



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: A70/2026

Case number (Regional Court): PRO 84/2018

BAREND BOOYSEN

Appellant

and

THE STATE

Respondent

Coram: Slingers, J et Van Zyl, AJ
Heard on: 29 May 2026
Judgment: 29 May 2026

Summary: Appellant convicted in the regional court on two counts of rape – appeal against conviction – proof beyond a reasonable doubt – not required that guilt proved beyond *all* reasonable doubt – evidence of single witness – necessary caution applied, and evidence corroborated in material respects – contradictory versions – evidence considered holistically - no misdirection on part of regional court – appeal dismissed

ORDER

The appeal is dismissed.

JUDGMENT

VAN ZYL, AJ:

Introduction

1. On 3 February 2021, in the Paarl Regional Court, the appellant pleaded not guilty to two counts of rape in contravention of section 3 of the Sexual Offences and Related Matters Amendment Act 32 of 2007. The provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997 were applicable in that the charges fell within the ambit of Part III¹ of Schedule 2 of that Act.² The prescribed minimum sentence in respect of each count was thus 10 years' direct imprisonment for first offenders such as the appellant. The appellant had legal representation throughout the trial.
2. On 30 January 2023 the appellant was convicted as charged, and on 25 May 2023 he was sentenced to 10 years' direct imprisonment in respect of each count. The sentences are running concurrently, and he is currently in custody.
3. This appeal is against the appellant's conviction. Leave to appeal was refused by the regional court, but granted on petition³ to this court.

This Court's approach on appeal against conviction

4. It is trite that a court of appeal's powers to interfere with the findings of a trial

¹ With reference to "rape or compelled rape".

² "51(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in- (b) Part III of Schedule 2, in the case of- (i) a first offender, to imprisonment for a period not less than 10 years".

³ Under case number P92/2025 on 26 January 2026.

court are limited to cases where there was a material misdirection by the trial court on findings of fact, and where the recorded evidence shows such findings to be clearly wrong. The reason for this is obvious: the trial court has the advantage of seeing, hearing, and appraising witnesses. A court of appeal would therefore only interfere with the trial court's evaluation of oral evidence in exceptional circumstances.⁴

5. One must keep in mind that there is no such thing as a perfect judgment. Merely because a certain aspect is not mentioned in a judgment does not necessarily mean that it was not considered. In *Director of Public Prosecutions: Limpopo v Molope and another*⁵ the SCA held that its “*function is not to seek to discover reasons adverse to the conclusions of the trial judge.... It is true that no judgment is perfect and all embracing, but it does not necessarily follow that, because certain aspects were not mentioned in the judgment, they were not considered.*”
6. The appellant's main submission in the present case is that the State failed to discharged the onus of proving beyond a reasonable doubt that the appellant had raped the complainant. In particular, the regional court evaluated the evidence in a piecemeal fashion, highlighted a few unsatisfactory aspects in the appellant's evidence which was not of such a serious nature that it materially affected his credibility, and did not exercise proper caution in considering the complainant's evidence.
7. The onus is on the State to prove its case beyond a reasonable doubt, and not above all reasonable doubt.⁶ In *S v Chabalala*⁷ the Supreme Court of Appeal (SCA) formulated the principles for evaluating the evidence of the State and the accused in criminal trials as follows:

“The trial court's approach to the case was, however, holistic and in this it was undoubtedly right: S v Van Aswegen 2001 (2) SACR 97 (SCA). The correct

⁴ *S v Monyane and others* 2008 (1) SACR 543 (SCA) para 15.

⁵ 2020 (2) SACR 343 (SCA) para 55, confirming *R v Dhlumayo* 1948 (2) SA 677 (A) at 706.

⁶ *S v Phallo and others* 1999 (2) SACR 558 (SCA) paras 10-11.

⁷ 2003 (1) SACR 134 (SCA) para 15. Emphasis supplied.

approach is to weigh up all the elements which points towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of the 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."

8. In *S v Van der Meyden*⁸ the court held:

"A court does not base its conclusion, whether it be to convict or to acquit, on only part of the evidence The proper test is that the accused is bound to be convicted if the evidence established his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. 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 unreliable; some of it might be found to be possibly false or unreliable; but none may simply be ignored."

