



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MAKHANDA
(CIRCUIT COURT HELD AT KOMANI)**

NOT REPORTABLE

Case no: CC16/2026

In the matter between:

THE STATE

and

SIPHUMEZE SPIRES

Accused

JUDGMENT

Govindjee J

[1] The accused is charged with rape in contravention of s 3, read with other sections, of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 (the Act). It is alleged that he raped the complainant, IP, an 11-year-old girl, on 15 March 2025 at Dordrecht. The accused pleaded not guilty.

[2] It is common cause that the complainant and accused attended birthday celebrations at the residence of AG and TS. They had met for the first time that day. After the celebrations, the complainant and four other children slept on a pink mattress near the couple's bedroom door in the open-plan living area of the residence. The accused slept on a blue mattress close-by in the same area.

[3] The complainant, who is now aged 12, testified through an intermediary after the Court satisfied itself that she was a competent witness, and after she had been admonished. The complainant testified that she had had a brief conversation with the accused prior to the incident. He had asked her name and enquired where she stayed, before she moved away. On her evidence, the accused had also made a remark about the size of her buttocks while she and the other children had undressed. She had ignored the remark and proceeded to sleep. She had awoken to find the accused next to her, inserting his penis into her vagina. This had been painful and she had cried. She had called A, one of the other children, who had called TS and indicated that she needed to urinate. The accused had then hastened to return to his bedding.

[4] The complainant explained that she had not informed any adult about the incident on the evening of 15 March or on 16 March because she feared the accused, who had given her a bad look. On Monday 17 March 2025, the complainant experienced irritation in the area of her private parts while bathing and observed what she described as pimples. Ms VK, an adult, had been summoned and had taken her to the police station once she reported what had occurred.

[5] VK testified that she was called to the complainant's home by the complainant's older sister, after being told that the complainant did not want to bath. When she arrived, the complainant was crying. On being asked what was wrong, the complainant informed her that the accused, who was known to the witness and had been accurately described by the complainant, had raped her by inserting his penis into her vagina, which had caused her to cry. VK had decided to report the matter to the police and accompanied the complainant to the hospital in Dordrecht thereafter. She noticed that the complainant was in pain and had difficulty in walking.

[6] TS testified that the complainant was her boyfriend's niece. She confirmed the sleeping arrangements on the day of the incident and explained that her boyfriend, AG, had been sleeping with her throughout that night. Neither had consumed alcohol. At some stage that night, the complainant had knocked on her bedroom door and asked to urinate, before returning to sleep. Nothing had been said to her about the incident at the time or on 16 March 2025.

[7] The medical evidence provides objective support for the State's case. Dr Pienaar, a medical practitioner, examined the complainant two days after the incident. Her findings were consistent with recent forceful vaginal penetration of the complainant. She concluded that the injuries were consistent with trauma to the vestibule, including various signs of redness, tenderness and swelling, as well as a torn hymen. A white discharge, likely caused by a sexually transmitted infection, possibly combined with semen, was also noted.

[8] The accused testified in his own defence. He testified that he had remained asleep on his mattress throughout the night and denied raping the complainant. He had only heard about the incident once he had returned to work on the farm, and TS had informed him about the allegation.

[9] Three significant pieces of evidence emerged during cross-examination. Firstly, the accused conceded that there was no reason for the complainant to have lied about their discussion earlier during the evening of the incident, including that he had commented about her buttocks. He went as far as to state that he was not disputing those assertions because the complainant had indicated to the Court that she would not lie during her evidence.

[10] Secondly, he repeatedly indicated that he had slept on the blue mattress at all material times 'without moving an inch'. When it was put to him that the complainant had been adamant that she had seen him in a manner interpreted as 'face-to-face' or at close quarters, he explained that the complainant might have seen him when he had left the mattress to open the door when someone was knocking. That person, who introduced himself as 'Sipho', had wanted to light a cigarette and he had assisted before returning to the mattress. The accused indicated that he had

forgotten to mention this evidence, which had taken only 'a minute or a second' to his attorney. He later explained that this had occurred before he had fallen asleep, and during the time that some of the children were also still awake.

[11] Thirdly, when asked to confirm that this had been his first encounter with the complainant, he explained that he had had sight of her, and noticed her, while walking in Phase One location prior to the date of the incident. He sought to explain this by indicating that he had misunderstood the earlier instance the question had been asked to enquire whether this was the first occasion he had sat at one place with the complainant.

