In the High Court of South Africa
(Western Cape Division, Cape Town)

Case No: A209/2025

In the matter between:

JEROME COETZEE **APPELLANT**

And

THE STATE **RESPONDENT**

Neutral citation: *State v Coetzee* (Appeal Case no A209/2025) [2026] ZAWCHC … (21 May 2025)
Coram: LEKHULENI J *et* TOEFY AJ
Heard: 6 February 2025
Delivered: 21 May 2025

Summary: Criminal Law: Complainant raped by the appellant, a member of SAPS, while on duty. Appellant convicted and sentenced to 10 years' imprisonment – Appeal against conviction and sentence – Evidence of a single witness to be approached with caution - guilt of appellant proven beyond a reasonable doubt – Appellant's version implausible – Appeal on sentence – Section 51(3) of Criminal

Law Amendment Act 105 of 1997- No compelling and substantial circumstance proven – Appeal on conviction and sentence dismissed.

JUDGMENT

LEKHULENI J

Introduction

[1] The escalation of gender-based violence in our country has evolved from a scourge into a pervasive pandemic. This situation is particularly troubling when such violence is committed by members of the South African Police Service (SAPS) in the execution of their duties. The situation becomes increasingly concerning when law enforcement officials at community service centres decline to assist victims of sexual violence in filing charges, particularly when the allegations involve police officers. The lack of support significantly undermines survivors' efforts to seek justice and erodes trust in law enforcement. This matter is a quintessential example of this lived reality.

[2] This is an appeal against the conviction and sentence imposed by the Strand Regional Court on the appellant, a police sergeant, who was convicted of raping the complainant whilst he was on duty. The appellant was convicted on 14 October 2024 on one count of sexual penetration in violation of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 *("the Sexual Offences Act").* At the commencement of the trial, the appellant pleaded not guilty and exercised his right to remain silent. Before the trial could commence, the sentencing provisions envisaged in section 51(2) of the Criminal Law Amendment Act 105 of 1997 *("the CLAA")* and the relevant competent verdicts in terms of section 256 of the Criminal Procedure Act 51 of 1977 *('the CPA')* were explained to the

appellant, who confirmed that he understood. In addition to the rape charge, the appellant also faced a charge of Kidnapping and a charge of obstructing the course of justice. He was acquitted on these two counts at the end of the trial.

[3] On the rape charge, the State alleged that the appellant was guilty of the crime of contravening the provisions of section 3 of the Sexual Offences Act in that on or about the period of 4 July 2018 and at or near Greenfields, Lwandle in the Regional Division of the Western Cape, the appellant did unlawfully and intentionally commit an act of sexual penetration with a female person to wit, MW a 19 year old girl, by inserting his penis into her vagina without her consent.

[4] The prescribed minimum sentence under the CLAA as amended, in particular section 51(2) read with Part II of Schedule 2, for the charge against the appellant was ten years of imprisonment, since the offence was committed before the amendment to the CLAA on 5 August 2022 took effect. At the conclusion of the trial on 14 October 2024, the Regional Magistrate, Ms A Ramos, convicted the appellant on the charge of rape and found no substantial and compelling circumstances meriting a deviation from the prescribed minimum sentence. Subsequent thereto, on 16 April 2025, the Regional Magistrate imposed a sentence of ten years imprisonment as envisaged in section 51(2) of the CLAA and further made relevant ancillary orders.

[5] In terms of section 103(1)(g) of the Firearms Control Act 60 of 2000, the trial court declared the appellant unfit to possess a firearm. The court also made an ancillary order in terms of section 299A of the CPA. It directed that the complainant is to be advised of her rights to make representations should the appellant be considered for parole ahead of finishing his sentence.

[6] Aggrieved by this decision, on 12 June 2025, the appellant applied for leave to appeal before the court *a quo* in terms of section 309B of the CPA. In the application for leave to appeal, the appellant essentially asserted that the Regional Magistrate misdirected herself in finding that the State had discharged its onus and had proven the appellant's guilt beyond a reasonable doubt. The appellant also contended that the court *a quo* erred in failing to take into account that the

complainant contradicted herself on material aspects. On sentence, the appellant submitted that the court *a quo* misdirected itself by overemphasising the interests of the community and the severity of the offence, and by underemphasising the appellant's personal circumstances. The appellant further contended that the sentence of 10 years' imprisonment is startlingly inappropriate and therefore induces a sense of shock. The court *a quo* granted the appellant leave to appeal. It denied the appellant's application for bail pending the outcome of his appeal.

[7] The appellant essentially relied on the same grounds in this appeal. The appellant seeks an order from this court setting aside his conviction and the resultant sentence.

Background facts

[8] To fully understand the key issues in this appeal, it is essential to provide a brief overview of the material facts. The State called ten witnesses in a quest to prove the appellant's guilt beyond a reasonable doubt. The appellant testified and called no witnesses in his defence. Several documentary exhibits, including a medical expert report, photographs of the crime scene, a vehicle movement report, and various other documentary evidence, were, by agreement, admitted into evidence at the trial. To the extent necessary, I will summarise the evidence of the witnesses led at the trial and not repeat the evidence verbatim. Where necessary, I will refer to the exhibits admitted during the trial.