9. Proof beyond reasonable doubt must thus be determined by assessing all probabilities and improbabilities, not only in the evidence of the State, but also in the evidence of the accused:⁹

"But whilst it is entirely permissible for a court to test an accused's evidence against the probabilities, it is improper to determine his or her guilt on a balance of probabilities. The standard of proof remains proof beyond reasonable doubt, i.e. evidence with such a high degree of probability that the ordinary reasonable man, after mature consideration comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. An accused's evidence therefore can be rejected on the basis of probabilities only if found to be so improbable that it cannot be reasonably possibly true ..."

10. There is no obligation on the State to close every avenue of escape for the

⁸ 1999 (1) SACR 447 (W) at 449I-450B. Emphasis supplied.

⁹ *Monageng v S* [2009] 1 All SA 237 (SCA) paras 13-14. Emphasis supplied.

accused. The State's evidence must, however, be of such a degree that upon mature consideration a reasonable person would have no doubt that the accused committed the offence. In evaluating the evidence, a court must adopt a holistic approach and consider and evaluate all the evidence as presented.¹⁰ The accused does not bear any onus.¹¹

11. It is against this background that the appellant's case is considered.

The relevant evidence

12. The evidence presented was, briefly, as follows.
13. The complainant testified that she was employed on the farm Heksberg in Wellington. She had worked with the appellant but did not know him very well. On Friday, 2 March 2018, she accompanied her cousin to Hermanus after acquiring the services of the appellant who was a driver on the farm. The appellant's phone number had been obtained from another person at the instance of her cousin. The complainant did not want to go with, but relented upon her cousin's insistence.
14. The complainant initially seated herself at the back of the vehicle, but her cousin insisted that she move to the front passenger seat. After they had dropped her cousin in Hermanus, the complainant and the appellant drove back to the farm. When they reached the Franschoek Pass the appellant stopped the vehicle at a big rock, climbed over to the complainant's seat, and positioned himself behind her. With his one hand he grabbed the back of her neck and forced it towards the driver's seat. The other hand he used to pull down her tracksuit pants and underwear. Thereafter he held both her hands behind her back and penetrated her vagina with his penis while he was behind her. During the incident she was crying, screaming, and resisting. The appellant did not use a condom and the complainant did not know whether he ejaculated. Afterwards, he told her not to tell anyone, and climbed back to his

¹⁰ *R v Mlambo* [1957] 4 All SA 326 (A) at 337.

¹¹ See *S v V* 2001 (1) SACR 453 (SCA) para 3.

seat. She pulled her pants up and remained quiet for the remainder of the drive back. Her private parts were sore.

15. The complainant testified that when they reached Vlakkeland near Wellington, the appellant again pulled the car over and stopped under trees. The area was dark. The appellant climbed over to the complainant's seat and again raped her in the same manner as earlier that evening. This time he ejaculated over her. He then took her home.
16. On the Saturday morning the complainant made a report to her friend, Ms Johanna Pietersen, that the appellant raped her twice. The complainant went to the police station and reported the rapes. Sergeant Readien requested her to point out the two scenes, which she did.
17. Ms Pietersen testified that the complainant approached her on the Saturday, wanting to tell her something. The complainant did not look her normal self, and Ms Pietersen suggested that they go to her house as they were not alone. At her house the complainant told her that, on the way back, the appellant had touched her private parts, but that she had pushed his hand away. He then raped her, first at the Franschoek Pass, and again at the bushy area called Vlakkeland. According to her, the appellant told the complainant that if she did not want to have sex with him, she should get out his vehicle.
18. When this statement by Ms Pietersen was put to the complainant in cross-examination, she confirmed that the appellant had told her to "'f...-off' out of his car. She did not do so, because it was dark, and she was too scared to walk alone: *"Dit was donker toe kon ek nie loop nie. Ek is bang hulle maak my seer langs die pad"*.
19. Ms Pietersen testified that during the report the complainant was nervous, fiddled with her hands, and vomited. She testified further that the complainant had marks (looking like "love bites") on her neck, and told her that the appellant had choked her.