Analysis

[12] The State bears the onus of proving the accused's guilt beyond reasonable doubt. An accused person must be acquitted if it is reasonably possible that he may be innocent. Where the State and defence versions conflict, the Court must consider the merits and demerits of the witnesses, the inherent probabilities and improbabilities, and the evidence as a whole before deciding whether the State has discharged the onus.¹

[13] The evidence must, therefore, not be approached in a fragmented way. The correct approach is to weigh all the evidence pointing towards guilt against the evidence pointing away from guilt, taking proper account of the strengths and weaknesses on both sides. The Court must then decide whether the totality of the evidence excludes reasonable doubt.²

[14] The complainant was a young witness, and her evidence must be approached with the necessary caution.³ Caution must also be applied given that she was the only direct witness, or a single witness, to the central event.⁴ The imaginativeness and suggestibility of children have been held to be only two of several elements that

¹ *S v Guess* [1976] 4 All SA 534 (A) at 537-538; *S v Singh* 1975 (1) SA 227 (N) at 228.

² *S v Chabalala* 2003 (1) SACR 134 (SCA) para 15. Also see *S v Dlamini* 2019 (1) SACR 467 (KZP) para 25.

³ *S v Manda* 1951 (3) SA 158 (A) at 162E-163F. See *S v Artman and Another* 1968 (3) SA 339 at 340H.

⁴ *S v Weber* 1971 (3) SA 754 (A) at 758.

require that their evidence be scrutinised with care to the point of suspicion.⁵ Section 208 of the Criminal Procedure Act, 55 of 1977, provides that an accused may be convicted of any offence on the single evidence of any competent witness. A conviction may follow on the evidence of a single competent witness if, after proper scrutiny and beyond reasonable doubt, the Court is satisfied that the truth has been told on the material issues, and notwithstanding that the testimony was unsatisfactory in some respect.⁶

[15] I have applied those cautions. The central question is whether, having regard to all the evidence, the complainant's account identifying the accused as the person responsible for raping her is reliable and whether the accused's denial is reasonably possibly true.

[16] The complainant made a very favourable impression as a witness for a child of her age. She was clear, responsive and engaged. She did not appear rehearsed and did not embellish her evidence, providing a coherent account of the material events of the evening, including the sleeping arrangements, the accused's earlier inappropriate remark, and the rape itself. She testified about the pain she had felt, and the fear that had caused her not to report immediately to an adult.

[17] I have given careful consideration to the reliability of the complainant's identification of the accused and whether it is possible that she was mistaken in that respect, considering the setting and the likely opportunity for accurate observation at the time. The complainant's identification of the accused was particularly compelling and reliable considering the totality of the evidence. She had engaged with the accused earlier that evening and recalled that he had asked her name and where she lived and they had slept in the same open-plan area. The complainant placed him on the blue mattress close to where she and the other children had slept and, when the issue was tested, remained firm and convincing in her explanation that she had seen him clearly and at such close quarters that he had been visible to her at

⁵ *S v Manda* 1951 (3) SA 158 (A) at 162E-163F. See *S v Artman and Another* 1968 (3) SA 339 at 340H. Also see *S v Dyira* 2010 (1) SACR 78 (E).

⁶ *R v Abdoorham* 1954 (3) SA 163 (N) at 165, as quoted in *S v Sauls* *ibid*.

the time of the rape.⁷ Her identification of the accused, when pressed, was spontaneous.

[18] The common-cause evidence supports her account. Other than AG, and leaving aside the brief appearance of Sipho, on the accused's version, there was no other male present and no suggestion that any other male could have been present in the open-plan area at the relevant time. TS's assertion that AG had remained with her in their bedroom throughout the night was uncontested.

[19] The medical evidence provides strong objective support for the complainant's version of events, sufficient to establish recent forceful vaginal penetration, consistent with the complainant's account and with her evidence that the incident had caused her pain. Dr Pienaar was a very good witness able to recall her examination of the complainant given the nature of the incident. She had been informed by the complainant that she had been raped. Her overall interpretation of the examination, assisted by the history obtained through an interpreter, reflected bruising of the vulva consistent with force having been applied by a blunt object. She also recalled that the complainant understood what had occurred, and was, for example, able to explain that there had been no anal penetration.