[9] The State tendered the complainant's evidence as its first witness. At the beginning of the trial on 8 November 2019, the complainant was unable to proceed with her evidence in chief after taking the prescribed oath, as she was extremely emotional. This led to a delay in the hearing of the matter. On 20 September 2021, the complainant testified, and in summary, her evidence was that on the day of the incident, 4 July 2018, at about 20h00, she was at her boyfriend's house (which is a flat) in Vukeya Street in Greenfield Strand. At that time, she was about three weeks pregnant. Suddenly, three police officers arrived at the flat looking for her boyfriend. One of the police officers was the appellant. The complainant told them her boyfriend was not at home. The police officers asked her to open the door so they could

search the house. Indeed, she opened, and they searched the property, finding three small plastic bags under the bed, but she did not know what they contained. They informed her that the small plastic bags contained drugs.

[10] The policemen told her that they were taking her to the Police Station because they had found the plastic bags in the house she occupied. The police requested that she contact her boyfriend; however, he did not come to the residence, stating he was occupied elsewhere. The three police men ordered the complainant to go with them to the Police Station. She was stressed because she was afraid of being arrested, particularly since she was pregnant. The three policemen drove around with her, looking for her boyfriend, including at Mtata lodge.

[11] Subsequently, the appellant dropped the other two policemen at Lwandle Police Station, who then went inside, and she remained with the appellant in the car. As she was getting out of the car, they told her not to enter the Police Station because they were not looking for her, but for her boyfriend. The appellant drove with the complainant to a second Police Station which is located in Strand, where he went inside, but she remained in the vehicle. On his return, the appellant drove back to the “location”, and as he was driving, the complainant was crying. The appellant asked the complainant why she was crying, and the complainant told him she was afraid of being arrested.

[12] It was then that the appellant told the complainant that if she could help him, he would, in return, help her too. When she asked him what he meant by that, he replied that she was a grown-up and she knew what he meant. The appellant then told her that when they were searching her house, he saw condoms, and if she could kiss him, maybe something could happen. The complainant did not answer. The appellant thereafter drove to the flat of the complainant’s boyfriend to fetch condoms. Upon arrival at the flat, the complainant waited in the car, believing that leaving it would be breaking the law. The appellant went to the flat alone, came back with the condoms, and drove to a place known as ASLA, a place where there are no houses, which is next to the veld. The appellant stopped there and got out of the vehicle, pulled down his pants, put on a condom and came to the front passenger side where

the complainant was sitting and raped the complainant despite her fervent resistance.

[13] When he was done, the appellant took the condom off, tied it and threw it onto the grass. Thereafter, the appellant took the complainant home, gave her the house keys, and the money (R2300) he had taken during the earlier search. The complainant immediately went to her neighbour, E[...] M[...], and informed her of what had happened to her. The following day, the complainant and E[...] went to report the case at Lwandle Police Station. However, they were ignored for hours and not assisted. Pursuant to the police's indifference, the complainant and E[...] decided to go to Strand Police Station, where Warrant Officer Enrico Everts enlisted the help of Khayelitsha FCS to assist the complainant in laying a criminal charge against the appellant. She laid the charge against the appellant and was subsequently taken to the hospital, where a doctor examined her. Her medical examination report was admitted as an exhibit during the trial and marked Exhibit E.

[14] During cross-examination, it was put to her by the appellant's erstwhile attorney (Mr Moffitt) that her boyfriend, a Nigerian, was selling drugs, and she replied that she did not know. The complainant also testified in cross-examination that from her boyfriend's premises, the three police officers told her that they were interested in her boyfriend. She testified during cross-examination that she took them to several locations in an effort to show them where her boyfriend might be found. When advocate Herman, who subsequently came on record for the appellant after the withdrawal of Mr Moffitt, put to her that the reason the appellant returned to the flat was to get his torch, which he used to search her room, she denied this. The complainant also denied giving the appellant information about Nigerian drug dealings.

[15] Sergeant Enrico Everts is stationed at Strand. He testified that the rape was reported to him as the complainant informed him that she was at Lwandle Police Station, but she was not assisted. Sergeant Everts contacted the Khayelitsha FCS to assist the complainant in opening a criminal case against the appellant. Warrant Officer Arries subsequently came and assisted the complainant in opening the case against the appellant.

[16] E[...] M[...] testified that she is the complainant's neighbour. She also lives in the same building as the complainant. One has to pass through her flat to reach the complainant's flat. She was in her flat on the evening in question, and she saw people passing her flat. She checked through the window to see who it was and could not really see, but she saw that the complainant's door was open. She saw people passing again, and later she went to the complainant's flat to ask what was happening, but the complainant was not there. Later, the complainant came to her crying. She asked her what was wrong, and the complainant told her that the police were in her house. One of them drove around with her and eventually raped her.

[17] Constable Valentine testified that on the day in question, he was on duty with appellant and Constable Masumpa, and they went to Vukayi Street to search a house in Lwandle. Upon arrival, they found the complainant, who welcomed them inside. They then searched the place and found 3 little packets containing traces of tik. The complainant phoned her boyfriend to report to him that she was being arrested. They tried to get further information from the complainant. They then arrested the complainant and drove to the Police Station.

[18] On the way to the Police Station, they looked for the complainant's boyfriend but could not find him. They then drove back to the Police Station. On the way, the appellant told them that the complainant informed him that she does not trust the witness and Constable Masumpa and had information about the drugs. Constable Valentine testified that upon arriving at the Police Station, he and Constable Masumpa exited the vehicle. The appellant left with the complainant. The tik sachets were not booked in SAP13, and nothing was entered in the SAPS books.

[19] The evidence of Constable Masumpa was in substance aligned to that of Constable Valentine. In addition to the evidence of Constable Valentine, Constable Masumpa testified that the appellant found the sachets of tik on the complainant's premises and informed the complainant that she was under arrest, and explained her rights. Constable Masumpa explained that the complainant was told to come with them because she was arrested. Upon arriving at the Police Station, he and Constable Valentine entered while the appellant left with the complainant.

[20] Eric Deysel, a consultant on the SAPS Automatic Vehicle Location, also testified. The witness explained the tracking report of the vehicle that the appellant and his two colleagues drove on the night in question. The vehicle's movement, as explained by Mr Deysel, was consistent with the complainant's evidence, especially in showing that the vehicle was stationary on a gravel road, in an open field near a body of water, with the engine on. The tracking device report corroborated the complainant’s version that the appellant returned to the complainant’s flat before the vehicle went to the ASLA building, where the rape allegedly took place.

[21] Lieutenant Colonel Joseph Du Toit also testified. He is the Visible Policing Commander at Somerset West. The appellant performed duties under his command. Colonel Du Toit confirmed that the appellant and his colleagues were posted to do crime prevention and were allocated the vehicle driven by the appellant. He requested a tracking report of the vehicle used by the appellant. He gave the same to the investigating officer, Mr Estree, who works for the Independent Police Investigating Directorate (IPID). His report was handed in as Exhibit G in the trial proceedings.

[22] The investigation officer, Jennica Estree, also testified. Mr Estree checked the records at Lwandle Police Station. He found no record of the drugs seized by the appellant and his colleagues. He also checked the SAP14 register and found no arrest of the complainant reflected in it. He testified that the appellant exercised his right to remain silent when he took his warning statement.

[23] The witness who collected the condom at the scene of the crime, Lieutenant Kurt Abrahams, testified. He explained that he photographed the vehicle and collected DNA from the interior door handles on the left side of the vehicle. Mr Abraham collected the condom that he found at the scene of the crime two days after the incident. The condom was partially in the water. He sent it to the forensic laboratory for analysis. When he collected the condom from the scene of the crime, it was not tied. He took a swab from inside the condom and placed it in a sealed bag. The photo album showing the condom, the crime scene, and the vehicle used by the appellant was marked as Exhibit H.

[24] The last witness that the State called was a forensic analyst, Ms Blanche November. Ms November testified that there was no possible semen in the condom; however, there was a DNA profile which was from the skin cells that were on the condom. The DNA found on the condom did not match the DNA of the appellant. That was, in short, the State's case.

[25] The appellant also testified. He admitted that he was on duty on the day of the incident and was the senior driver of the vehicle on the night in question. The appellant stated that he received a phone call from his informer that drugs had been delivered at the address where the complainant was found. He explained that upon receipt of that information, he went to that flat together with his two colleagues, Constable Valentine and Constable Masumpa and found the complainant in pyjamas. The complainant permitted them to enter the house. The appellant asked the complainant of her boyfriend's whereabouts. The complainant informed him that she was alone in the premises and that her boyfriend was not there. They told her they were there to search the premises using the information they had received, and the complainant permitted them to do so. His colleague, Constable Valentine, found three sachets containing tik residue. According to him, Constable Valentine was responsible for opening the case docket.

[26] It was then that the complainant started crying, and the appellant informed her that they were not there for her but were looking for her boyfriend. The complainant told them that she did not know where her boyfriend was. The complainant called her boyfriend and asked him to come home; he stated he was on his way, but later indicated he was not coming. According to him, during the search, he did not see any condoms at the complainant's premises. The appellant explained that the complainant told them that she could show them the place where her boyfriend goes to regularly. They subsequently went with her to look for the complainant's boyfriend at the Umtata Tavern in Lwandle, but did not find him.

[27] On the way from the Tavern, they spotted another Nigerian transporter of drugs. They stopped that vehicle, and Constable Valentine and Masumpa got out of

the vehicle to search the transporter of drugs. The appellant stated that as he was exiting the vehicle, the complainant expressed her desire to speak with him to provide more information regarding their operations within the drug trade in the area. Subsequent thereto, he went to drop Constable Valentine and Masumpa at Lwandle Police Station. Then he drove to the Strand Police Station to check their system for wanted persons, but it was offline. The complainant had waited in the car and was crying.

[28] The appellant testified that he continued to drive around looking for the complainant's boyfriend when he realised he had left his torch at the complainant's flat. Constable Valentine had called him about the torch, and he decided to drive to the complainant's address to pick it up. According to him, he used the torch during the search. He then went to the complainant's flat alone and left the complainant in the car. It took him about three to five minutes to fetch the torch from the complainant's flat and to return to the car. The appellant denied fetching condoms at the complainant's premises. The appellant asserted that the complainant was afraid that her boyfriend might see them, so she asked him to drive to a quiet place.

