THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: A68/2026

In the matter between:

Z[...] R[...] **Appellant**

And

THE STATE **Respondent**

Summary: Criminal law — Sentence — Rape of a fifteen-year-old child — Section 51(1) of the Criminal Law Amendment Act 105 of 1997 — Life imprisonment —Absence of physical injury not substantial and compelling circumstances in terms of section 51(3) (a A) (ii) — Familial breach of trust — Sentence not disproportionate or shockingly inappropriate — Appeal dismissed.

Coram: Ndita J et Yake AJ

Heard: 29 May 2026

Delivered: 29 May 2026

JUDGMENT

YAKE AJ (NDITA J) Concurring:

Introduction

[1] This is an appeal against the sentence imposed by the Regional Magistrate, sitting in Bluedowns upon the appellant, Mr. Z[...] R[...], an adult male who was approximately 26 years old at the time of the commission of the offence. It is alleged that the appellant unlawfully and intentionally inserted his penis into the vagina of the complainant, a fifteen-year-old minor, without her consent. By so doing, the appellant contravened the provisions of Section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 ('Act 32 of 2007') read with the provisions of Section 51 (1) of the Criminal Law Amendment Act 105 of 1997 ('CLAA"), which prescribes a minimum sentence of life imprisonment in circumstances where the complainant is under the age of sixteen years.

[2] The incident occurred during the early hours of 24 September 2018 at the complainant's home in Wallacedene, Kraaifontein. At the time, the complainant was sleeping in the same bed as her mother and the appellant. Following the incident, the complainant reported the matter to her aunt, N[...]. Later that same day, at 13:01, she was medically examined by Sister Bagaza, who compiled the relevant medical report.

[3] The appellant was legally represented throughout the trial. On 28 August 2023, he tendered a plea of not guilty, and admitted that the complainant was his stepdaughter. Prior to the commencement of the trial, the sentencing provisions contemplated in section 51(1) of the CLAA together with the competent verdicts envisaged in section 256 of the Criminal Procedure Act 51 of

1977 (“the CPA”), were duly explained to the appellant, who confirmed his understanding thereof. Furthermore, an application brought in terms of section 153 of the CPA for the complainant’s evidence to be heard in camera was granted.

[4] At the conclusion of the trial, the Regional Magistrate convicted the appellant on 30 May 2024 on a charge of rape. Pursuant to hearing arguments on sentence, the Regional Magistrate found no substantial and compelling circumstances justifying a departure from the prescribed minimum sentence. Accordingly, on 23 June 2025, she imposed a sentence of life imprisonment in terms of section 51(1) of the CLAA. In addition, the Regional Magistrate made the relevant ancillary orders.

[5] In terms of section 50(2)(a) of Act 32 of 2007, the Court directed that the appellant’s particulars be entered into the National Register for Sex Offenders. In addition, pursuant to section 103(1) of the Firearms Control Act 60 of 2000 enquiry, the appellant was declared unfit to possess a firearm.

[6] Aggrieved by the sentence imposed by the court *a quo*, the appellant exercised his automatic right of appeal in terms of section 309(1)(a) of the CPA, seeking the reversal of the sentence imposed. In his grounds of appeal, the appellant asserted that the Regional Magistrate erred in failing to find substantial and compelling circumstances warranting a deviation from the prescribed minimum sentence. Accordingly, the appellant seeks an order for this Court setting aside the sentence imposed by the court *a quo* and substituting it with a lesser sentence.

Relevant Factual Background

[7] The factual matrix leading to the appellant's conviction is, to a large extent,

common cause and may be succinctly summarised as follows: On the night in question, the complainant was sleeping in the same bed as her mother and the appellant. Her mother who drank sleeping pills due to pains in the leg was lying in the same direction as the appellant, while she was positioned at their feet. In the same room, her brother was sleeping in another bed together with her aunt, situated not far from theirs.

[8] While asleep, she experienced pain in her vagina. Upon awakening, she observed the appellant of on top of her. She immediately pushed him away, whereupon the appellant dressed himself up and fled. At that stage, her pyjama pants and underwear were halfway down. She stood up and went to sleep on the couch in the kitchen.

[9] The following morning, her aunt N[...], found her crying and enquired as to what had transpired. She disclosed the incident to her aunt, who in turn informed another aunt of hers and her mother. When confronted by the complainant's mother, the appellant denied raping her, indicating that the complainant must have been dreaming. The complainant was thereafter taken to hospital for medical examination, and the appellant was subsequently arrested.

[10] N[...] confirmed that, upon waking the following morning, she observed that the complainant was sleeping on the couch in the kitchen; an unusual occurrence. She further noted that the complainant's eyes were red, and, upon enquiring, the complainant informed her that the appellant had raped her. N[...] immediately relayed this disclosure to her sister, and together they informed the complainant's mother. Upon confronting the appellant, he denied the allegation, asserting instead that he had been overcome by an "evil spirit". He was thereafter arrested.

[11] The medical report commonly referred to as the J88, compiled by Sister Pauline Bagaza, was admitted into evidence by agreement. Sister Bagaza examined the complainant on 24 September 2018 at 13:01 at Karl Bremer Hospital. The history provided by the complainant was consistent with her testimony in court and the findings recorded were consistent with vaginal penetration by penis or blunt object. With the admission of this report, together with the complainant's birth certificate, the State closed its case.

[12] The appellant testified in his own defence and denied raping the complainant. He confirmed that he and the complainant were sleeping in the same bed. He stated that, during the course of the night, he felt someone touching his private parts and, upon looking, realised it was the complainant. He alleged that, being aroused, he engaged in what he described as consensual sexual intercourse with her. He further testified that, while in the act, he realised that his conduct was wrong and ceased. The following morning, he left for church and was subsequently arrested. After the close of the defence case, the court *a quo* was satisfied that the appellant's guilt had been proven beyond reasonable doubt and accordingly convicted him as charged on 30 May 2024.

[13] Since the complainant was under the age of sixteen years at the time of the commission of the offence, s 51(1) of the CLAA, mandates that a sentence of imprisonment for life be imposed on the appellant unless substantial and compelling circumstances existed which justified the imposition of a lesser sentence in terms of s 51(3)*(a)*.[1]

---

[1] Section 51(3)*(a)* provides that:

'(3)*(a)* If any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence: Provided that if a regional court imposes such a lesser sentence in respect of an offence referred to Part 1 of Schedule 2,

The findings of the court a quo on sentence

[14] In determining sentence, the court *a quo* considered both aggravating and mitigating factors. It took into account the appellant's personal circumstances, including the fact that he was a first offender. It further weighed the circumstances of the offence, notably the age of the complainant, the breach of trust arising from the familial relationship, and the broader social impact of the crime. The court *a quo* concluded that, notwithstanding the appellant being a first offender, no substantial and compelling circumstances existed warranting departure from the prescribed minimum sentence. Accordingly, it imposed life imprisonment in terms of the CLAA.

The grounds of appeal

[15] The appeal is founded on several grounds, which are set out in greater detail below. The respondent opposes the appeal, contending that the court *a quo* correctly sentenced the appellant. In summary the grounds of appeal, may be articulated as follows:

a) The court *a quo* erred in the following respects:

(i) In considering that the version of the complainant to be compelling and overwhelming against the appellant.

---

it shall have jurisdiction to impose a term of imprisonment for a period not exceeding 30 years.'

(ii) In not considering the personal circumstances in line with the crime itself and the interest of the society so that it can impose an appropriate sentence.

(iii) In not considering the role played by the complainant during the incident, the fact that she did not cry for help during the incident, in the house full of her family.

(iv) In failing to consider the evidence of the appellant holistically and only focused on the evidence of the complainant even though her evidence was not sound to be reasonable true.

(v) In failing to show an element of mercy.

(vi) And the sentence imposed is inappropriate and induces a sense of shock.

Submissions by the parties

[16] At the hearing of the appeal, Ms Kunju, counsel for the appellant, made concession that on her papers she touched on merits of the matter. She submitted the merits are retracted and this court need not deal with them. She contends that appellant had been in a romantic relationship with the complainant's mother and that no report of violent behaviour had been made during the period he resided with them. She argued that the appellant posed no threat of violence and inflicted no injuries upon the complainant. Counsel further contended that the appellant ceased his conduct of his own accord upon realising its wrongfulness. On this basis, Ms Kunju submitted that substantial and compelling circumstances existed which warranted a deviation from the prescribed minimum sentence.

[17] Ms Mabilietse, counsel for the State, submitted that the court *a quo* correctly sentenced the appellant. She emphasised that rape cases involving children are prevalent, as evidenced by the congested court rolls. Counsel

argued that the appellant, as the complainant's stepfather, occupied a position of trust and was expected to protect her. Although the complainant did not sustain physical injuries, she suffered psychological harm. The appellant, moreover, displayed no remorse. On this basis, Ms Mabilietse contended that the sentence imposed by the court *a quo* is not shockingly inappropriate, that no justification exists for interference by this Court, and that the appeal ought to be dismissed.

Issues for determination

[18] Against this backdrop, the central question before this Court is whether the court *a quo*, in imposing the prescribed minimum sentence of life imprisonment, exercised its discretion judicially and in accordance with established principles.

Discussion

[19] The rape of a child under the age of sixteen is a heinous and abhorrent crime, deserving of the utmost disdain. It has been described in *S v Chapman*[2] as 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. Disturbingly, cases involving familial or familiar relationships appear to be increasing rather than diminishing. Our society has reached a point where men, driven by unrestrained sexual desires, transgress all bounds of decency and humanity, as we have observed in the present matter.

[20] As judicial officers, the responsibility lies with us to uproot this scourge and to demonstrate, through the sentences we impose, the seriousness with

---

[2] S v Chapman 1997 (3) SA 341 (SCA)

which these offences are regarded. Only then may the community begin to regain trust in the judicial system.

[21] It is for this reason that the legislature has rightly placed the rape of a child under sixteen within the category of offences attracting a prescribed minimum sentence of life imprisonment, save where substantial and compelling circumstances justify a departure. This statutory framework underscores the gravity of the offence and the imperative of protecting the most vulnerable members of society.

[22] Section 51(1) provides that subject to subsections (3) and (6) of the CLAA, the court shall sentence a person it convicted of an offence referred to in Part 1 of Schedule 2 to imprisonment for life. Part 1 of Schedule 2 (as amended) refers to rape as contemplated in section 3 of Act 32 of 2007, *where the victim is a person under the age of 16*. In this case the victim was fifteen years old when she was raped.

[23] Section 51(3)(a) of the CLAA provides the court with a discretion to deviate from the prescribed sentence of imprisonment for life if the court is "*satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed."*

[24] It is trite law that sentencing falls pre-eminently within the discretion of the trial court. An appeal court must be slow to interfere and may only do so where a material misdirection or irregularity has occurred, or where the sentence imposed is so startlingly inappropriate as to induce a sense of shock. (*S v Moosajee* [1999] 2 All SA 353 (A), para 8). Thus, interference is warranted only if it appears that the trial court has exercised its discretion in an improper or unreasonable manner. *S v Gerber* [1998] 4 All SA 315 (NC).

[25] The mitigating factors which were considered and rejected by the court *a quo* are succinctly set out in the pre-sentence report of the Probation Officers and the Correctional Officers' report as follows: At the time of sentence, the appellant was 34 years of age, though he was 26 years old when the offence was committed. He is unmarried and the father of two minor children, aged three and seven years respectively, who reside with their mother. The appellant successfully completed Grade 11 and was thereafter employed as a packer at a pharmacy, earning R1,200 per week. From this income, he contributed to the maintenance of his children. He stands before court as a first offender, with no prior convictions.

