



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

CASE NO.: CC22/2025

Reportable	Yes/No
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In the matter between:

THE STATE

and

Z[...] B[...]

Accused

JUDGMENT

CENGANI-MBAKAZA J

Introduction

[1] Around 2024 and prior thereto, the three minor children, aged 12, 6 and 9 years respectively, resided with their stepfather, being the accused, and their mother, being the accused's girlfriend. This was on a farm located at Nqanqarhu, where the accused had been employed as a farm labourer.

[2] It is common cause that as an employee, the accused would, in the ordinary course, wake up in the morning, go to work, and return home for lunch between 13:00 and 14:00, which was approximately one hour.

[3] The children were attending school and the mother was unemployed at the time. She would on occasion go to town to run errands and, in some instances, to the clinic to collect her medication.

[4] In accordance with their routine, the accused would sometimes accompany the mother to town and to the clinic, especially during month-end. Based on their school routine, the children would return home early and, on occasion, would be in the company of the accused in the absence of their mother.

[5] The house in which they resided was of a humble nature. The accused and his girlfriend slept in the kitchen and utilised a bucket at night for ablution purposes. The television set was also situated in the kitchen. All three minor children would sleep in the bedroom.

[6] When the opportunity presented itself, the three minor children made disclosures of sexual violation, which led to the arrest and prosecution of the accused. Since they testified in camera, their names shall be withheld to protect their identities in the interests of justice.

The charges

[7] The indictment reads thus:

Count 1: Rape in contravention of section 3, read with sections 1, 56(1), 57,58,59 and 60 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 and read with section 64 of the Criminal Procedure Act, 51 of 1977(CPA).

In that during May to June 2024 at or near Woodcliff Farm, Nqanqarhu, in the Joe Gqabi magisterial district, the accused did unlawfully and intentionally commit acts of sexual penetration with “ECB”, a 12-year-old girl, by having intercourse with her per *vaginam* without her consent and against her will.

Count 2: Rape in contravention of section 3, read with sections 1, 56(1), 57,58,59 and 60 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007.

In that during June to July 2024 and at the place mentioned in count 1, the accused did unlawfully and intentionally commit an act of sexual

penetration with “ALB”, a 6- year-old girl, by having intercourse with her per *vaginam* without her consent and against her will.

Count 3: Rape in contravention of section 3, read with sections 1, 56(1), 57,58,59 and 60 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007.

In that during the period mentioned in Count 2, and at the place mentioned in Count 1, the accused did unlawfully and intentionally commit an act of sexual penetration with “ID”, a 9-year-old girl, by having intercourse with her per *vaginam* without her consent and against her will.

The evidence

[8] All three minor children testified via a closed-circuit television, through an intermediary. The first child to give evidence was “ECB”, the complainant in Count 1. During her testimony, she used the names “accused” and “Ta Beans” interchangeable when referring to the accused. She testified that on one occasion, around May 2024, her mother had gone to the clinic and one of her siblings was not at home as she had gone to the location.

[9] She went to school as usual, came back home and found “Ta Beans” there. “Ta Beans” instructed her to change out her school uniform. While she was in the process of doing so, “Ta Beans” entered the bedroom. He instructed

her not to get dressed but to get onto the bed, which she did. “ECB” testified that she stood next to the bed and suddenly “Ta Beans” undressed himself and was only left with his underwear.

[10] He took a blanket from a nearby small bed and threw it over her face. He undressed her panties and his underwear. He then climbed on top of her, inserted his penis into her vagina and copulated. After that, he ejaculated and made a sound. He then wore his clothes and went to the kitchen. “ECB” testified that when she got out of bed, her vagina secreted some fluids. “Ta Beans” prepared warm water for her and told her to bath, which she did. He threatened to kill her and her mother if she were to disclose the incident to anyone.

[11] “ECB” testified that she went to the neighbour Nasiphi and asked for airtime because she wanted to phone her mother. Nasiphi was unable to help. Later that day, her mother returned home with other siblings. When asked if she disclosed the incident to her mother, “ECB” testified that she did not because she was afraid that the accused would kill her and her mother.

[12] In her testimony, “ECB” narrated another incident which occurred in the same year before she went to Durban for holidays. She was doing her homework when the accused asked her to undress herself. He went to the kitchen and locked the door. He instructed her to get onto the bed. “ECB”

looked at him and said nothing. “Ta Beans” took out a knife from his pocket and threatened to kill her and her mother.