[29] Pursuant thereto, he drove to Timber City in Somerset West. It is a gravel road that runs out of Broadland Road. He parked there, and the complainant started to open up to him about how her boyfriend operates with drugs. They stayed there for about 15 to 20 minutes. The appellant testified that the information that the complainant gave them led to their success in drug busting. The appellant denied raping the complainant and asserted that he had been framed because most of his arrests were of foreign nationals. He stated that he never touched the complainant.

The findings of the trial court

[30] After considering the conspectus of the evidence, the trial court made favourable credibility findings regarding the evidence of the complainant, who was a single witness on the rape charge. The court found that the complainant provided a detailed and clear account of the incident, which was largely corroborated by the

appellant regarding the rape, strengthening her case significantly. The court found it had no reason not to accept the complainant's evidence as reliable and credible. The court also found that the complainant's evidence was trustworthy and supported by the first report, and that it was satisfactory beyond a reasonable doubt.

[31] To the contrary, the court found that the appellant's version was riddled with improbabilities and contradictions. The court observed that the appellant's version that it was not his responsibility to arrest the complainant did not make sense. In the trial court's view, this version makes no sense because the appellant was the senior police officer at the scene. The court noted that the appellant's *modus operandi* on the night in question is questionable to say the least. His explanation that he took the complainant to a deserted area to elicit information on drug dealing makes no sense either. The court concluded that the appellant adapted his version as the evidence against him unfolded. The trial court observed that the appellant used his position of authority to take advantage of a young, scared complainant and forced her to have sexual intercourse with him without her consent. The court concluded that on the totality of the evidence, the appellant's version that he did not sexually abuse the complainant was not reasonably possibly true.

Applicable legal principles

[32] It is settled law that in a matter such as the present, this court's powers to interfere on appeal with the findings of fact of the trial court are limited in the absence of demonstrable and material misdirection. Where there is no misdirection on the facts, the presumption is that its findings are correct, and the appellate court will only interfere with them if it is convinced that they are wrong. This principle was restated in S *v Jochems* 1991(1) SACR (A) at 211 E-G as follows:

> "It is a time-honoured principle that once a trial court has made credibility findings, an appeal court should be deferential and slow to interfere therewith unless is convinced on a conspectus of the evidence that the trial court was clearly wrong. *R v Dhlumayo and Another 1948(2) SA 677 (A)* at 706; *S v Kebana* [2010] 1 All SA 310 (SCA) para12. As the saying goes, he was steeped in the atmosphere of the trial. Absent

any positive finding that he was wrong, this court is not at liberty to interfere with his findings."

[33] In *Minister of Safety and Security & others v Craig & others NNO* 2011 (1) SACR 469 (SCA) para 58, Navsa JA stated that although courts of appeal are slow to disturb findings of credibility, they generally have greater liberty to do so where a finding of fact does not essentially depend on the personal impression made by a witness' demeanour, but predominantly upon inferences and other facts and upon probabilities. In such a case a court of appeal with the benefit of a full record may often be in a better position to draw inferences.

Principal submissions by the parties

[34] Ms Safodien, who appeared for the appellant, submitted that heavy reliance was placed on the complainant's evidence despite the discrepancies and contradictions in her evidence vis-à-vis her statement. Counsel argued that the complainant's evidence in court and her statement differed as to whether the appellant pulled her pants and at what stage. Counsel argued that the complainant's statement does not mention that the appellant returned to the flat to fetch a condom. Ms Safodien submitted that there are discrepancies in the state case, and that, as a result, not much weight can be attached to the complainant's evidence.

[35] Ms Safodien also asserted in her heads of argument that the magistrate failed to give sufficient weight to these contradictions and, in addition, failed properly to weigh the complainant's evidence against that of the appellant and against the probabilities. Counsel argued that the DNA evidence did not implicate the appellant. Significantly, Ms Safodien pointed out that the complainant was a single witness. In light of all the contradictions, the trial court erred in finding the complainant's evidence satisfactory in all material respects. According to Ms Safodien, the version of the complainant cannot, on the totality of the evidence, be said to be reasonably possibly true. On sentence, counsel argued that the court *a quo* was incorrect in finding that no substantial and compelling circumstances existed to deviate from the

prescribed sentence. Counsel submitted that a deviation from the minimum sentence was justified in this matter.

[36] On the other hand, Ms Galloway, the State's counsel, argued that the court *a quo* correctly weighed up the complainant's case and found her to be a credible, reliable, and honest witness. Ms Galloway conceded that the complainant was a single witness. However, counsel submitted that the court *a quo* considered the complainant's testimony by applying the relevant cautionary rule and considered aspects of the case that support the complainant's evidence on the issue in dispute. Ms Galloway argued that the trial court was correct in accepting the testimony of the complainant and the State witnesses. Ms Galloway further submitted that, on the probabilities of the matter, the trial court was correct in rejecting the appellant's submission as not reasonably possibly true.

[37] On sentence, counsel asserted that what aggravates the matter is that the crime was carefully planned to the extent that the appellant created an opportunity to commit the crime. Counsel pointed out that the appellant had ample opportunity to reconsider his actions. Ms Gallaway submitted that the trial court was correct in finding that there were no substantial and compelling circumstances and that the sentence imposed is not shockingly inappropriate. She implored this court to dismiss the appeal both on conviction and sentence.

Issues to be decided

[38] The issue for determination in this appeal is whether the appellant's guilt was established beyond a reasonable doubt, and if so, whether the sentence imposed by the trial court is inappropriate and evokes a sense of shock.

