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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No.: CA & R 184/25

Reportable	YES/NO
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In the matter between:

BHEKI LADUMA

APPELLANT

versus

THE STATE

RESPONDENT

JUDGMENT ON APPEAL

Cengani-Mbakaza AJ

Introduction

[1] The Regional Court sitting in Gqeberha (the court a quo), convicted the appellant on one count of assault with intent to do grievous bodily harm and two counts of rape in contravention of s 3 read with ss 1,2,50, 56 (1), 56A, 57,58,59,60,61 and 68(2) of the Criminal Law Sexual Offences and Related Matters Amendment Act 32 of 2007, read with the provisions of ss 94,256,261,268 and 270 of the Criminal Procedure Act 51 of 1997 (CPA) and further read with s 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA).

[2] In respect of assault with intent to do grievous bodily harm, he was sentenced to 10 years' imprisonment. For each count of rape, he was sentenced to life imprisonment. By operation of the law, the court a quo ordered that the sentences in respect of counts 1 and 3 should run concurrently. He was therefore sentenced to an active term of life imprisonment.

[3] Dissatisfied with the court a quo's decision, the appellant exercised his automatic right of appeal, appealing against convictions and sentences.

[4] The grounds of appeal as outlined in the notice dated 23 October 2025, can be summarised as follows:

- (a) That, the court a quo wrongly convicted the appellant without properly assessing the complainant's evidence, considering the fact that she was a single witness and under the influence of liquor.
- (b) The appellant also avers that the court overlooked the complainant's struggles under cross-examination. He contends that the complainant contradicted her version under oath with her police statements in relation to the issue of penetration during the alleged rape incidents. Furthermore,

the court a quo erred in drawing a negative inference on appellant's failure to testify during the trial proceedings.

- (c) The appellant argued that the court over-emphasised the seriousness of the offence and interests of the society at the expense of the appellant's personal circumstances.

The evidence

[5] The complainant, whose identity is protected in the interest of justice, was in a romantic relationship with the appellant. At the time of the alleged incident, they had been staying together for approximately 8 months.

[6] On or about 06 July 2024, she was socialising with her friend and the appellant, consuming liquor. During the social gathering, the complainant requested permission to attend a traditional ceremony. The appellant refused her request.

[7] According to the complainant, after her friend left, the appellant assaulted her: he kicked her in the face, bit her lower lip and forehead and hit her with a clenched fist, particularly around the nose and mouth area. The complainant suffered severe bleeding due to the injuries sustained during the assault. The appellant allegedly further assaulted her by pouring a bucket of urine and water over her.

[8] He threw her on the bed and undressed her skirt and tight pants. He simultaneously inserted his penis and finger in her vagina. He had sexual intercourse with her, stretching her vagina with his finger and asked her not to close it. The complainant was weakened by the ordeal and called for help with no response.

[9] The next morning she asked the appellant why he had assaulted her. He allegedly responded that it was because she had wanted to leave. Thereafter, he climbed on her and raped her despite her asking what he was doing whilst she was in pain. He repeated the same conduct stretching her vagina with his finger saying she should not make it smaller. The appellant went out to buy cigarettes, giving the complainant an opportunity to call one Ms P [...], the next-door neighbour. Ms P [...] brought the pain medication in company of D [...], her husband.

[10] When the appellant returned from the shop, he pulled the complainant who had already stood up. She managed to run to D [...]'s place where D [...] confronted the appellant asking him to stop what he was doing.

[11] D [...] tried to locate an ambulance which delayed, so one Mr X [...] took the complainant to the police station instead. Upon arrival at the police station, they found the appellant there, and he was subsequently arrested.

[12] The police then took the complainant to hospital, where she was examined by a forensic nurse, treated and later discharged. During cross-examination, the appellant through his legal representative, denied the allegations against him, claiming consensual sexual intercourse which occurred before the fight he had with the complainant. Regarding the assault, he claimed that he was acting in self-defence. Both claims were denied by the complainant.

[13] Ms NY [...], the complainant and the appellant's neighbour, testified that she was called by Ms P [...] to observe the complainant that had been injured. Initially, she was reluctant to go until Ms P [...] showed her the complainant's photograph.

[14] Ms NY [...] went to the complainant's place and observed that she was lying helplessly on the bed with visible injuries, specifically a swollen face and eyes. She also observed a lot of blood on the floor. She confronted the appellant who seemed unsure why he assaulted the complainant.

[15] In cross-examination, Ms NY [...] added that the complainant had speech complications and her head appeared heavy, not due to the consumption of liquor but likely as a result of assault as she would often lower her head while speaking.

[16] Constable Mbina (Const. Mbina), a South African Police Service Officer at Walmer police station confirmed that the appellant arrived at the station the same day as the incident. He requested an ambulance and the appellant admitted to having assaulted the complainant. Const. Mbina called for an ambulance and around that time, the complainant's neighbour arrived asking for help to take the complainant to the hospital.

[17] The neighbour explained what had happened to the complainant. Const. Mbina went to the car that was parked outside and observed the complainant's injuries, noting the swollen face and slurred speech. Despite speaking difficulties, the complainant reported that the appellant assaulted and raped her.

[18] The state presented a medical report commonly known as a J88 compiled by a forensic nurse Ms Vilum. Ms Vilum noted these injuries: bite marks on the face, torn inner lower lip, swelling around both eyes and right lower jaw and bruises on the arm. The complainant's photograph and medical report were submitted as Exhibits A and B respectively. With this evidence, the state closed its case. The appellant elected not to testify and closed his case.

Appeal against convictions

[19] The issue is whether in its analysis, the court a quo misdirected itself on both the facts and the law. It is a well-established principle that the state must prove the guilt of an accused person beyond reasonable doubt¹. The accused may only be acquitted if his version is reasonably possibly true.

[20] In this instance, it is imperative to examine whether the trial court properly evaluated the cautionary rules relevant to single-witness evidence².

[21] It is apposite to bear in mind that the powers of the appeal court in resolving factual disputes are limited. in *Rex v Dhlumayo and Another*³, Schreiner JA set out this principle as follows:

‘Ordinarily the appellant in a criminal appeal has to satisfy the appellate court that the verdict was wrong, at least to the extent that the trial court should have had a reasonable doubt as to his guilt. Where there has been no misdirection on fact by the trial Judge, the presumption is that his conclusion is correct; the appellate court will only reverse it where it is convinced that it is wrong.’

[22] The Constitutional Court (CC) in *Makate v Vodacom (Pty)(Ltd)*⁴ referred to *R v Dhlumayo*⁵ and made the following judicial remarks: *per* Jafta J

¹ In *S v T* 2005 (2) SACR 318 (E) at 329 b-e the court held that the state is required, when it tries a person for allegedly committing an offence, to prove the guilt beyond a reasonable doubt. This high standard of proof universally required in civil systems of criminal justice, is a core component of the fundamental right that every person enjoys under the Constitution, and under the common law prior to 1994, to a fair trial. It is not part of a charter for criminals and neither is it a mere technicality. When the court finds that the guilt of an accused has not been proved beyond reasonable doubt, that accused is entitled to an acquittal, even if there may be suspicions that he or she was indeed the perpetrator of the criminal question.

² Section 208 of Act 51 of 1977 entails that an accused may be convicted on the evidence of a single and competent witness; see also *S v Sauls* 1981 (3) SA 172 (A) at 180E-G.

³ 1948 (2) SA 677 (A).

⁴ (CCT52/15) [2016] ZACC13;2016 (6) BCLR709 (CC); 2016 (4) SA 121(CC) (26 April 2016) at para 37.

⁵ Fn 3 above.

(with Mogoeng CJ, Moseneke DCJ, Khampepe J, Matojane AJ, Nkabinde J and Zondo J) concurring:

‘[37] Ordinarily appeal courts in our law are reluctant to interfere with factual findings made by the trial courts, more particularly if the factual finding is depended on the credibility of the witnesses who testified at the trial.’

[23] At paragraph 40, the CC added that the esteem afforded to a trial court’s credibility findings cannot be overstated. The court held:

‘[40] If it emerges from the record that the trial court misdirected itself on the facts or that it came to a wrong conclusion, the appellate court is duty-bound to overrule factual findings of the trial court so as to do justice to the case. In *Bernert* this court affirmed:

