

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A183/2014

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
8/05/2026	[Redacted Signature]
DATE:	SIGNATURE

In the matter between:

DANIEL LEWIS

Appellant

and

THE STATE

Respondent

JUDGMENT

MIA, J

Introduction

[1] This is an appeal against both conviction and sentence arising from proceedings in the Regional Court, Germiston, where the appellant was convicted on 13 November 2012 of rape in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, read with section 51(1) of the Criminal Law Amendment Act 105 of 1997,

and subsequently sentenced on 11 February 2013 to life imprisonment. Leave to appeal against both conviction and sentence was granted by the trial court. The appellant appeals against the correctness of the conviction and the appropriateness of the sentence imposed.

Legal framework

[2] It is trite that in criminal proceedings the State bears the onus of proving the guilt of the accused beyond a reasonable doubt. No onus rests upon the accused to prove the truthfulness of his version.¹ The correct approach is not to consider the State and defence cases in isolation, but to evaluate the totality of the evidence holistically in order to determine whether the guilt of the accused has been established beyond reasonable doubt.²

[3] The test remains whether there exists a reasonable possibility that the accused's version may be true. If such possibility exists, the accused is entitled to an acquittal.³

[4] Where the State relies substantially on the evidence of a single witness, the court must approach such evidence with caution, though it may convict if satisfied that the evidence is clear and satisfactory in all material respects. The Court held in *S v Mkhle*⁴ that "not every error made by a witness affects his credibility; in each case the trier of fact has to make an evaluation, taking into account such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness' evidence"⁵

Consideration of the record

[5] The State's case rested primarily on the evidence of the complainant, supported to a limited extent by the evidence of a first report witness and medical evidence contained in the J88. The trial court accepted the complainant

¹ *R v Difford* 1937 AD 370 at 373; *S v Singh* 1975 (1) SA 227 (N)

² *S v Chabalala* 2003 (1) SACR 134 (SCA); *S v Shackell* 2001 (4) SA 1 (SCA)

³ *S v Van der Meyden* 1999 (1) SACR 447 (W)

⁴ 1990 (1) SACR 95 (A)

⁵ *S v Mkhle* 1990 (1) SACR 95 (A)

as a credible witness and found that her version established the guilt of the appellant beyond reasonable doubt.

[6] The appellant contends that the trial court misdirected itself by failing properly to consider material contradictions in the State's case. The first alleged contradiction relates to the complainant's evidence that she was struck in the face, which was not corroborated by the medical evidence and was absent from her earlier statement. The second concerns inconsistencies regarding the sequence of events following the incident, namely whether the complainant first proceeded to her home, the police station, or the hospital. The third and more significant contradiction relates to the number of perpetrators, where the complainant testified to multiple assailants, while the first report indicated a single perpetrator.

[7] It is well established that not every contradiction is material. Courts must distinguish between discrepancies that are peripheral and those that go to the core of the State's case.⁶ The absence of corroboration regarding the alleged assault, while relevant to credibility, does not necessarily undermine the central allegation of rape. Similarly, inconsistencies concerning the sequence of post-incident events are not uncommon in cases involving trauma and do not, without more, render the complainant's evidence unreliable. The report to the complainant's first report was clearly influenced by the trauma she had experienced and does not detract from her testimony regarding the post incident events once she had time to stabilise after the trauma.

[8] The discrepancy concerning the number of perpetrators is more serious. However, even material contradictions must be weighed within the totality of the evidence in its entirety and do not automatically render the entire version false.⁷ The trial court was alive to the cautionary rule applicable to single witnesses⁸ and nevertheless found the complainant's evidence to be satisfactory in all material respects. It concluded that the complainants evidence

⁶ *S v Mkhle* 1990 (1) SACR 95 (A)

⁷ *S v Trainor* 2003 (1) SACR 35 (SCA)

⁸ *S v Mokoale* 2026 JDR 1873 (SCA)

despite being that of a single witness was credible.⁹ This is reinforced by the Courts view in *Mkohle* that: *"It need hardly be stressed that where a trial Court's findings on credibility are in issue on appeal, as in this matter, then, unless there has been a misdirection on fact, the presumption is that the conclusion is correct; the appellate Court will only reverse it if convinced that it is wrong."*¹⁰

[9] The medical evidence, while not corroborating every aspect of the complainant's testimony, was consistent with sexual intercourse having occurred. In contrast, the appellant's version was a bare denial. It did not raise a reasonable possibility that it might be true when weighed against the State's evidence. There was no explanation to account for the medical evidence indicating the violation.

[10] Applying the test in *S v Van der Meyden*¹¹, and considering the evidence holistically, this Court is not persuaded that the trial court misdirected itself in concluding that the State had proved its case beyond reasonable doubt. In the absence of a material misdirection, an appellate court is slow to interfere with the factual findings of the trial court, particularly where such findings are based on credibility assessments.¹² No such misdirection has been demonstrated. The appeal against conviction must accordingly fail.

Sentence

[11] Sentencing is pre-eminently a matter within the discretion of the trial court. An appellate court may interfere only where that discretion has not been properly exercised.¹³ Interference is justified where the sentence is vitiated by misdirection or is disturbingly inappropriate.¹⁴

[12] The offence falls within the ambit of section 51(1) of Act 105 of 1997, which prescribes life imprisonment unless substantial and compelling

⁹ *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G; See also *S v Banana* 2000 (3) SA 885 (ZS) 894

¹⁰ *Mkohle* at p 100

¹¹ 1999 (2) SA 79 (W)

¹² *S v Francis* 1991 (1) SACR 198 (A)

¹³ *S v Rabie* 1975 (4) SA 855 (A)

¹⁴ *S v Malgas* 2001 (2) SA 1222 (SCA); *S v Bogaards* 2013 (1) SACR 1 (CC)

circumstances justify a lesser sentence. The following personal circumstances were before the trial court: the appellant was approximately 56 years old; he had been in custody awaiting trial for approximately three years; and there had been an employment history prior to his arrest. In addition, he had children, although their dependency was unclear.

[13] The period the appellant spent in custody awaiting trial is a significant factor which must be considered in determining an appropriate sentence.¹⁵ It does not however outweigh the seriousness of the offence.

[14] The offence of rape is inherently serious and constitutes a grave violation of the dignity and bodily integrity of the complainant. The trial court further considered that the appellant was aware of his HIV-positive status at the time of the offence. The complainant knew the accused. She felt safe with him. His conduct breached that trust in the familiarity. The right of women to be safe in their homes in the streets where they live and the places of business they frequent, and their communities has been recognised.

[15] While the trial court emphasised the seriousness of the offence and the interests of society, it does not appear that insufficient weight was given to the appellant's personal circumstances. The cumulative effect of the mitigating factors does not rise to the level of substantial and compelling circumstances justifying a departure from the prescribed sentence. The sentence imposed cannot be said to be disproportionate or to induce a sense of shock.

[16] I am unable to conclude that a material misdirection has been established, or that the sentence is disturbingly inappropriate.

[17] The appeal against sentence must accordingly fail.

ORDER

[18] The following order is made:

¹⁵ *S v Vilakazi* 2000 (1) SACR 140 (W)

1. The appeal against conviction is dismissed.
2. The appeal against sentence is dismissed.

f.p. 

S C MIA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

I AGREE



W A KARAM
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

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Date of hearing: 13 October 2025

Date of judgement: