



**IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]**

Case no: A178/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE **19 June 2026**

SIGNATURE

In the matter between:

SIMON MABUZA

Appellant

and

THE STATE

Respondent

Delivered: This judgment is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading to Caselines. The date of hand down is deemed to be 19 June 2026

JUDGMENT

LUKHAIMANE AJ:

Introduction

1. The appellant was charged with one count of housebreaking with intent to rape, three counts of rape and one count of kidnapping in terms of Section 3 read with Sections 1, 15, 55, 56(1), 56A, as amended, 57, 58, 59, 60 and 61 of the Criminal Law Amendment Act (Sexual Offences And Related Matters) 32 of 2007, read with Sections 92(2), 94, 227, 256, 257, 261, 276 and 281 of the Criminal Procedure Act 51 of 1977, read with the provisions of section 51 and Schedule 2 and Part I of the Criminal Law Amendment Act 105 of 1997, as amended, and further read with Section 92(1) of the Magistrates Court Act 32 of 1994.
2. The provisions of Section 51(1) and Schedule 2 of Act 105 of 1997 providing for the prescribed minimum sentence of life imprisonment applied.
3. The appellant pleaded not guilty on all charges. The appellant was legally represented during the trial. He denied the allegations levelled against him but was convicted as charged on 29 January 2025. He was sentenced to three years' imprisonment each for the housebreaking with intent to rape and kidnapping; and life imprisonment for the three counts of rape.
4. After hearing argument, the court found that there were no substantial and compelling circumstances present to justify a departure from the prescribed minimum sentence and accordingly sentenced the appellant to the prescribed minimum term of life imprisonment for the three counts of rape taken together, to run concurrently with the other two sentences. The following ancillary order was also made: in terms of Section 103(1) of the Firearms Control Act 60 of 2000 he was declared unfit to possess a firearm.
5. The appellant appeals to this Court against both his conviction and the sentence. He does so in terms of the automatic right of appeal under Section 309(1) of the Criminal Procedure Act.

The material facts

6. The complainant was 16 years old at the time of the commission of the alleged offences, and 18 at the time of the trial.
7. The State led evidence by four witnesses: the complainant herself, the complainant's aunt ("Ms R[...] M[...]"), Ms T[...] M[...], the complainant's niece, Mr Thulani Elias Mahlangu, a constable in the SAPS and Dr Sandra Kendol, the medical examiner who completed the J88 form.
8. The complainant testified *in camera* during the trial.
9. The appellant testified in his own defence and did not call any witnesses.
10. The complainant lived with her aunt and her children in a two roomed shack.
11. The complainant's evidence was as follows:
 - 11.1 On the night of 8 July 2023, she and three other children were sleeping in the house. Her aunt, who had gone out to drink, returned later and slept.
 - 11.2 They heard a knock at the bedroom window and then a person pushing and opening the door. The door was locked before it was opened. The person entered the house and came to the bedroom where all of them were asleep.
 - 11.3 T[...], got up and screamed. The person threatened to kill them should she continue to scream. They did not manage to wake up her aunt. The complainant opened a window and ran away. The person went through the door and followed her.

- 11.4 The person's face was covered. He caught her and brought her back into the house. The person took her to the kitchen and told her to undress. He had a knife and threatened to kill her. She took off her trouser and panty and he had sexual intercourse with her on the floor. His face was still covered with a balaclava, and she could only see his eyes. He took her scarf (doek) and covered her face.
- 11.5 She was forcefully taken again. He said he came to fetch one of them because her aunt was owing him. When they arrived at the other place, he opened the door, and they got inside. He closed the door and locked it. He undressed her trouser and underwear, put her on the bed and had sexual intercourse with her for the second time. He got off her and had intercourse with her for the third time. Her face was still covered. She did not see the person's face.
- 11.6 She then decided to run back home. When she got home, her aunt was awake and she explained to her what happened. She took her aunt and other people to the place where she was taken to. They found the person asleep and woke him up. The person was the appellant (she pointed him out in court). They took him to her aunt's house. They asked him again whether he raped her and he agreed. She had never seen him before the incident. The handle of the door where entry was gained was broken. She did not consent to the sexual intercourse.
- 11.7 The knife looked like an Okapi knife. She denied during cross-examination that the appellant proposed love to her in 2020. She testified that in 2020, she was staying with her uncle, not her aunt. She denied that the appellant entered the house with R[...] and that she accompanied the appellant to his place when R[...] went to sleep.
- 11.8 Before she left, the appellant threatened that if she were to tell anyone, he would do 'something' to her younger sister, who was a baby at the time and living with her parents.

12. Ms R[...] M[...]’s evidence was as follows:

12.1 She knew the appellant with the name of Bafoza. During the afternoon of 8 July 2023, she and the appellant’s sister were drinking alcohol. While walking to her place, they entered a tavern to drink some more. This is where they found the appellant. She met the appellant that night, and he accompanied her on foot to her place. She unlocked the door, went in and locked the door again. The children were sleeping. She went to sleep with the clothes she was wearing.

12.2 T[...] woke her the following morning and informed her what happened to the complainant. There were community members outside. While she was speaking to them, the complainant came. The complainant reported the incident to her and took them to the house she came from. They found the appellant still sleeping.

12.3 They took him and went to her place. The complainant did not know the appellant. She missed her phone that was on the cupboard after the incident. It was never found. She was adamant during cross-examination that the complainant did not know the appellant or his sister.

13. Thulani Elias Mahlangu testified that he is a Constable in the SAPS. He responded to a call on the day where he met R[...] and the complainant. The appellant was pointed out to him. The appellant was injured after being assaulted by community members. He arrested the appellant. He took a knife out of the left-hand side pocket of his pants. The appellant was injured. During cross-examination, he testified that the appellant did not inform him that the complainant was his girlfriend.

14. Dr Sandra Kendol examined the complainant and compiled the J-88 medical report. Clinically, the complainant was in pain. There was redness of the vagina opening. She was unable to examine her further because she had excessive pain. Her findings were suggestive of forceful penetration; however, she conceded that it may also be caused by consensual sexual intercourse.
15. Ms T[...] M[...] was 16 years old when she testified. She corroborated the evidence of the complainant and her mother, R[...], in all material aspects. She and the complainant were very close. The complainant never told her that she had a boyfriend. She would have told her if she had one. During cross-examination, she was adamant that the complainant did not know the appellant and that she was not in a relationship or love affair with the appellant.
16. The appellant testified as follows:
 - 16.1 He denied the charges. He met the complainant whilst still at school. They were not in the same school; he met her when their school's played soccer against each other. He proposed love to her in 2020 and she accepted.
 - 16.2 He confirmed that he met with R[...] and his sister. They drank beer and enjoyed themselves. He accompanied R[...] to her home that night. They entered the house. After they drank beer, she went to sleep and he remained with the complainant. The complainant told him they should go and sleep at his place. They went to his place, he had consensual sex with her, and they slept.
 - 16.3 She woke him up and asked him to open the door. He only accompanied her halfway because he had to prepare for work. Before, he could leave, the community members came. R[...] and a male entered his place and asked where her cellphone was.

- 16.4 They also wanted the knife he had. They took a knife he used in the house. The appellant denied that a knife was found in his pocket. He was assaulted by R[...] and the community. He denied that he had sexual intercourse with the complainant at her place.
- 16.5 During cross-examination, he testified that R[...] only said she wanted her phone. They told him that if they could get the phone, they would leave him. When they arrived at R[...]’s home, he was accused of rape and kidnapping.
- 16.6 He once had sexual intercourse with the complainant before the incident. R[...] placed the knife that was brought from his home in her pocket after the police arrived. He agreed that the complainant would have been 14 years old when he proposed to her.

The conviction

17. The above is a summary of the evidence, which is more carefully detailed in a judgment by the presiding magistrate. It suffices to say that the learned magistrate’s summation of the evidence is a fair and accurate reflection of what is contained in the record.
18. The grounds of appeal may be essentially summarised as follows: that the complainant’s evidence was unreliable because there were some inconsistencies in her evidence, that the complainant’s evidence was unreliable because she was a single witness, and that the complainant’s evidence was unsupported by the medical evidence.
19. The learned magistrate determined that the issues to be decided was whether the rape took place, the identity of the rapist and the correctness of the appellant’s version. In addressing these issues, the learned magistrate, was mindful of and applied the cautionary rules applicable to a single witness (which, in relation to the two incidents of rape, the complainant was).

20. The criticism of the trial court's findings was solely at the alleged incorrect assessment of the alleged poor quality of the complainant's evidence. Nothing noticeable, is mentioned about the totality of the evidence and the evaluation thereof as presented during the trial.¹
21. Thus, the issue in the appeal was whether the respondent had met its burden of proving the appellant's guilt beyond a reasonable doubt on the evidence presented to the trial court.
22. The appellant was convicted based primarily on the evidence of a single witness, and there was supporting evidence from other witnesses and the medical evidence to validate the complainant's version. Most notably, T[...] confirmed the incident that happened in the house before the appellant left with the complainant, while R[...] slept.
23. Another factor that supports the credibility of the complainant's evidence is her recollection of all three incidents of rape and how the door was broken whereas when they went to sleep it was locked. The appellant also failed to advance any reason or motive as to why the complainant would fabricate these details if R[...] was the one orchestrating the allegations because of a cellphone. This proposition is improbable and not reasonably possibly true. The appellant places himself in the house whilst R[...] was still awake (whilst R[...]’s version is that he bid her farewell at the door, once she had safely returned home) and further places the complainant in his house as a willing participant in the sexual intercourse.
24. Further support for the complainant's credibility is in her report to R[...] and in the medical evidence. These reports demonstrate that the complainant acted

¹ *S v Van der Meyden* 1999 (1) SACR 447 (W) at 448.

in a manner consistent with her allegation that she had been raped. The medical evidence could not be taken any further as Dr Kendol indicated that the complainant was in too much pain to be examined any further. The trial court was correct to reject the suggestion that the lack of visible physical injuries and the presence of redness points to consensual sex.

25. In contrast, the court found the appellant to be an unreliable witness who wanted the court to believe that the complainant was a willing partner who initiated sexual intercourse and that she then falsely, and for no apparent reason, accused him of the crimes. The appellant contradicted himself and did not answer questions. He also testified about several material aspects that were not put to the state witnesses for their comment.
26. The trial court evaluated the appellant's evidence and found it to be improbable that the complainant was in a relationship with the appellant. Further to this, material aspects of this allegation were not put to the state witnesses. We agree that the proposition lacks logic, especially if regard is had to the circumstances surrounding this alleged relationship.
27. Having considered the record, it is difficult to disagree with this assessment. In the result, the appellant's evidence was rejected as false, and the complainant's evidence accepted. The learned magistrate sufficiently engaged with the evidence.
28. A court of appeal will be slow to interfere with the factual findings of a trial court unless such findings are clearly wrong:

'The powers of the court of appeal to interfere with the findings of fact of a trial are limited. In the absence of any misdirection the trial court's conclusion, including the acceptance of a witness' evidence is presumed to be correct. To succeed on appeal, the appellant must

*therefore convince the court of appeal on adequate grounds that the trial court was wrong in accepting the witness' evidence – a reasonable doubt will not suffice to justify interference with its findings. Bearing in mind the advantage which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional circumstances that the court of appeal will be entitled to interfere with a trial court's evaluation of oral testimony.*²

29. The state's onus is to prove the guilt of an accused beyond a reasonable doubt. An accused's version cannot be rejected solely on the basis that it is improbable: only once the trial court has found on credible evidence that the explanation is false beyond a reasonable doubt can it be rejected.³ Should the accused's version be reasonably possibly true, the accused is entitled to an acquittal.⁴
30. In the absence of an irregularity or misdirection, a court of appeal will not intervene with the credibility findings of the trial court unless it is convinced that such findings are clearly wrong.⁵

*'... there are well-established principles governing the hearing of appeals against findings of fact. In short, in the absence of demonstrable and material misdirection's by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong. The reasons why this deference is shown by appellate courts to factual findings of the trial court are so well known that restatement is unnecessary.'*⁶

31. The trial court – from its judgment carefully considered all the relevant and applicable principles in evaluating the evidence.

² *S v Francis* 1991 (1) SACR 198 (A) at 198j - 199a.

³ *S v Van der Meyden* 1991 (1) SA 447 (W) at 448f-g].

⁴ *S v V* 2000 (1) SACR 453 (SCA) at 455B.

⁵ *Francis* n 1 at 204C - E] *S v Mkohle* 1990 (1) SACR 95 (A) at 100e.

⁶ *S v Hadebe* [1997] ZASCA 86.

32. There is no evident misdirection on the part of the trial court. The complaints of a supposed misdirection from the appellant's counsel in argument are a mere dissatisfaction with the ultimate findings made. The evaluation of the evidence on any of the factual findings made by the trial court was correct. The evidence of the appellant was rightfully rejected by the court *a quo* as so improbable, that it could not reasonably possibly be true. The appellant's version as far as the aunt's phone is concerned, is highly unlikely.
33. When weighed in its totality, the evidence raises no reasonable doubt about the appellant's guilt. There is no reasonable possibility that the appellant's version is remotely authentic for him to be entitled to the benefit of any doubt.
34. Thus, the trial court's findings on conviction were correct and cannot be faulted.

The Sentence

35. The appellant submitted that there were substantial and compelling factors present within the totality of the appellant's personal circumstances, which justified a deviation from the prescribed sentence of life imprisonment. For the reasons below, we disagree.
36. The appellant's personal circumstances are as follows:
 - 36.1 He was 29 years old as at the date of sentencing.
 - 36.2 He suffers from epilepsy which was the reason he left school while in Grade 8.
 - 36.3 The appellant worked at FOFA and earned R3000 per month.
 - 36.4 He had no previous convictions.
37. A sentence of life imprisonment is prescribed for rape unless the court found substantial and compelling circumstances to impose a lesser sentence. The

trial court imposed a sentence of life imprisonment on the basis that it could not find substantial and compelling circumstances justifying a deviation from the prescribed sentence of life imprisonment.

38. The appellant's case is that the sentencing court erred in finding that no substantial and compelling circumstances existed.
39. It is now argued on behalf of the appellant that the learned magistrate erred in over emphasizing the interest of the community when he imposed the sentence⁷. Further that a sentence of life imprisonment is shocking and inappropriate under the specific circumstances of this case. It is further submitted that the complainant was not a minor child and further sustained no injuries.
40. It is trite law that in sentencing, the punishment should fit the crime and the offender, be fair to society, and be blended with mercy.⁸
41. The factors to be considered in determining whether substantial and compelling circumstances exist are all the factors traditionally considered in assessing an appropriate sentence, bearing in mind that the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions.⁹

*'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.'*¹⁰

⁷ S v SMM 2013 (2) SACR 292 (SCA)

⁸ S v Rabie 1975 (4) SA 855 (AD) at 862 G.

⁹ S v Malgas 2001 (1) SACR 469 (SCA); CC para 20.

¹⁰ *Id.*

42. As reflected in *S v Abrahams*:¹¹

‘..some rapes are worse than others” and “The life sentence ordained by the Legislature should be reserved for cases devoid of substantial factors compelling the conclusion that such a sentence is inappropriate or unjust. ‘¹²

43. In *S v C*¹³, the court stated as follows:

“Rape is regarded by society as one of the most heinous crimes, and rightly so. A rapist does not murder his victim, he murders her self-respect and destroys her feelings physically and mentally and her security. His monstrous de

ed often haunts his victim and subjects her to a mental torment for the rest of her life, a fate often worse than loss of life.”

44. It was further submitted on behalf of the appellant that the magistrate erred in emphasising the interests of the community when he imposed the sentence. However, in the absence of any sign of remorse from the appellant for this most heinous violation of the complainant, it is not clear what else was there for the learned magistrate to consider.

45. The appellant was indeed a young man, held employment and had no previous convictions. He continues to deny the rape, thereby not taking responsibility for his actions. He offered an implausible explanation for the circumstances he found himself in and this must be weighed in the light of his

¹¹ 2002 (1) SACR 116 (SCA) para 29.

¹² See also *S v Mahomotsa* 2002 (2) SACR 435 SCA, paras 17 – 19.

¹³ 1996 (2) SACR 181 (C) at 186 D-F

prospects of rehabilitation and the punitive and deterrent aspects of the sentence. None of these elements must be over or under emphasised when meting out punishment.

46. In aggravation of sentence, the court found that the appellant broke into the house of the complainant, a place she was supposed to be safe. He covered his face with a balaclava to prevent identification, he threatened to kill the complainant, he threatened to kill T[...] and the complainant with a knife, the seriousness of the offence, he displayed no remorse and the abuse will have lifelong impact on the complainant. Further, the complainant was raped multiple times.
47. The lack of visible physical injuries on the complainant does not constitute a substantial and compelling circumstance when imposing a sentence in respect of an offence of rape¹⁴.
48. In general, an appeal court's interference with a sentence will only be justified: when there has been an irregularity that fails justice; or when the court *a quo* misdirected itself to such an extent that its decision on sentencing is vitiated, or when the sentence is so disproportionate or shocking that no reasonable court could have imposed it.
49. As regards an appeal court's powers when considering an appeal against a mandatory sentence, the following *dicta* is apposite:

'...What then is the correct approach by a court on appeal against a sentence imposed in terms of the Act? Can the appellate court interfere with such a sentence imposed by the trial court's exercising its discretion properly, simply because it is not the sentence which it would have imposed or that it finds shocking? The approach to an appeal on

¹⁴ Section 51(3)(Aa)(ii) of the Criminal Law Amendment Act 38 of 2007

*sentence imposed in terms of the Act should, in my view, be different to an approach to other sentences imposed under the ordinary sentencing regime. This, in my view, is so because the minimum sentences to be imposed are ordained by the Act. They cannot be departed from lightly or for flimsy reasons. It follows therefore that a proper enquiry on appeal is whether the facts which were considered by the sentencing court are substantial and compelling, or not...*¹⁵

50. Thus, where the legislature has deemed it necessary to prescribe a sentence of life imprisonment, a court is expected to depart from such prescribed sentence only if it can find and identify substantial and compelling circumstances to justify such a departure to the appellant's benefit. The court in another remains obliged to remember that the specified sentence has been prescribed by law as the sentence that should be regarded as ordinarily appropriate for the crime. Whilst deterrence and retribution tend to steer the severity of the proposed sentence in a specific direction, rehabilitation, on the other hand, pulls the proposed sentence direction.
51. As already stated, in the absence of any demonstrated remorse by the appellant, there is nothing before us to decide on the prospect of rehabilitation. In the circumstances, focusing on rehabilitation, in this case, would lead to an unfair and inappropriate sentence, which would be disproportionate to that deserved by the appellant for the crime for which he stands convicted.

¹⁵ Tafeni v S 2016 (2) SACR 720 (WCC) at para 8, with reference to S v PB 2013 (2) SACR 533 (SCA) at para 20.

52. Crimes in general, and those against women and children in this country, are a severe invasion of the dignity of the victims. The appellant's crimes, rape perpetrated against a sixteen-year-old girl multiple times, fall into the category of the most heinous and abhorrent crimes and precisely what the legislature contemplated when it included such.

53. Therefore, the court *a quo* fairly balanced the appellant's personal circumstances against the seriousness of the offence and the interests of society. The court was correct that the appellant's personal circumstances, did not merit deviation of the mandated sentence. Thus, the court *a quo* did not err in imposing a sentence of life imprisonment on the appellant.

54. This instance is one that is suitable for the life sentence imposed and is not disproportionate to the triad of factors relevant to sentencing. There is no cause to interfere with the sentence.

55. Accordingly, the appeal is dismissed and both the conviction and the sentence are confirmed.

56. **ORDER**

56.1 The automatic appeal against the appellant's conviction and sentence is dismissed.

56.2 The conviction and sentences including life imprisonment is confirmed.

**MA LUKHAIMANE
ACTING JUDGE OF THE HIGH COURT
PRETORIA**

I agree,

**R FRANCIS-SUBBIAH
JUDGE OF THE HIGH COURT
PRETORIA**

Appearances:

Appellant's Counsel: Adv Leana Augustyn (Legal Aid, Pretoria)

Respondent's Counsel: Adv GJC Maritz (DPP, Pretoria)