Discussion

[39] Against this backdrop, I turn to evaluate the merits of this appeal on conviction and sentence.

[40] It is well established in our law that the duty to prove an accused's guilt rests fairly and squarely on the shoulders of the State. The accused need not assist the

State in any way in discharging this onus. (*S v Mathebula* 1997 (1) SACR 10 (W)). In assessing whether the State has discharged the onus of proving its case against the accused beyond a reasonable doubt, it must consider all the evidence in concluding whether to convict or acquit an accused. In other words, a court's conclusion must account for all the evidence presented before it. (*S v Van der Meyden* 1999 (1) SACR 447 (WLD) at 449h).

[41] The complainant was a single witness in this case. She was 19 years old at the time the alleged offence was committed. As a single witness, the complainant's evidence had to either be: (a) substantially satisfactory in every material respect, or (b) corroborated. (*Phogole v The State* (370/2023) [2024] ZASCA 54 (9 May 2025)) para 77. Her evidence had to be approached with caution, particularly taking into account the appellant's version that the complainant was framing him to spite him because he arrested Nigerian nationals who were dealing in drugs. In *S v Webber* 1971 (3) SA 754 (A) at 758F-H, the court held:

> 'A conviction is possible on the evidence of a single witness. Such witness must be credible, and the evidence should be approached with caution. Due consideration should be given to factors which affirm, and factors which detract from the creditability of the witnesses. The probative value of the evidence of a single witness should also not be equated with that of several witnesses.'

[42] Our courts have stressed the fact that it is not possible to prescribe a formula in terms whereof every single witness' credibility can be determined, but it is essential to approach the evidence of a single witness with caution and to weigh up the good qualities of such a witness against all the factors which may diminish the credibility of the witness. (see *S v Sauls* 1981 (3) SA 172 (A) at 180E-H).

[43] Section 208 of the CPA provides that an accused person may be convicted of any offence on the single evidence of any competent witness. As stated above, the testimony of a single witness should be clear and satisfactory in all material aspects. However, the exercise of caution against such evidence must not be allowed to

displace the exercise of common-sense. (*S v Artman and Another* 1968 (3) SA 339 (SCA)).

[44] It is incontestable that the version of the complainant and that of the appellant are diametrically opposed to each other. The trial court was faced with two mutually destructive versions of two single witnesses based on the evidence of the complainant and the appellant. Both versions cannot be true. Consequently, the other must be false. Only one can be true. In *S v Kotze* (776/16) [2017] ZASCA 27 (27 March 2017) para 17, the court stated as follows regarding mutually destructive versions:

> 'In order to determine the objective truth of the one version and the falsity of the other, it is important to consider not only the credibility of the witnesses, but also the reliability of such witnesses. Evidence that is reliable should be weighed against the evidence that is found to be false and in the process measured against the probabilities. In the final analysis the court must determine whether the State has mustered the requisite threshold proof beyond reasonable doubt.'

[45] It is common cause that the appellant and the complainant were in the police vehicle on the night in question. The complainant asserted that the appellant raped her on the night in question. The appellant, on the other hand, denied that he raped the complainant and, in fact, asserted that nothing happened between them. According to the appellant, the complainant opened up to him and advised him of how drugs are sold in the area. The trial court rejected this version as false and found that the State proved its case beyond a reasonable doubt. For the reasons that follow, I am of the view that the findings of the trial court are correct and unimpeachable.

[46] It is important to emphasise that the complainant's evidence must not be assessed in isolation. It must be assessed together with the evidence of the appellant and the other State witnesses. The appellant's evidence largely corroborates the complainant's version. The complainant's version was that the appellant dropped his colleagues at the Lwandle Police Station and drove with her looking for her boyfriend, and subsequently raped her in a secluded place situated in

Somerset West Timbers. In addition, the complainant testified that the appellant informed her that he saw condoms at her flat when they were searching. Pursuant thereto, the appellant drove to the complainant's premises, fetched the condoms and drove with the complainant to a secluded place where he raped her.

[47] From the totality of the evidence, it is not in dispute that the appellant was together with the complainant during the course of the night after he dropped his colleagues at the Lwandle Police Station. It is common cause that the appellant drove around with her and eventually went to a secluded place. According to the complainant, the appellant raped her in a police vehicle at that remote and isolated place. As the trial court noted, the pertinent question was whether the truth had been told in this matter. As articulated above, the complainant was able to clearly recall the incident, which the appellant to a greater extent corroborated, but for the rape.

[48] There were no material contradictions in the complainant's evidence and that of the first report. Essentially, the first report (Ms M[...]) corroborated the complainant's version in all material respects about the reporting of the incident and the state of mind in which the complainant was when reporting the incident to her. She stated that the complainant was crying and distressed when she opened the door for her. Significantly, this was on the night in question, immediately after the incident. There is nothing of substance to reject the first report's testimony. In my view, the court *a quo*'s finding that the first report's evidence was unimpeachable cannot be faulted.

