

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: A16/2024

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
9/06/2026	[Redacted Signature]
DATE	SIGNATURE

In the matter between:

NJAUNJE RICHARD

Appellant

and

STATE

Respondent

JUDGMENT

STRYDOM, J

- [1] This is an appeal against both the conviction and sentence imposed by the Regional Court. The appellant was convicted of rape in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 ("the Act") and was sentenced to life imprisonment by the Regional Court.
- [2] The complainant's mother testified that on 10 April 2019, the complainant, her female child aged 3, was playing in the vicinity of her kitchen shop, in the

company of the appellant, who worked as a security guard at the petrol station where the shop was located. She testified that she was present in the area. At some point during the afternoon, the complainant ran into the shop and informed her that she should check her private parts. Upon doing so, she observed a creamy discharge on the complainant's genitalia. The child was wearing so-called "tights" or "leggings". She immediately suspected that the complainant might have been sexually assaulted by the appellant and confronted him. When confronted, he said that he went to the toilet and left the child outside. The father of the child, who was also in the vicinity of the petrol station, testified that when he questioned the appellant about this, he said at first he did not go to the toilet with the child, but later said he only "*did it*" on the tights of the child. He did not penetrate her.

- [3] The police were contacted, and the appellant was arrested. The police took the child's tights. The complainant's mother then took the child to the doctor to be examined.
- [4] A medical practitioner testified that he examined the complainant and completed a J88 medico-legal examination form. She observed bruising to the complainant's hymen at 6 o'clock. She explained that the hymen was situated at the mouth of the uterus. She testified that when you open the vagina, you will find the hymen. To get there, one will have to go beyond the membrane or skin that covers the vagina. She took swabs from her vagina. The complainant reported to him that a male person had "*put his thing*" on her vagina.
- [5] The police obtained a buccal sample from the appellant.
- [6] A member of the South African Police Service forensic laboratory testified that he received exhibits consisting of the complainant's leggings, a buccal swab, and other swabs for the purpose of conducting a forensic DNA comparison. Following the analysis, he found that the DNA profile derived from the exhibits matched the appellant's DNA profile.
- [7] The appellant testified in his own defence. He acknowledged knowing the complainant. He denied, however, that he was with the complainant or played

with her on 10 April 2019. He further categorically denied that he raped the complainant.

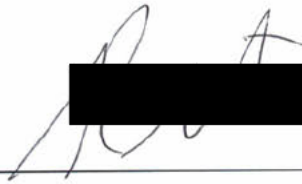
- [8] The appellant, pertaining to his conviction, raises the ground of appeal that the magistrate erred in convicting him, in that she failed to properly analyse and evaluate the evidence before her.
- [9] The test on appeal against a conviction is well established. An appellate court will interfere with the factual findings of a trial court only where such findings are vitiated by irregularity, misdirection, or are demonstrably wrong.
- [10] When you carefully consider the record of proceedings, including the evidence presented to the magistrate, there is no basis upon which to interfere with the magistrate's findings of fact and credibility. The prosecution's case was founded on several independent pillars of evidence.
- [11] First, the evidence of the complainant's mother was clear and compelling. Her account of finding a creamy discharge on the complainant's private parts, immediately after the child had been in the company of the appellant, was not meaningfully challenged. She had no apparent motive to fabricate her evidence.
- [12] Second, the medical evidence was significant. The examining doctor found a bruised hymen on the complainant, a finding that is consistent with some form of penetration. The J88 form was duly completed, and the medical evidence corroborated the child's complaint. It is trite that a J88 form constitutes important documentary evidence in cases of this nature.
- [13] Third, and perhaps the most important one, the forensic DNA evidence conclusively linked the appellant to the offence. The DNA profile derived from the exhibits matched the appellant's. DNA evidence of this nature, which was not disputed in any meaningful respect, constitutes compelling evidence that it was the appellant's semen which was found in the vicinity of the child's vagina.
- [14] In the face of this overwhelming evidence, the appellant offered nothing more than a bare denial. The magistrate was entirely correct in rejecting his version as not reasonably possibly true, and therefore false beyond a reasonable doubt.

- [15] The submission that the magistrate failed to properly analyse the evidence is without merit. After a careful evaluation of the evidence, the magistrate found the appellant guilty of rape. The objective medical evidence indicates some form of penetration, as there was bruising of the hymen. She was satisfied that the State had proved the guilt of the appellant beyond a reasonable doubt. She rejected the appellant's bare denial as not reasonably possibly true, having regard to the totality of the evidence, and in particular, the DNA evidence and the medical evidence. The magistrate's assessment of the evidence was thorough, balanced, and correct.
- [16] The appeal against the conviction of the appellant stands to be dismissed.
- [17] In relation to the sentence, the magistrate sentenced the appellant to life imprisonment in accordance with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 ("the Minimum Sentences Act"), read with Part I of Schedule 2 thereof, which prescribes life imprisonment for rape where the victim is a child under the age of sixteen years.
- [18] In the notice of appeal, it is stated that the magistrate erred in imposing a sentence of life imprisonment in that she failed to properly consider the existence of substantial and compelling circumstances justifying a departure from the prescribed minimum sentence.
- [19] A sentencing court may depart from this prescribed minimum only if it is satisfied that there are substantial and compelling circumstances which justify the imposition of a lesser sentence.
- [20] As was made clear in the case of *S v Malgas*,¹ that the existence of substantial and compelling circumstances does not mean a simple weighing of aggravating and mitigating factors. The inquiry is whether, taking all the circumstances into account, the prescribed sentence would be so unjust or so disproportionate to the offence that it would be fundamentally unjust to impose it.
- [21] In considering the sentence, the magistrate duly took into account the personal circumstances of the appellant. He is 41 years old, has been married for 17

¹ 2001 (1) SACR 469 (SCA).

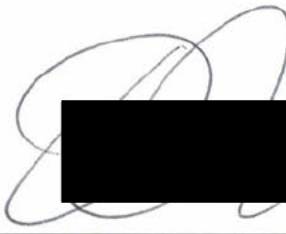
years, and supports his three children from the marriage. He came to South Africa from Zimbabwe in 2017 in search of employment opportunities and has been the breadwinner for his family. He is a first offender with no prior convictions.

- [22] The magistrate further considered the circumstances of the victim. The complainant was a mere three years of age at the time of the offence; in every meaningful sense, she was an infant. She has since required psychological therapy. She is reported to be terrified and so severely traumatised that she is afraid to attend the toilet alone. The rape has fundamentally and irreversibly altered the trajectory of her life.
- [23] Of particular significance is that the appellant displayed not an ounce of remorse. Despite overwhelming evidence against him, including forensic DNA evidence and medical evidence of physical injury, he maintained his denial throughout.
- [24] I am in full agreement with the magistrate's assessment. The appellant is a grown man who raped an infant of three years. The physical and psychological harm visited upon this child is incalculable. It is no exaggeration to say that the appellant has, by his conduct, imposed upon this child a life of fear, trauma, and lasting injury. Against the backdrop of these facts, the mitigating factors advanced on behalf of the appellant, while not ignored, are outweighed by the aggravating factors.
- [25] I find no substantial and compelling circumstances that would justify a departure from the prescribed minimum sentence of life imprisonment. Sentencing is a matter for the discretion of the trial court, and an appellant court will not lightly interfere with that discretion unless there is compelling reason to do so. In this case, there is no compelling reason to deviate from the imposed sentence. Therefore, the appeal against the sentence should also fail.
- [26] As a result, I make the following order:
1. The appeal against conviction is dismissed.
 2. The appeal against the sentence is dismissed.




R. STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I concur,




D. DOSIO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 01 June 2026

Delivered on: 09 June 2026

Appearances:

For the Appellant: Mr. L. Mosoang

Instructed by: Legal-Aid SA (Johannesburg)

For the State: Adv. A. K. Mathebula

Instructed by: The National Prosecuting Authority