[26] The court *a quo* considered the above personal circumstances of the appellant and weighed them against the seriousness of the offence committed and the interest of society. If found that his personal circumstances receded to the background. The seriousness of the offence, the young age of the complainant, and the breach of trust inherent in the familial relationship were weighty aggravating factors. It concluded that the mitigating factors did not constitute substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence.

[27] Ms Kunju contends that the court *a quo* misdirected itself in failing to find that there were substantial and compelling circumstances which warranted a departure from the prescribed minimum sentence of life imprisonment. As such, the appeal is directed at the way the trial court weighed the evidence and factors before it, to arrive at the life sentence imposed. It was submitted that the sentence was shocking.

[28] Ms Kunju, with commendable candour, conceded that her criticism regarding the complainant’s failure to cry out for help during the incident;

despite the house being her place of safety and occupied by several family members, was devoid of merit and wholly untenable.

[29] It is regrettable that, even in this day and age, victims of sexual offences continue to be criticised for not behaving in a manner that accords with preconceived expectations; whether before, during, or after the incident. Such criticism is misplaced and perpetuates harmful stereotypes. As Maya JA (as she then was) eloquently observed in *Monageng v The State*[3] that:

'Much was made by the appellant's counsel of the complainant's apparent ability to act normally after the rape and her delay in reporting it. It has been firmly established in a number of studies on the impact of violence, including rape, against women that victims display individualised emotional responses to the assault.[4] Some of the immediate effects are frozen fright or cognitive dissociation, shock, numbness and disbelief.[5] It is therefore not unusual for a victim to present a façade of normality.

[24] It is further widely accepted that there are many factors which may inhibit a rape victim from disclosing the assault immediately. Children who have been sexually abused, especially by a family member, often do not disclose their abuse and those who ultimately do may wait for long periods and even until adulthood for fear of retribution, feelings of complicity, embarrassment, guilt, shame and other social and familial consequences of disclosure.[6] Significantly, the newly passed Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 provides, in s 59, that 'in criminal proceedings involving the alleged commission of a sexual offence, the court may not draw any inference only from the length of any delay between the alleged commission of such offence and the reporting thereof'. Raising a hue and cry and collapsing in a trembling and sobbing heap is not the benchmark for determining whether or not a woman has been raped. There was thus

---

[3] *Monageng v The State*[3] *(590/06)*[2008] ZASCA 129 (01 OCTOBER 2008) para 23
[4] S Bollen et al '*Violence Against Women in Metropolitan South Africa: A study on impact and service delivery*' Institute for Security Studies (1999) Monograph No 41.
[5] S Ullman & R A Knight 'Women's Resistance Strategies to Different Rapist Types' (1995) 22 No 3 *Criminal Justice & Behaviour* 263, 280; S Katz & M A Mazur *Understanding the Rape Victim: A Synthesis of Research Findings* (1979) 172, 173. M Symonds 'Victims of Violence: Psychological effects and after-effects' (1975) 35 (1) *American Journal of Psychoanalysis* 19 - 726, 22.
[6] T B Goodman-Brown et al 'Why Children Tell: A Model of Children's Disclosure of Sexual Abuse' *Child Abuse & Neglect* 27 (2003) 525-540.

nothing unusual about the complainant's behaviour and her explanation for not immediately reporting the appellant is plausible."

[30] Applying *Monageng,* to the case at hand, I am in full agreement with the findings of the court *a quo*. There is nothing untoward in the complainant's failure to cry out for help during the night. This was the first time on which she had experienced such an assault, and she testified that she was not sexually active prior to the incident. She further explained that her mother was ill and in pain, and she did not wish to disturb her or awaken the rest of the household. In these circumstances, her conduct is entirely understandable. The absence of an outcry cannot, in law, be construed as undermining the credibility of her evidence.