“What must be stressed here is the point that has been repeatedly made. The principle that an appellate court will not ordinarily interfere with a factual finding by the trial court is not an inflexible rule. It is recognition of the advantages that the trial court enjoys which the appellate court does not. These advantages flow from the observing and hearing the witnesses as opposed to reading ‘the cold printed word’. The main advantage being the opportunity to observe the demeanour of the witnesses. But this rule of practice should not be used to ‘tie the hands of the appellate courts. It should be used to assist, and not to hamper, an appellate court to do justice to the case before it. Thus, where there is misdirection on the facts by the trial court, the appellate court is entitled to disregard the findings on facts and come to its own conclusion on the facts as they appear on the record. Similarly, where the appellate court is convinced that the conclusion reached by the trial court is clearly wrong, it will reverse it.”⁶

Analysis

[24] The court a quo correctly made credibility findings on the basis that there were two mutually destructive versions.⁷ The appellant’s grounds of

⁶ *Bernert v Absa Bank Ltd* [2010] ZACC 28; 2011 (3) SA 92(CC); 2011(4) BCLR 329 (CC) at para 106.

⁷ See *Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others* (427/01) [2002] ZASCA 98; 2003 (1) SA 11 (SCA) (6 September 2002).

appeal note some contradictions between the complainant's evidence in court and the statement she made to the police. However, as noted in *Mkhohle*⁸, not all contradictions impact a witness's credibility.

[25] The Supreme Court of Appeal (SCA) in *Maqaladiso v S*⁹ remarked that: 'The discrepancy in statement caused by one sentence only could be interpreted in one of two ways. It must be read in the context of the whole statement. Most significantly, the court must take into account the fact that a statement to the police was not subjected to cross-examination, language and cultural differences between the witness and the person who took the statement, and the fact that the police did not require any explanation of a statement. Secondly, not every error by, or discrepancy in the statement affects the witness's credibility. Thirdly, the different versions must be evaluated holistically. This evaluation includes the circumstances in which the versions were given, reasons for the discrepancies, the effect of the discrepancies on the witness's credibility and whether the witness had sufficient opportunity to explain the discrepancies. Lastly, the witness's statement to the police must be weighed up against the witness's viva voce evidence.'

[26] Notably, the inconsistency in complainant's statement at page 120 of the index bundle exhibits no material contradictions. Overall, the said statement presents a coherent account of the incident especially when read in context.

[27] It should be acknowledged that although a single witness, the complainant's evidence finds corroboration in the observations made by Ms NY [...] and Const. Mbina.

[28] The medical report speaks volumes about the injuries the complainant sustained. Her helpless state indicates that this was egregious behaviour hence

⁸ Nestadt JA stated, in *Mkhohle* 1990(1) SACR 95 (A) at 98f-g, 'Contradictions per se do not lead to the rejection of a witness' evidence They may simply be indicative of an error (*S v Oosthuizen* 1982 (3) SA 571 (T) quoting from 576G-H :) it is stated that not every error made by a witness affects his credibility; in each case the trier of fact has to take into account such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness' evidence.'

⁹ 2003 (1) SACR 583 (SCA) (593j – 594a-g).

the severe consequences. Furthermore, the appellant's spontaneous admission to Const. Mbina is a crucial piece of evidence that corroborates the complainant's version, strongly suggesting that she was indeed assaulted.

[29] Therefore, the appellant's version that he acted in self-defence is untenable, specifically because he had no injuries when he approached the police station to request an ambulance. Similarly, there is no cogent reason to doubt the complainant's evidence regarding her account on the rape charges. Her testimony is remarkably consistent, from her initial report to Ms NY[...] to her statement at the police station.

[30] It is a rule of practice, aligning with the constitutional imperatives, that an accused enjoys the right to remain silent. As enunciated by the CC in *Osman and Another v Attorney-General Transvaal*¹⁰, the accused's failure to testify does not relieve the prosecution of its duty to prove guilt beyond reasonable doubt.

[31] Nevertheless, it is well-established that an accused who elects to remain silent runs the risk that, absent any rebuttal, the prosecution's case may suffice to establish the elements of the offence.¹¹ In *casu*, it is reasonable to conclude that the accused failed to testify at his own peril, given the overwhelming, credible and reliable evidence presented by the state.

Appeal against sentences

[32] Regarding an appeal against sentence, this court is guided by the principle laid down in *S v Pillay*¹², where the court stated:

¹⁰ 1998(4) SA 1224 (CC) at para 50.

¹¹ Ibid.

¹² 1977 (4) SA 531 A at 635 E-F.

‘...as the essential inquiry in an appeal against sentence, however, is not whether the sentence is right or wrong, but whether the Court in imposing it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence; it must be of such a nature , degree or seriousness that it is shows, directly or inferentially, that the court did not exercise its discretion at all or exercised it improperly or unreasonably. Such a misdirection is usually and conveniently termed one that vitiates the Court’s decision on sentence . That is obviously the kind of misdirection predicated in the last quoted dictum above: one that the “dictates of justice” clearly entitle the Appeal Court “to consider the sentence afresh.’

[33] The issue for determination on sentence before this court is whether the court a quo erred in finding that no substantial and compelling circumstances existed. In *S v GK*¹³, Rogers J stated that on appeal, the court may take into account and examine not only those factors considered by the trial court, but all the circumstances bearing on the question, in order to determine the correctness of the trial court’s findings *re* the absence and presence of substantial and compelling circumstances.

[34] The SCA in *Malgas*¹⁴ (Malgas) had indicated that the prescribed sentences are the starting point when imposing a minimum sentence and should not be departed from for flimsy reasons. The SCA emphasised that courts are obligated to implement the prescribed minimum sentences notwithstanding any personal doubts or concerns regarding the efficacy of the policy underlying the legislation. Furthermore, speculative hypotheses favourable to the offender as well as undue sympathy are to be excluded. The principles encapsulated in *Malgas*¹⁵ were also followed in *S v Matyityi*¹⁶ and other long line of cases.¹⁷

¹³ 2013 (2) SACR 505 (WCC).

¹⁴ (117/2000) [2001 ZASCA 30; [2001] (3) All SA 220 (A); 2001(2) SA 1222 (SCA); 2001(1) SACR 469 (SCA) (19 March 2001) at para 25.

¹⁵ Fn 14 above.

¹⁶ 2011(1) SACR 40 SCA; [2010] 2 All SA 424 (SCA) 30 September 2010).

¹⁷ See also *DPP KZN v Ngcobo* 2009 (2) SACR 361 (SCA) para 12.

[35] The legal position is that in instances where a court is convinced that after consideration of all factors, an injustice would occur if the minimum sentence is imposed, then it can categorise such factor(s) as constituting substantial and compelling circumstance(s)¹⁸.

[36] The CLAA has been amended to include life imprisonment when the victim is in a domestic relationship with the accused and the crime involves rape. These amendments aim to strengthen the protection against gender-based violence.

[37] Our Constitution guarantees that no one may be subjected to violence in any form.¹⁹ It also guarantees the right to dignity²⁰ and privacy²¹ which were clearly infringed upon in this case. A plethora of cases describe rape as a degrading, humiliating and brutal invasion of a person's most intimate private space.²²

[38] In the matter under consideration, the appellant persisted with his actions, disregarding the complainant's expressed discomfort and physical pain. He raped her twice stretching her genital with her fingers, making a torrent of demeaning remarks. Despite visible bleeding, the appellant showed no mercy instead displaying brutal behaviour towards her.

¹⁸ *S v Pillay* fn 12 above.

¹⁹ Section 12 (1) (c) of the Constitution, Act 108 of 1996 (the Constitution).

²⁰ Section 10 of the Constitution

²¹ Section 14 of the Constitution

²² *S v C* 1996 (2) SACR 121 C at 186 e-f; *S v Chapman* 1997(3) SA 341 (SCA) at 345 c-d; *S v MM* 2013 (2) SA 537 at 540 G.

[39] Although the pre-sentence report indicates that the appellant has a minor child, he is not a primary care giver. The child resides with the mother and the appellant and had been living with the complainant. In my opinion, the court a quo duly considered the appellant's personal circumstances in relation to the legitimate interests of the community. The appellant's repeated acts including the brutal assault indicates a lack of prospects of rehabilitation. He did all this to his partner at their home where she should be safe and protected by him. His actions suggest that retribution is warranted, given the violent nature of the crime.

[40] Therefore, the cumulative effect of the appellant's personal circumstances, weighed against the aggravating factors, does not constitute substantial and compelling circumstances justifying a departure from the prescribed effective term of life imprisonment.

[41] In the result, the appeals against convictions and sentences are dismissed.

N CENGANI-MBAKAZA
ACTING JUDGE OF THE HIGH COURT

I agree

B MAJIKI
JUDGE OF THE HIGH COURT

APPEARANCES:

For the state : Adv. AA Nohiya
DPP, Grahamstown

For the accused : Adv. D P Geldenhuys
Legal Aid-SA, Grahamstown

Date Heard : 04 March 2026

Date Delivered : 14 April 2026