[49] It must be borne in mind that the alleged incident happened in July 2018. The complainant only testified in September 2021. Despite the passage of time since the incident, the complainant's evidence was clear and consistent. Although the complainant is a single witness, her evidence was corroborated by the appellant and the first report's evidence. It was also corroborated by the tracking report. The appellant's version of events from the arrest of the complainant and their movement until they stopped at the secluded place in the veld is consistent with that of the complainant. The only difference between the two versions is on the alleged raped. Accordingly, there was no reason not to accept the complainant's version and that of

the first report, as their evidence was reliable and credible. As it will be demonstrated hereunder, the finding of the court *a quo* in this regard is unassailable.

[50] The appellant's version, on the other hand, was riddled with improbabilities and contradictions. Crucially, the appellant adapted his version as the trial unfolded. The following fortifies this conclusion: During the proceedings and throughout the testimony of the complainant and the two police officers who were together with the appellant on the night in question, the appellant disputed that he returned to the complainant's premises to fetch condoms. In substance, the appellant denied that he went back to the complainant's house to fetch condoms as alleged by the complainant after he dropped his colleagues at the Police Station. It was never put to the complainant that the appellant returned to the complainant's flat to collect his torch.

[51] The appellant adapted his version after the SAPS Automatic Vehicle Location Project consultant explained the vehicle's movement (tracking report) from the tracking system on the night in question. The witness explained that the vehicle went back to the complainant's flat from Lwandle Police Station. This evidence corroborated the complainant's version materially in that the appellant went to her flat to fetch condoms. At this point, the appellant realised that the tracking system completely negated his version, namely that he did not go to the complainant's flat. Faced with the reality, the appellant resorted to adapting his version to cover the gap and asserted that he returned to the complainant's place for the second time to fetch his torch, which he had forgotten at the house when the search was conducted.

[52] This version was a sheer fabrication. The following facts bear out this conclusion: The complainant's version was that when the appellant raped her, he used a condom which the appellant fetched from the complainant's flat. The use of the condom was central to the complainant's version. As foreshadowed above, during cross-examination of the complainant, Mr Moffitt denied in the presence of the appellant that the appellant returned to the complainant's flat to fetch condoms. Importantly, the denial was not qualified. It was never put to the complainant that the appellant returned to the complainant's flat to look for his torch, which he allegedly forgot at the premises while searching the place with his colleagues. The issue of a

torch was fabricated after the tracking report detailing the movement of the appellant's vehicle on the night in question was explained in court.

[53] To cover up the gap, the appellant postulated that he went back to the flat to fetch a torch. This necessitated recalling the complainant after the testimony of five witnesses so that the new version of the appellant could be put to her. The complainant refuted this version and clung to her version that the appellant returned to the flat to fetch condoms, which he used when he raped her. She stated that the three policemen did not use a torch that night during the search, as her room was well lit by electric light.

[54] What compounds the difficulty in the appellant's version is his testimony that he went to look for the torch after receiving a call from Constable Valentine. He testified that the reason Constable Valentine called him to look for the torch was that the area where Constable Valentine was taking fingerprints in the charge office had no lighting. As a result, Constable Valentine contacted him directly to request the torch. Notably, Constable Valentine testified before the evidence on the movement of the vehicle could be presented. Surprisingly, when Constable Valentine testified, it was not put to him that he called the appellant looking for the torch. This was central to the appellant's version.

[55] If indeed it happened, it would have corroborated the appellant's version. It is my firm view that the version of the torch was an afterthought, fabricated only after the tracker witness testified about the vehicle's movement. Unfortunately for the appellant, this witness was called long after his colleagues, particularly Constable Valentine, had testified. The appellant had no option but to adapt his version and denounce his denial of not returning to the complainant's flat. Moreover, I find it highly improbable that Constable Valentine, who was at the Police Station with all the resources available to the police, would call the appellant looking for a torch that could be readily obtained there. This version is implausible and makes no sense; the court below was correct to reject it as false.

[56] I am mindful that the appellant need not prove his innocence in a criminal trial and that the State remains with the onus of proving his guilt beyond a reasonable

doubt. However, in this case, the appellant's version is false beyond a reasonable doubt. He was a senior police officer, and the other two police officers were his juniors. They seized drugs at the complainant's house and drove around with her during the course of the night, and failed to book those drugs in the SAP13. According to Constable Masumpa, the appellant told the complainant that she was under arrest as she was found in possession of drugs. Her constitutional rights were explained to her. Surprisingly, nothing was recorded in the SAP14 nor in the occurrence book (SAP10) that the complainant was arrested. It is also not known what happened to the drugs that were seized at the complainant's premises, as the said drugs were not booked in the SAP13. Nothing was recorded in the police source documents regarding the arrest or questioning of the complainant. However, what is evident is that after the complainant was molested, the appellant released her.

[57] It is noteworthy that, despite holding a senior position relative to his juniors, the appellant maintained that it was not his responsibility to arrest the complainant, despite the drugs found in her possession. As the trial court found, the appellant's *modus operandi* on the night in question is highly questionable, to say the least. His explanation that he took the complainant to a deserted area to elicit information on drug dealing does not make sense at all. In my view, the trial court rightly rejected this version and it should be dismissed entirely by this court. The Police Station is a quiet place to conduct interviews. It is highly improbable that a seasoned male police sergeant would choose to conduct an interview with a young female suspect or informant in the middle of the night, deep in the veld, inside a vehicle. On the appellant's own version, one would have expected such serious and sensitive discussions to take place within the safe, controlled environment of the Police Station offices, where privacy and dignity can be maintained.