20. Sergeant Readien testified that she was a sergeant in the FCS Unit of the police and that she was tasked with accompanying the complainant to do pointings-out. The complainant was traumatised, and cried a lot.¹² She complainant pointed out a big rock at the Franschoek Pass where she said the appellant had stopped and raped her. They proceeded to Stokkiesdraai on the Old Paarl Road, but the complainant could not recall the exact place where she was raped again.
21. The appellant testified in his own defence, and did not call any other witnesses. He denied raping the complainant, stating that they had consensual sex. He testified that, after dropping the complainant's cousin in Hermanus, they bought beers in Caledon and stopped at the Franschoek Pass to drink the beer. While they were talking he asked the complainant if she would have sex with him. There had been previous occasions on the farm when he had made advances towards her, but she would always jokingly rebuff him: "*We used to have a good understanding*". He therefore did not think it inappropriate to ask for sex while they were drinking.
22. He testified that the complainant stated that it would not be appropriate to have sex near a cross on the Pass (the cross marked a collision spot), and they accordingly drove on, looking for another place. The appellant testified that they first drove to Drommedaris, where a colleague resided. They tried to wake him up to chat, but he was too drunk. They then went to the complainant's nephew who also stayed in Drommedaris, to fetch some of the complainant's clothes that were there. They later came to a place called Newton where they finished the beers. He went to her side of the car. She opened the door and he proceeded to flatten her seat. Thereafter she lifted her lower body to enable him to take her pants and underwear off. He took his clothes off and inserted his penis into her vagina. She did not stop him and laid still while he was having sexual intercourse with her.

¹² "*Baie getraumatiseer en baie hartseer. Sy het baie gehuil. Ek het baie gesukkel met haar*".

23. After a few minutes she started screaming and told him to take his penis out because he was hurting her. He stopped and asked her what was wrong. She told him that he was hurting her, and insisted that he get off her. When he asked why she screamed, she did not reply but insisted that he take her home. The drive was silent and he felt awkward, because she did not speak and did not look at him, but instead stared out of the window: *“On the way back, I was still talking to her, but she was not answering back ... I did feel a bit strange, because I did not know what was going on now with this woman”*.
24. When the complainant left the appellant’s car on their arrival back at the farm, she *“just banged the car’s door and then she left”*.
25. The J88 medical report was admitted by consent. It indicates, that the relevant history given by the complainant was that she had been raped vaginally by a man known to her on 2 March 2018. She was raped twice and no condom was used. There was no clinical evidence of drugs or alcohol in her system. The doctor’s clinical findings were that there were no injuries noted except a bruise on her right thigh, and there were no vulvar injuries noted.
26. The appellant was of the view that the complainant accused him of rape because she was scared that her aunts and grandmother, with whom she resided, would be angry at her for coming home late at night.

Evaluation of the evidence

27. Section 208 of the Criminal Procedure Act 51 of 1977 (CPA) provides that a conviction can follow on the evidence of a single witness provided that the evidence is clear and satisfactory in every material aspect.
28. In the present matter the complainant was a single witness in relation to the rapes. Her evidence was, however, corroborated to a large extent by the

other facts placed before the regional court. In *S v Sauls and others*¹³ it was held that:

“There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness. The trial judge will weigh his evidence, will consider its merits and demerits and having done so, will decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told ... It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense.”

29. I do not agree with the appellant’s criticism of the regional court’s judgment. The court was correct in finding that the complainant's evidence was clear, detailed, and consistent, and duly took her status as single witness into account. She explained how both rapes took place, and maintained her version during extensive cross-examination. Such contradictions as there were would be expected in the course of the narrative, and were not in relation to the material parts of her evidence. There was nothing – apart from the appellant’s speculation - to indicate that the complainant was falsely implicating the appellant. They were colleagues on the farm and the complainant had been in a lift club with the appellant for a few months before the incident.
30. The complainant’s evidence was moreover largely corroborated by Ms Pietersen, who testified that the complainant had informed her about the ordeal the next day. Her evidence in respect of the crux of the report corresponded with the complainant's version of events. Sgt Radian confirmed that the complainant showed her the two scenes where the appellant had raped her. Both Sgt Radian and Ms Pietersen remarked on the complainant’s traumatised state.
31. As I have indicated earlier in this judgment, where a conviction is based on credibility findings, a court of appeal who did not have the benefit of

¹³ 1981 (3) SA 172 (A) at 180F-H.

observing the witnesses and listening to their testimony, will be reluctant to interfere in the credibility findings of the court *a quo*.¹⁴

32. In the present matter, the regional court carefully weighed and considered the evidence at its disposal, including the contradictions upon which the appellant relies. When considering contradictory versions or contradictory parts of the oral evidence of witnesses, a holistic evaluation is required. This is what the regional court did. It recognized that "*..... not every error made by the witness affects his credibility; in each case the trier of facts has to make an evaluation; taking into account such matters as the nature of the contradictions, their number and importance and their bearing on the other parts of the witness's evidence*".¹⁵
33. *S v Mafaladiso en andere*¹⁶ is also instructive in this respect. The relevant extract, translated from the original Afrikaans, reads as follows:

"The judicial approach to contradictions between two witnesses and contradictions between the versions of the same witness (such inter alia, between her or his viva voce evidence and previous statement) is in principle (even if not in degree), identical. Indeed in neither case is the aim to prove which of the versions is correct, but to satisfy oneself that the witness could err, either because of defective recollection or by dishonesty. ...

The mere fact that there are self-contradictions must be approach with caution by the court. Firstly, it must be carefully determined whether there is an actual contradiction and what the precise nature thereof is. ... Secondly, 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. Non-material deviations are not necessarily relevant.... Thirdly, the contradictory versions must be considered on a holistic basis. The circumstances under which the versions were made, the proven reasons for the

¹⁴ See, for example, *S v Hassim and others* 1973 (3) SA 455 (A), and *S v Kelly* 1980 (3) SA 308 (A).

¹⁵ *S v Oosthuizen* 1982 (3) SA 571 (T) at 576G-H. See also *S v Bruiners en 'n ander* 1998 (2) SACR 432 (SE) at 439E-F: "*Ondervinding het geleer dat daar byna nooit twee of drie getuies sal wees wat presies dieselfde getuienis sal aflê met betrekking tot dieselfde voorval of gebeure nie.*" [My loose translation: "Experience has taught that there would almost never be two or three witnesses who would give exactly the same evidence in relation to the same incident or events".]

¹⁶ 2003 (1) SACR 583 (SCA) at 593F-594G. Emphasis supplied.

contradictions, the actual effect of the contradictions with regard to the reliability and credibility of the witness, the question whether the witness was given sufficient opportunity to explain contradictions - and the quality of the explanations - and the connection between the contradictions and the rest of the witness' evidence, amongst other factors, to be taken into consideration and weighed up.... Lastly, there is the final task of the trial Judge, namely to weigh up the previous statement against the viva voce evidence, to consider all the evidence and to decide whether it is reliable or not and to decide whether the truth have been told, despite any shortcomings."

34. Even if the appellant was not a bad witness this does not mean that his version should be accepted. There were some unsatisfactory features in his evidence. In cross-examination it was put to the complainant that she had falsely laid this complaint because she arrived home late that evening, and was scared of her grandmother and aunts who resided with her in the same house. This aspect was inconsistent with the appellant's own testimony - the grandmother and aunts knew where the complainant was, and she had no reason to be scared when she arrived home. The appellant alleged that he had regularly asked the complainant for sex and she would just laugh at his suggestions. This aspect was never put to the complainant in cross-examination.
35. The complainant and the appellant did not know each other well, even though they were colleagues. When they left for Hermanus she was initially not willing to sit next to him in the vehicle but was persuaded by her cousin to sit in front. As the regional court remarked, it was highly unlikely that she would have engaged in sex talk with him. It was also strange that after the complainant would agree to have sexual intercourse with the appellant, he would first drive to Drommedaris to visit two other persons, and not immediately find a place for them to have intercourse.
36. It is trite that the absence of serious injuries indicated on the J88 medical form does not mean that the compellent had not been raped.

37. In all of the circumstances, viewed holistically, the regional court's findings cannot be faulted.
38. I should mention that, in his petition, the appellant raised as a ground of appeal that it "*would have been expected of a victim to try and escape knowing what is about to happen for a second time*". This is a deplorable statement, and one that I hope not to see again in matters of this nature.

Order

39. I accordingly propose that the following order be granted:

The appeal is dismissed.

P. S. VAN ZYL
Acting Judge of the High Court

I agree, and it is so ordered.

H. SLINGERS
Judge of the High Court

Appearances:

For the appellant:

Ms L. N. Adams

Instructed by:

Legal Aid South Africa

For the respondent:

Ms E. Cecil

Instructed by:

Directorate of Public Prosecutions, Western
Cape