[13] Because she was afraid, so she testified, she went to bed as instructed. “Ta Beans” threw a small blanket over her face. He got on top of her, opened her legs and inserted his penis into her vagina. He ejaculated and made a sound. “ECB” testified further that the accused went to the kitchen, prepared warm water and instructed her to bath which she did. He then instructed her not to disclose the incident and posed similar threats to her. He then left and went to work.

[14] When “ECB” came back from the June holidays from Durban, “ID” told her that she had something to tell her. She informed her that the accused had raped her. “ECB” kept quiet in shock, “ID” further told her that she was afraid to tell her mother. “ECB” testified that upon hearing this, she was angry. Nevertheless, they attended school as usual and returned in the afternoon.

[15] Later that night, so she testified, “Ta Beans” entered the bedroom where they were sleeping and pulled her legs. Her mother witnessed this and confronted him. “Ta Beans” denied having done anything wrong. He instead, explained that he went to the bedroom to relieve himself in the bucket.

[16] “ECB” testified that her marks dropped at school and her behaviour changed, to the extent that one of her teachers, Mrs Namhla Prudence Nqina (Mrs Nqina) called and asked her what was going on. She informed her that her

stepfather was abusing her. Mrs Nqina called the principal, who also interviewed her. She informed the principal that her stepfather had raped her. It was decided that this issue would be attended to after the school holidays.

[17] “ECB” testified that after the school holidays, when “ID” told her about her rape incident, she again went to Mrs Nqina and informed her. Mrs Nqina called the principal; they were all interviewed separately, including the 6-year-old girl, “ALB”, in the presence of their mother. It transpired that all three of them had experienced similar incidents. Her mother could not cope with the news and kept crying during the interviews.

[18] “ALB”, the complainant in Count 2, testified that one day when her mother had gone to the clinic, she was home with “Ta Beans” only. “ECB” was in Durban for holidays. “Ta Beans” instructed her to undress, which she did. He got on top of her, took off her panties, inserted his private parts into hers while closing her mouth with one hand. She testified that she was crying at all times. When he finished, she saw a whitish substance on her private part. “Ta Beans” threatened that he would kill her and her mother if she were to disclose the incident. She reported the matter to “ECB” and later to the school teachers.

[19] “ID”, the complainant in Count 3’s testimony, can be summarised as follows: one day, when “ECB” was in Durban, their mother was not at home, and she was left with “Ta Beans” and one “A[...]”, a minor. “Ta Beans” called her to the bedroom and instructed “A[...]” to go to the kitchen to watch

television, which he did. “ID” testified that “Ta Beans” took out her clothes and also undressed himself. He put a big pillow on her face, and the music was playing loud in the neighbourhood at that time.

[20] Thereafter, so she testified, “Ta Beans” jumped on top of her. He inserted his private part inside hers and copulated. After he had finished, he stood up and threatened that he would kill her and her mother if she were to disclose the incident to anyone.

[21] “ID” testified that she was shocked; she went to “T”’s place, a neighbour and advised “T” that “Ta Beans” had touched her. “T” informed her mother about the incident. Her mother confronted “Ta Beans”. “Ta Beans” explained that he had been suffering from a toothache and would not have touched the child.

[22] “ID” testified that she informed “ECB” about the rape incident, and they all agreed that the matter should be reported to the school teacher, which they did. She further testified that she witnessed “Ta Beans” pulling “ECB”’s leg on a certain night, and that led to a confrontation between “Ta Beans” and her mother. In her testimony, “ID” also confirmed the interviews she had with the school teacher and the principal.

[23] During cross-examination, “ID” testified that she was crying loudly during the rape incident, however, she could not be heard because there was a big pillow that was thrown over her face. When asked why she reported that

“Ta Beans” touched instead of saying he raped her, she testified that she was scared, “Ta Beans” had threatened to kill her and her mother.

[24] Mrs Nqina, the school teacher, testified that she is employed by the Department of Education. Between June and July 2024, she was a teacher at Joel’s Hoek Farm School. She knows the minor children involved in the matter. She testified that as a teacher who deals with children, she is observant. She noticed that “ECB” had lost some weight. Because she is a brilliant child, she also noticed that her grades had decreased significantly.

[25] Because she suspected that “ECB” was being bullied at school, she called her aside for a private discussion to investigate what was going on. She spoke to her and advised her to speak up when she was ready. Mrs Nqina testified that she stood up as she thought their conversation had ended. “ECB” started crying and advised her that her stepfather had been raping her. She requested “ECB”’s permission to inform the principal, which she gave. “ECB” repeated the narration to the principal. They decided to deal with the matter after the school holidays.

[26] In the second week, after the school reopened, and immediately after the morning prayer, “ECB”, “ALB” and “ID” came to see her. They reported that their stepfather had been raping them on different occasions. They repeated the account to the principal and their mother, who knew nothing about these incidents.

[27] “TB”, the mother testified and confirmed that she was called at school and the children reported to have been raped by “Ta Beans”. The report was made in the presence of the principal and Mrs Nqina. The children were taken to hospital for medical examination. “TB” testified that “ALB” had a tear and vaginal infection. She further testified that there was a day when “ID” reported that “Ta Beans” had touched her. “TB” informed the court that at that stage “ID” was scared and advised that she should keep on checking on her. She could feel that the child was cold and went to the room to confront “Ta Beans” about the touching. He said he was suffering from a toothache and denied having touched the child.

[28] One day, so she testified, an alarm went off around 4:00 as usual. She saw “Ta Beans” inside the bedroom pulling “ECB’s legs. She confronted him. He ignored her and later advised her that he was rushing to work. “TB” testified that “Ta Beans” was ill-treating the children and sometimes he would insult them.

[29] The last witness to testify was Doctor Tandokazi Sondishe (“Dr Sondishe”), a medical officer. She possesses an MBChB, which she started in Cuba and later completed at Walter Sisulu University in 2021. She did an internship for two years at Philenomi Academic Complex and community service at Mc Clear Hospital. Dr Sondishe informed the court that she examined

the three minor children and compiled a medical report (J88) in respect of each child.

[30] According to her examination, “ECB” was generally well with no bruises or lesions in the body. Although the perineum was intact, with no swelling or bruising, there was mild tenderness on the vulva. There was a brownish discharge, an indication of vaginal infection. “ECB’s hymen was broken, an indication of penetration in the vagina. She testified that she could not collect samples because the incident was reported to have occurred in the previous month.

[31] In relation to “ALB’s examination, she was generally and clinically well. However, upon gynaecological examination, she noted that the vulva vestibule, clitoris, labia minora and her vagina were swollen with yellowish discharge, an indication of vaginal infection or sexually transmitted diseases. She also noted tenderness on palpation. The hymen was broken. She therefore concluded that these were signs of sexual trauma which had occurred recently.

[32] The Dr further examined “ID” and observed that generally she was clinically well. The perineum was intact with no bruising or lesions. There was a mild swelling of the vagina and also tenderness on palpation. She collected no samples as it was reported to her that the incident had happened more than 72 hours ago. In her examination, she concluded that the injuries that the child

sustained in her genitals, coupled with a broken hymen, were indicative of vaginal penetration. With this evidence, the state closed its case.

[33] The accused gave evidence in his defence and denied the allegations against him. He stated that while he did return home for lunch, the children were, in most instances, in the company of him and their mother. He was never left alone with the children. He further testified that he accompanied his girlfriend whenever she went to town, including when she went to collect medication from the clinic. In cross-examination, he conceded, however that he would at times be left with the minor children at home.

[34] He informed the court that he does not dispute the medical examination by the Dr. However, so he stated, he did nothing to the children; he never raped them. According to his knowledge, “ECB” had a boyfriend who bought her a cell phone. He further testified that all three minor children, including “ECB”, had been playing with boys. Basically the accused was insinuating that the three minor children may have been sexually active at the time of the alleged rape incidents. With this evidence, the defence closed its case.

The issues

[35] The central issue for determination is the identity of the perpetrator(s) who raped the three minor girls.

The legal principles

[36] In criminal trials, nothing can be properly examined without reaffirming that when it tries a person for allegedly committing an offence, the state is required to prove the guilt of the accused beyond reasonable doubt.¹

[37] When a court finds that the guilt of an accused has not been established 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 crime in question. The Supreme Court of Appeal (“SCA”) in *Shackell v S*², stated:

‘...the court does not have to be convinced that every detail of an accused’s version is true. If the accused’s version is reasonably possible true, in substance, the court must decide the matter on acceptance of that version. Of course, it is permissible to test the accused’s version against the inherent probabilities; but it cannot be rejected merely because it is improbable. It can only be rejected on the basis of inherent probabilities if it can be said that it will be so improbable that it cannot be reasonably possible true.’