[20] Evidence relating to previous consistent statements by a complainant is admissible in criminal proceedings involving the alleged commission of a sexual offence.⁸ VK's evidence confirms that the complainant explained to her, less than two days after the incident, what had transpired, including her pain and identification of the accused as the perpetrator. In criminal proceedings involving the alleged commission of a sexual offence, a court may not draw any inference only from the length of any delay between the alleged commission of such offence and the reporting thereof.⁹ The complainant's failure to report immediately to TS or another adult has been adequately explained, considering her age, the setting, the fact that the accused was present in the same house at the time, and the look he had given her. The delay was short and, in my view, adequately explained.

⁷ See *S v Mthetwa* 1972 (3) SA 766 (A) at 768A–C.

⁸ S 58 of the Act.

⁹ S 59 of the Act.

[21] I have also considered whether there are blemishes in the complainant's evidence that undermine her reliability. There are none of substance in my view. This is not to suggest that the complainant's evidence was completely without blemish. There was some uncertainty about the precise sequence of events after she had called A during the night, including whether it was A or the complainant who had asked TS to be allowed to urinate. That difference, viewed against TS's evidence, is a matter of detail and does not affect the central question. Nor does the complainant's reaction at the time undermine her reliability: she cried, called A and, on TS's evidence, called or knocked at the bedroom door. On the material issue – whether the accused was the person responsible for raping her – the complainant was clear, consistent, firm and honest and I am satisfied that she had genuinely identified the accused as the perpetrator.

[22] The accused's own evidence was unsatisfactory. He accepted the central setting, including his presence at the house, his sleeping place, the proximity of the children and the complainant's presence, against the backdrop of Dr Pienaar's evidence confirming recent forceful injury consistent with the complainant's account. But his concessions, as well as the new evidence that emerged during cross-examination, impacted negatively on his credibility. He struggled to provide convincing answers to his earlier interactions with the complainant and ultimately indicated that he was not disputing those assertions based on the complainant having indicated that she would not lie. Those interactions, including the inappropriate remark, formed part of the complainant's account of the accused's conduct before the children went to sleep and must be considered together with the accused's own evidence that he had taken note of the complainant's presence on one or more prior instances when they had passed each other in the street. The belated 'Sipho' explanation, which emerged in response to the complainant's identification of him at close quarters, further undermined the accused's reliability, particularly given his repeated earlier reference to having remained on his mattress without moving. This had not formed part of his evidence-in-chief and was not put to the complainant. The explanation that he had forgotten this detail was wholly unconvincing, emerging as it did when his earlier version could no longer comfortably accommodate the complainant's identification of him.

[23] While it is trite that demeanour must be approached with caution, given the dangers associated with drawing conclusions from a witness's demeanour, and because demeanour is not a substitute for evaluating the substance of the evidence tendered, it must be noted that the accused appeared markedly nervous, uncertain and hesitant at material stages of his testimony. While this is by no means decisive, it is consistent with the substantive difficulties in his evidence, including his inability to engage squarely with the complainant's evidence, including her identification of him as the perpetrator.

[24] The evidence must be considered cumulatively. The probabilities strongly favour the State. It must be accepted, particularly given the accepted medical evidence and the complainant's testimony, that the complainant was sexually penetrated on 15 March 2025 as she slept on the pink mattress. The complainant had no apparent motive falsely to implicate the accused, who accepted that there was no bad blood between them. A false implication is difficult to reconcile with the evaluation of the quality of the complainant's testimony, and her consistent complaint that the accused had perpetrated the crime and the pain it had caused, including the manner in which she reported the incident. The accused was sleeping close by on the blue mattress and was observed face-to-face by the complainant when she awoke that night, while being penetrated. The only other male present at the time was sleeping with his partner, TS, in the bedroom.

[25] Applying the necessary caution to the evidence of the single child witness, I am satisfied that the complainant's evidence on the material issues was reliable and truthful. Her evidence was supported by objective medical findings, her complaint to VK, which occurred within a 48-hour period, the observed distress and pain, the common-cause sleeping arrangements and TS's evidence. All the evidence, including the accused's concessions and modifications, and his overall performance as a witness, points in the same direction. His denial does not withstand scrutiny when assessed against the total body of evidence and, as a matter of probability, is not reasonably possibly true in the circumstances. I conclude that the State has proved the accused's guilt beyond reasonable doubt.

Order

[26] The accused, Siphumeze Spires, is found guilty of rape as charged.

**A GOVINDJEE
JUDGE OF THE HIGH COURT**

Heard: 1–2 June 2026

Delivered: 2 June 2026

Appearances:

For the State: Mr Mqenge

Instructed by: Director of Public Prosecutions
Makhanda

For the Respondent: Mr Solani

Instructed by: Legal Aid South Africa
Makhanda