[58] If, as the appellant claims, he went to the deserted area because the complainant was afraid that her boyfriend would see her with him, it would make more sense for him to take her to the Police Station for questioning in a secure, private environment. Importantly, at that stage, the boyfriend knew that the police had searched the flat and had arrested the complainant. So, seeing her with the appellant would not have been odd. Further, the appellant (together with the complainant) returned to the boyfriend's flat not knowing whether he had since also

returned; and they were, earlier that night, actively searching for the boyfriend with the complainant in the vehicle. The appellant's argument in this respect is lacking in substance and was justifiably dismissed by the trial court. The appellant had an opportunity to interview the complainant at Lwandle Police Station when he dropped off his two colleagues. The appellant also had a second opportunity to interview the complainant at Strand Police Station but chose not to. Instead, he chose to go with the complainant into a secluded place where his deeds could not be seen.

[59] The appellant could not reasonably explain why he could not interview the complainant at the Police Station, but instead chose to interview her in the veld in the middle of the night. The evidence presented clearly indicates that the appellant had a disturbing intention to sexually assault the complainant. It seems to me that he carefully devised a plan, intending to exchange sexual favours for the complainant's release from arrest. This behaviour is deeply troubling.

[60] Ms Safodien argued that the court *a quo* was faced with two conflicting versions and that there are no objective facts to support either. Moreover, the medical evidence is neutral and consistent with either version, and the DNA evidence did not implicate the appellant. This argument, in my view, cannot be correct. It must be stressed that, in coming to a decision, the court must consider the totality of the evidence before it and not adopt a piecemeal approach. Nugent J, as he then was, in *S v Van der Meyden* 1999 (1) SACR 447 (W) at 448 – 450 stated:

> 'A court does not look at the evidence implicating the accused in isolation in order to determine whether there is proof beyond reasonable doubt, and so too does it not look at the exculpatory evidence in isolation to determine whether it is reasonably possible that it might be true. A court does not base its conclusion, whether it be to convict or to acquit, on only part of the evidence …What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored.'

[61] In my opinion, the totality of the evidence proved the guilt of the appellant beyond a reasonable doubt. The fact that the DNA results did not implicate the appellant is neither here nor there. The DNA evidence is not the sole factor in establishing the appellant's guilt. It is one piece of the overall puzzle that the trial court needed to evaluate in order to determine whether the prosecution had proven the accused's guilt beyond a reasonable doubt. Importantly, the complainant stated that the appellant used a yellow condom when raping her. After he was done, he tied it and discarded it in the grass area where the vehicle was parked. She was not there at the scene when the condom was collected. She did not point out the condom that members of IPID collected from the scene as the condom that was used by the accused.

[62] Significantly, the condom that was uplifted from the scene was not tied. The complainant did not see the police officers when they collected the condom from the scene. According to her evidence, she only pointed a condom wrapper to the police. During the court proceedings, when the photo album (Exhibit H) was presented, which displayed the condom allegedly collected from the scene by IPID members, she maintained that the condom used by the appellant was tied, while the one shown in the exhibit was not tied. The trial court found that this evidence holds considerable importance as it addresses the question of whether the condom discovered by Warrant Officer Abrahams two days after the alleged incident is, in fact, the same condom that the complainant asserts was used by the appellant during the commission of the offence.

[63] The police officer who collected the condom testified that when he picked it up, it was not tied. From the evidence of the complainant, it is abundantly clear that the condom that was found at the scene and booked as an exhibit in this matter was not the condom that the appellant used. It was not tied. It was open and empty inside. The suggestion that the absence of the appellant’s DNA in the condom found at the crime scene definitively proves the appellant's innocence ignores the objective facts and the compelling evidence the complainant presented.

[64] Finally, the appellant's counsel contended that there is excessive reliance on the complainant's testimony, despite significant inconsistencies and contradictions

between her evidence in court and the statement she gave to the police. It was pointed out that these discrepancies pertain specifically to her assertions regarding whether the appellant pulled down her pants and the timing of that action. Furthermore, it was stated that the complainant's statement does not mention that the appellant returned to the flat to fetch a condom. It was submitted that there were discrepancies between the complainant's statement and his evidence in court; accordingly, little weight should be placed on the complainant's evidence.

[65] In *S v Mafaladiso en Andere*, 2003 (1) SACR 583 (SCA) at 593E - 594H, the SCA set out the approach to be adopted in cases where there is a contradiction between the police statement of a witness and the evidence of such a witness or where there is no reference in a police statement to what can be an essential aspect of that witness's testimony. Among other things, the court noted that mere self-contradictions must be approached with caution by a court. Importantly, the court noted that it must be kept in mind that not every error by a witness and not every contradiction or deviation affects the credibility of a witness. Thus, the contradictory versions must be considered and evaluated holistically. The court must weigh the previous statement against the viva voce evidence, consider all the evidence, and decide whether it is reliable and whether the truth has been told despite any shortcomings.

[66] In the present matter, the complainant has given a plausible explanation of the differences. She stated that when she gave the statement, there was no interpreter. Instead, the first report served as an interpreter when her statement was taken. The complainant also stated that her evidence in court is exactly what she told the officer who was taking the statement. In my opinion, the differences between her statement and her evidence in court are minimal and immaterial and must be viewed from that perspective.