[38] In this matter, the court is faced with the evidence of young children. Each child is a single witness in respect of her own case. Furthermore, there is an issue of identification, as already noted at paragraph 35. It is a legal principle that where all these key issues are central to the evaluation of evidence, the cautionary rules find application.³ In both instances, that is, where there is evidence of a single witness and evidence of identification, it is trite that a

¹ S v Shackell 2001 (4) SA 1 (SCA) 279 at para [30].

² Fn 2 above.

³ S v Mthethwa 1972 (3 SA 766 (A) at 768 A-C.

witness must give a clear and precise account in all material aspects. Therefore, such evidence must be credible and reliable.⁴

[39] Fortified by section 208 of the CPA, our courts had on many occasions convicted the accused on the evidence of a single witness. Section 208 of the CPA provides,

‘An accused may be convicted of any offence on the single evidence of a competent witness’

[40] The SCA in *ICM v The State*,⁵ remarked that although the evidence of a single witness must be clear and precise in all material aspects, it does not mean it must be flawless and beyond criticism.

[41] To ensure that the evidence of a child witness can be relied upon as provided in s 208 of the CPA, the SCA stated in *Woji v Santam Insurance Co Ltd*⁶, that a court must be satisfied that the child's evidence is trustworthy. The SCA held:

‘Trustworthiness...depends on factors such as the child’s power of observation, his power of recollection, and his power of narration on the specific matter to be testified.... His capacity of observation will depend on whether he appears ‘intelligent enough to observe’. Whether he has the capacity of recollection will depend again on whether he has ‘sufficient years of discretion to remember what occurs’ while the

⁴ Fn 3 above

⁵ *ICM v the State* (692/2021) [2022] ZASCA 108 (15 July 2022) para 22.

⁶ *Woji v Santam Insurance Co Ltd* 1981(1) SA 1020 (A) at 1028B-D, *Maila v The State* (429/2022) [2023] ZASCA 3 (23 January 2023) para 17.

capacity of narration or communication raises the question whether the child has the capacity to understand the questions put, and to frame and express intelligent answers.’

[42] Referring to *Vilakazi v S*⁷, the SCA, in *Maila*⁸, cautioned against what is commonly known as the double cautionary rule. The SCA held: ‘*double cautionary rule should not be used to disadvantage the child; the evidence of a child must be evaluated in totality*’. Notably, Section 60 of the Criminal Law (Sexual offence and Related Matters Amendment Act 32 of 2007 provides,

‘The court may not treat the evidence of a complainant in criminal proceedings involving the alleged commission of a sexual offender pending before that court with caution, on account of the nature of the offence’.

Discussion

[43] Following closing submissions by counsel, the State sought a conviction, highlighting consistencies and corroboration in the evidence of the three minor children. In contrast, the defence contended that the accused should be afforded the benefit of doubt.

[44] In essence, the following are the points of criticism levelled against the evidence of the state: Mr Geldenhuys, counsel for the accused, argued that ECB’s evidence appears to be a recitation. The narration, so he argued, is the

⁷ *Vilakazi v S* [2016] ZASCA 103.

⁸ Fn 6 above at para [18].

same in respect of both incidents. Counsel highlighted the use of a knife, the instruction to bath as well as the blanket that was thrown over the face.

[45] In addition, he argued that the accused would not have raped “ID” when “A[...]” was present in the house. This evidence, so he argued, should be rejected as unfounded. Although counsel acknowledged that the accused advanced a speculative hypothesis in his defence, when he testified that these girls had boys, he submitted that such speculation should not be used against the accused.

[46] Furthermore, counsel contended that the limited cross-examination in relation to ALB’s evidence was due to a lack of detail in her evidence-in-chief. In a nutshell, counsel submitted therefore that the evidence presented by all the minor children was not clear and precise, especially on material aspects.

