance; the trial court erred in finding no substantial and compelling circumstances to deviate from the prescribed minimum sentence considering the mitigating circumstances before the trial court; trial court not able to find cumulative factors in pre-sentence report that constitutes substantial and compelling circumstances to impose a lessor sentence than life; magistrate misdirected herself by not considering an appropriate sentence instead of the minimum sentence of life that would be unjust; the trial court did over emphasised aggravating factors and overlooked that the victim/complainant had no physical and/or permanent injuries and lastly the trial court approach when sentencing the appellant was that of anger and not to apply mercy which is an element of justice.

[11] In light of what is said in *S v Chapman* this Court find it necessary to mention the date when the legislature implemented Sections 51-53 of the Criminal Law Amendment Act 105 of 1997 which was the 1st of May 1998, when minimum sentences were prescribed for various crimes.

[12] It is important to note that the Criminal Law Amendment Act 105 of 1997 ("Act 105") and more specifically Section 51(3) stipulates that the sentencing court may impose a lesser sentence only if it is satisfied that "*substantial and compelling circumstances*" exist which justify doing so.

[13] In *S v Dodo*² the Constitutional Court said that the above-mentioned legislation passed muster. In the judgment, Ackermann J refuted suggestions that Criminal Law Amendment Act 105 of 1997 infringed upon the principle of separation of powers and find that it was

¹ *S v Chapman* [1997] ZASCA 45; 1997 (3) SA 341 (SCA) at paras 3-4.

² *S v Dodo* 2001 (1) SACR 594 (CC)

permissible for Parliament to require the Judiciary to impose punishment in specified cases provided that such punishment was not: *"wholly lacking in proportionality to the crime."*

[14] In regard to proportionality, Ackermann J said the following at page 614 g:

"[38] To attempt to justify any period of penal incarceration, let alone imprisonment for life as in the present case, without inquiring into the proportionality between the offence and the period of imprisonment, is to ignore, if not deny, that which lies at very heart of human dignity. Human beings are not commodities to which a price can be attached, they are creatures with the inherent and infinite worth; (they are creatures with the inherent and infinite worth) (own repeat); they ought to be treated as ends in themselves; never merely as means to an end. Where the length of a sentence, which has been imposed because of its general deterrent effect on others, bears no relation to the gravity of the offence (in the sense defined in paragraph 1 above) the offender is being used essentially as a means to another end and the offender's dignity assailed. So too where the reformatory effect of the punishment is predominant and the offender sentenced to lengthy imprisonment, principally because he cannot be reformed in a shorter period, but the length of imprisonment bears no relationship to what the committed offence merits. Even in the absence of such features, mere disproportionality between the offence and the period of imprisonment would also tend to treat the offender as a means to an end, thereby denying the offender dignity."

[15] The conviction in the trial court in respect of counts two, three and four attracts a sentence of life in terms of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 ("The Act") which stipulates that a High Court or Regional Court must impose a sentence of life imprisonment if it convicted a person of rape where the victim was raped *"more than once whether by the accused or by any co-perpetrator or accomplice"* or where the victim that was raped *"is under the age of 16 years"*, unless substantial and compelling circumstances exist, which justify the imposition of a lesser sentence.

[16] It is trite that imposition of sentence is pre-eminently a matter within the discretion of the trial court. The appeal court's power to interfere with a sentence is circumscribed to instances where the sentence is vitiated by an irregularity, misdirection or where there is a striking disparity between the sentence and that which the appeal court would have

imposed, had it been the trial court. The question to be answered is not whether the sentence was right or wrong, but whether the trial court used its discretion in a reasonable manner.

[17] In *S v Pillay*³ it was stated:

*"Now the word 'misdirection' in the present context simply means error committed by the court in determining or applying the facts for assessing the appropriate sentence. As the essential inquiry in an appeal against sentence, however, is not whether the sentence was right or wrong, but whether the court in imposing it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence, it must be of such nature, degree, or seriousness that it shows, directly or inferentially that the court **did not exercise its discretion at all or exercised it improperly or unreasonably (own emphasized)**. Such misdirection is usually and conveniently termed one that vitiates the court's decision on sentence."*

[18] In the trial court, the presiding officer imposed the sentence prescribed by the Criminal Law Amendment Act 105 of 1997, the approach on appeal is whether the facts that were considered by the sentencing court are indeed substantial and compelling circumstances.

[19] In *MDT v S*⁴ NAVSA, SHONGWE & LEACH JJA stated : *"In remarkably similar circumstances, this court in S v PB 2013 (2) SACR 533 (SCA), after stressing that a prescribed minimum sentence cannot be departed from lightly or for flimsy reasons, refused to interfere with a prescribed sentence of life imprisonment imposed on a father who had raped his 12 year old daughter. While this can only serve as a guideline, it emphasises the necessity to impose heavy sentences in cases such as the present, to prevent young girls from being abused. Before us counsel for the appellant was constrained to concede that child rape is becoming prevalent in Limpopo.⁵ Indeed, child rape is a national scourge that shames us as a nation."*

³ *S v Pillay* 1977(4) SA 531 (A) at 553 E-F

⁴ *MDT v S* (548/2013) [2014] ZASCA 15 (20 March 2014)

⁵ For recent cases see *S v MM* 2012 (2) SACR 18 (SCA), *S v SMM* 2013 (2) SACR 292 (SCA), *S v M* 2013 JDR 2747 (SCA).