[67] In any event, I share the views expressed in *Johnson v The Road Accident Fund* [2000] JOL 7375 (C) at 5, where the court observed that the real test of truth does not lie in a comparison between what the witness is alleged to have told someone else and what he now tells the court. What a witness alleged to have told someone else leaves room for mis-statements, misunderstandings and misconstructions. A statement, however carefully drafted, can never be as reliable as

listening to the *ipsissima verba* of the witness herself. The best test of the accuracy and truth of what a witness says lies in an independent assessment of his actually spoken words. It lies in the court's ability to listen to his words and to observe his demeanour.

[68] On a conspectus of all the facts, I am of the firm view that the appellant's version was implausible, and the court *a quo* was correct in rejecting it as false.

Ad sentence

[69] As far as the appeal on the sentence is concerned, it is trite law that sentencing is pre-eminently a matter of the trial court's discretion. Interference with a sentence on appeal is not justified in the absence of a material misdirection or irregularity, or unless the sentence imposed is so startlingly inappropriate as to create a sense of shock. (*S v Moosajee* [1999] 2 All SA 353 (A), para 8). Thus, an appeal court will only interfere with a sentence on appeal if it appears that the trial court has exercised its discretion improperly or unreasonably. (*S v Gerber* [1998] 4 All SA 315 (NC)).

[70] In the present matter, the enquiry is whether the court *a quo* in imposing the sentence of 10 years imprisonment had exercised its discretion judicially and properly. It was argued on behalf of the appellant that the trial court failed to consider the personal circumstances of the appellant properly and erred by failing to find substantial and compelling circumstances to deviate from the prescribed sentence.

[71] The personal circumstances of the appellant were succinctly set out during the address in mitigation of sentence by his legal representative and on the Probation Officer's report. The appellant was 44 years old, married, and had five children from different relationships, two of whom were minors. The appellant is not the children's primary caregiver. The appellant was unemployed. He had a previous conviction for reckless and negligent driving. At the time of sentencing, the appellant had a 4-year-old daughter and a 4-month-old infant. It was submitted to the court *a quo* that these children are entirely dependent on the appellant and require stability and support during the most crucial developmental stages of their lives. It was

argued that a sentence of 10 years' imprisonment would have a negative impact on the children. It was also submitted that the appellant was a member of the SAPS for 14 years, demonstrating a significant period of adherence to societal rules, discipline, and public service.

[72] It must be emphasised that rape is a repulsive crime. As stated in *S v Vilakazi* 2009 (1) SACR 552 (SCA) para 1, rape is "*an invasion of the most private and intimate zone of a woman and strikes at the core of her personhood and dignity.*" Section 12(1)(c) of the Constitution guarantees everyone the right to freedom and security which includes the right to be free from all forms of violence from either public or private sources. Section 51(3) of the CLAA demands the imposition of the prescribed minimum sentences for a conviction of rape unless a court is satisfied in a particular case that there are substantial and compelling circumstances that justify the imposition of a lesser sentence.

[73] In the present matter, I am mindful of the accused's personal circumstances. However, I hold the view that the sentence imposed by the trial court is beyond reproach. The appellant was in a position of trust. He was entrusted with the sacred duty to protect the complainant and members of the public, particularly the most vulnerable of society. Instead, the appellant breached that trust in an egregious manner. The appellant abused and betrayed the trust that the public and the complainant had in him as a member of SAPS.

[74] Incontestably, the appellant, as a sergeant in the police services, has dealt with several rape cases and has observed how rape negatively impacts the psychological being of a rape victim. Notwithstanding, he abused his position and took advantage of the complainant's vulnerability. Concernedly, the complainant was relatively young. No victim impact statement was presented during the trial. However, it must be accepted that no woman would be left unscathed by sexual assault. The complainant in this matter was indeed traumatised. Her trauma was exacerbated by the Lwandle Police Station 's charge office refusing to open a docket when she attempted to lay a charge. This response is deeply disturbing, to say the least.

[75] Of great significance is that the incident has had profound psychological repercussions for the complainant. On the first day of the trial which was over a year after the rape occurred, she became visibly emotional while beginning her testimony, which necessitated the postponement of the proceedings.

[76] In *S v Vilakazi (supra)* para 58, the SCA held that in cases of serious crime, the personal circumstances of the offender, by themselves, will necessarily recede into the background. The court held that 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 be the kind of 'flimsy' grounds that *S v Malgas* 2001 (1) SACR 469 (SCA) said should be avoided.

[77] Upon conviction on this count, the court *a quo* was bound to impose the prescribed sentence unless there were substantial and compelling circumstances warranting a deviation from it. There was none. To the contrary, there are serious aggravating factors that militate against deviating from the prescribed minimum sentence. There are no compelling reasons to disturb the trial court's well-reasoned judgment.

[78] In the final analysis, given all these considerations, I am of the view that the appeal on both conviction and sentence must be dismissed.

Order

[79] In the result, the following order is granted.

79.1 The appeal on both conviction and sentence is hereby dismissed.

LEKHULENI JD

JUDGE OF THE HIGH COURT

I agree:

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TOEFY A

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the Appellant: Ms Safodien
Instructed by: Legal Aid South Africa

For the Respondent (State): Ms Galloway
Instructed by: Director of Public Prosecutions