[31] The appellant was a father figure to the complainant. He was in a position of trust and was supposed to be the one protecting her, yet he egregiously violated that trust. With remarkable audacity, he contends that the sexual intercourse was consensual and expect this court to accept that he permitted the complainant, a child of tender years, to insert her hand into his private parts. If this court were to accept such version, it would amount to an abhorrent act, wholly inconsistent with the conduct expected of an adult in his position. An elderly person in the appellant's position would have rebuffed with disdain such behaviour and immediately called the complainant to order.

[32] What is most disturbing in this matter is the conduct of the appellant. He has shown himself to be a man devoid of respect; not only for the complainant and her mother, but for his own dignity as well. He did not shrink from engaging in sexual intercourse with a child while her mother lay beside them in the same bed. He exploited the fact that the complainant's mother, having taken sleeping medication, was unlikely to awaken. Such behaviour demonstrates that the appellant is a manifest danger to children and to society at large. It is incumbent upon the courts to protect our children, who are the future of this

country. The only effective means of doing so is to ensure that the provisions of section 51(1) of the CLAA are given full effect, thereby removing from society those who pose a threat to its most vulnerable members.

[33] I am mindful of the appellant's personal circumstances. However, I hold the view that the sentence imposed by the court *a quo* is unimpeachable. In *S v Vilakazi* 2009 (1) SACR 552 (SCA) para 58, the Supreme Court of Appeal 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. But they are nonetheless relevant in another respect.

[34] I have noted the submissions advanced on behalf of the appellant, that there was no history of violent behaviour during his relationship with the complainant's mother, and that no threats of violence were made nor physical injuries inflicted. There is, however, nothing commendable in the mere absence of violence or injury. That is the baseline of lawful conduct, not a mitigating factor. Section 51(3) (aA) (ii) makes it clear that the absence of injuries cannot reduce the gravity of rape.

[35] The complainant may not bear visible scars, but the emotional and psychological trauma inflicted upon her is profound. The appellant raped an innocent, defenceless child, stripping her of her innocence and childhood. She now carries lifelong invisible scars and through no fault of her own, her life will forever be tainted by the appellant's actions.

[36] The appellant has displayed no remorse. Instead, he sought to minimise his conduct by shifting blame onto the child, accusing her of being the instigator. Such an attitude aggravates rather than mitigates. In these circumstances, the appellant deserves nothing less than the severe sentence imposed.

[37] Applying the well-established triad of S v Zinn[7] principles; namely: the crime, the offender, and the interests of society; I am unable to discern any misdirection in the sentence imposed by the court *a quo*. I must emphasise that the appellant stands convicted of the rape of a vulnerable 15-year-old child, an offence which attracts the prescribed sentence of life imprisonment unless there were substantial and compelling circumstances warranting a deviation from it. None were present. On the contrary, the aggravating factors; its predatory nature, the youth and helplessness of the complainant, and the breach of trust inherent in the relationship; militate strongly against any deviation.

[38] In *S v Malgas*[8] the court held:

'If, after considering all the relevant factors, the court has not merely a sense of unease but a conviction that injustice will be done if the prescribed sentence is imposed or (to put it differently) that the prescribed sentence would be disproportionate to the crime, the criminal and the legitimate needs of society, there will be substantial and compelling circumstances requiring the court to depart from the prescribed sentence and to impose a lesser sentence.'

[39] In the result, and having regard to all the considerations canvassed above, this Court is satisfied that no basis exists for interference with the sentence imposed by the court a quo. The appeal against sentence is accordingly dismissed.

---

[7] S v Zinn 1969 (2) SA 537 (A) 540 G-H
[8] *S v Malgas* 2001 (1) SACR 469 (SCA); *CC* para 20

Order

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

[40.1] The appeal sentence is hereby dismissed.

_____

S. YAKE
ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered:

_____

T. NDITA
JUDGE OF THE HIGH COURT

Appearances

Counsel for the Appellant:	Advocate N. Kunju Cape Town Justice Centre Legal Aid South Africa
Counsel for the Respondent:	Advocate N. Mabilietse Office of Director of Public Prosecutions Western Cape