[20] In *S v PB*⁶ Bosielo JA reaffirmed the correct approach by a court on appeal against a minimum sentence, as follows:

"Can the appellate court interfere with such a sentence imposed by the trial court exercising its discretion properly, simply because it is not the sentence which it would have imposed or that it finds shocking? ***The approach to an appeal on sentence imposed in terms of the Act should, in my view, be different to an approach to other sentences imposed under the ordinary sentencing regime (own emphasized).*** This, in my view, is so because the minimum sentences to be imposed are ordained by the Act. They cannot be departed from lightly or for flimsy reasons. It follows therefore that a ***proper enquiry on appeal is whether the facts which were considered by the sentencing court are substantial and compelling, or not (own emphasized again).***"

[21] In paragraph 3.1 of the Appellant's heads, the legal representative for the Appellant alleged that the life imprisonment sentence is: "*shockingly harsh and induces a sense of shock under the circumstances of this case*". This Court is of the opinion that the sentencing court is compelled to impose the minimum sentence as contained in the Criminal Law Amendment Act 105 of 1997 unless substantial and compelling circumstances exist.

[22] *S v Sikhipha* "*personal circumstances of the appellant as contained in the pre-sentence report cumulative constitute substantial and compelling circumstances.*" In *S v Sikhipha*⁷ Lewis JA stated that: "*Factors in mitigation include the fact that the appellant is a first offender; that he has a wife and children dependent upon him; that he has a trade (he is a bricklayer) and makes a living from his work; that he was 31 years old at the time of the trial, and that he is capable of rehabilitation. Moreover the complainant was not seriously injured. However, no evidence was led as to the psychological consequences for her of the rape. But there can be no doubt that the rape was traumatic for her. She was only 13 when a neighbour, a married man, more than twice her age, dragged her across his yard and had sexual intercourse with her against her will. Her injuries may have been minor, but she must have been severely affected.*"

⁶ *S v PB* 2013 (2) SACR 533 at para 20

⁷ *Sikhipha v State* [2006] SCA 71 (RSA)

[23] In the evidence in the trial court, the social worker testified that the appellant was born on the 05/01/1983 , appellant had a physical home address, appellant had a minor child (3 years old) whom appellant used to maintain, appellant passed grade 8 (tried 3 times grade 9 but failed), appellant had a fixed job since 2013 and he looked after the family financially. In light of what was said in *S v PB*⁸ this Court is of the opinion that due to the fact that minimum sentences are prescribed by the Act, the Appeal Court cannot depart from it because of lightly or flimsy reasons.

[24] In paragraph 3.3 of the Appellant's heads, the legal representative for the Appellant alleged that the sentencing court: "*over emphasised the seriousness of the offences committed and attached undue weight to the submitted mitigating factors.*". This Court is of the view that the offences committed in the trial court can never be over emphasised due to the fact that even Parlement put into place on 1st of May 1998 the Criminal Law Amendment Act 105 of 1997.

[25] In paragraph 3.4 of the Appellants heads, the legal representative for the Appellant alleged that the sentencing court: "*sentenced the appellant with anger and failed to blind the imposed sentence with mercy as mercy is an element of justice.*" This Court is of the view that mercy do indeed play a role when sentencing is considered in ordinary sentencing regime but not in the minimum sentencing regime except when there is mitigating circumstances which this Court is of the opinion the sentencing court did consider.

[26] In paragraph 3.5 and 3.6 of the Appellants heads, the legal representative for the Appellant alleged that: "*although the victims must have suffered some form of trauma and stress related to the incidents, they were better and recovered at the time the sentence was considered.*" This Court is of the view that the question whether the victims feel emotionally better does not take away the crime that was committed and the seriousness of the crime.

[27] In paragraph 3.7 of the Appellants heads, the legal representative for the Appellant alleged that: "*the sentencing court failed to consider the whole principle in S v Malgas*⁹ and

⁸ *S v PB* 2013 (2) SACR 533 at para 20

⁹ *S v Malgas* 2001 (1) SACR 469 SCA

more specifically if the imposition of the prescribed minimum sentence will be unjust." When it comes to the word "unjust" the following is stated: *"Subject of course to any limitations imposed by legislation or binding judicial precedent, a trial court will consider the particular circumstances of the case in the light of the well-known triad of factors relevant to sentence and impose what it considers to be a just and appropriate sentence"* ¹⁰ This Court is of the view that the same principle applies as here above.

[28] Considering the triad in *S v Zinn*¹¹ and the objectives of sentencing, this Court is of the view that life imprisonment is appropriate and that the sentencing court did exercise its discretion as emphasized in *S v Pillay*.

Order

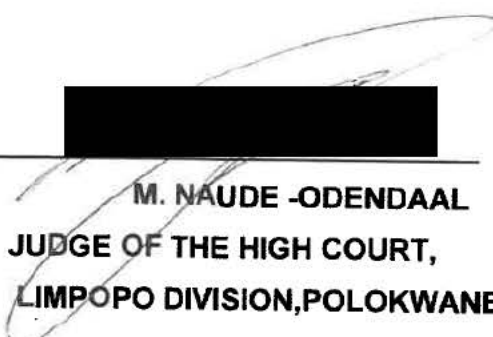
1. The appeal is dismissed.




JD STRÖH AJ

**ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

I AGREE:




M. NAUDE -ODENDAAL

**JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

¹⁰ *S v Malgas* 2001 (1) SACR 469 SCA para 12

¹¹ *S v Zinn* 1969 2 SA 537 (A)

APPEARANCES

FOR THE APPELLANT : Mr MP Legodi

INSTRUCTED BY : Legal Aid

Polokwane

FOR THE RESPONDENT : Adv AV Mudau

INSTRUCTED BY : Director of Public Prosecutions

Limpopo, Polokwane

DATE OF HEARING : 19th September 2025

DATE OF JUDGMENT : 09. March 2026