The court’s evaluation of evidence

[47] The principles guiding the court in evaluating evidence are well-established. In *S v Chabalala*,⁹ the following was stated:

‘The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused’s guilt. The

⁹ 2003 (1) SACR 134 at para 15.

result may prove that one scrap of evidence or one defect in the case for either party (such as the failure to call a material witness concerning an identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence. Once that approach is applied to the evidence in the present matter the solution becomes clear.’

[48] Our courts have consistently reiterated that there is no thumb-nail or formulaic test to apply when it comes to the evaluation of a single witness. The court is expected to weigh all the facts presented. In particular, the merits and demerits, as well as the credibility issues on both sides. The court must be satisfied that truth has been told. Our courts have further cautioned that the exercise of caution must not be allowed to displace the exercise of common sense.¹⁰

[49] Considering the evidence of the three young children, as well as the Dr who highlighted broken hymens and injuries to the minor children’s genitals, it has been proven that the three young girls were penetrated per *vaginam*.

[50] I find it difficult and indeed impossible to conclude that “ECB’s narration was a recitation as suggested by counsel for the accused. Instead, it is reasonable to conclude based on the facts presented by all the minor children, that the perpetrator applied more or less the same *modus operandi* when sexually violating them. One is able to highlight, for instance, the threats made

¹⁰ S v Sauls 1981 (3) SA 172 (A) at 180E-G.

after the rape, the instruction to bath which can be equated to an act to conceal evidence, as well as the pillow or blanket thrown over the face to minimise the raising of an alarm.

[51] I agree with Ms Phikiso, counsel for the state, that a further significant feature indicative of a consistent *modus operandi* is that the perpetrator infected the children with a sexually transmitted infection. This constitutes, *inter alia*, compelling evidence that one and the same person was responsible for the violation of all three minor children. On the totality of the evidence presented, DNA or medical evidence is not necessary to reinforce this particular finding.

[52] In relation to the issue of identity, there is no evidence suggestive of the fact that the three minor children decided to shield the real culprit and falsely implicate the accused. The suggestion by the accused that they were involved with boys is rejected out of hand. Firstly, because this was raised as an afterthought, and secondly because the evidence suggests that these children were of a very tender age when the incidents occurred. There is nothing to suggest that they were sexually violated by anyone other than the accused, save for the speculative allegations made by him.

[53] In my view, the evidence of all three minor children was trustworthy. Despite the fact that they were cross-examined by the defence, they were consistent in their testimonies especially on material issues. They were all adamant that “Ta Beans” is the perpetrator of the crimes. It is common cause

that “Ta Beans” is the accused before court. When identifying the perpetrator, the three minor children were confident and steadfast. There was no suggestion that they were mistaken about the identity of the perpetrator.

[54] They identified the perpetrator to the school teacher, the principal and later to their mother. Most significantly, they all received threats not to disclose the ordeal. They carried out the instructions and only disclosed the ordeal when the opportunity presented itself. In my view this excludes any suspicion that they may have decided to conspire against the accused. Although it was suggested in cross-examination that the accused suspects that the children may have been influenced by their mother to falsely implicate him, there is no evidence to support that narrative. Instead, clear evidence was adduced that the mother knew nothing about this and was even crying when it was narrated to her.

[55] In my view, the accused’s version that he did not rape the three minor children is found not to be reasonably possibly true. The probabilities overwhelmingly point to him as the perpetrator of the offences in question. Consequently, I conclude that the state has proved the guilt of the accused beyond reasonable doubt in respect of all charges.

Verdict

[56] Resultantly, the verdict is pronounced thus:

Count 1: Rape in contravention of section 3, of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007, read with section 51(1) of the Criminal Law Amendment Act 105 of 1997, the accused is found guilty.

Count 2: Rape in contravention of section 3, of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007, read with section 51(1) of the Criminal Law Amendment Act 105 of 1997, the accused is found guilty.

Count 3: Rape in contravention of section 3, of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007, read with section 51(1) of the Criminal Law Amendment Act 105 of 1997, the accused is found guilty.

**N CENGANI-MBAKAZA
JUDGE OF THE HIGH COURT**

APPEARANCES:

Counsel for the State : *Adv Phikiso*

Instructed by : Director of Public Prosecutions
Makhanda

Counsel for the Accused : *Adv Geldenhuys*

Instructed by : Legal Aid South Africa
Makhanda

Heard on : 20, 21, 22, 23 April 2026 and 27,
28
July 2026

Judgment Delivered on : 30 July 2026