



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

Case No.: CC22/2025

Reportable	Yes/No
------------	--------

In the matter between:

THE STATE

versus

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

ACCUSED

JUDGMENT ON SENTENCE

Cengani-Mbakaza J

[1] In her seminal work, *Rape: A South African nightmare*, Pumla Deneo Gqola (Gqola) characterises sexual violence as a South African nightmare. At page 11-12 of her book, she says:

‘Rape is a crime of power, and in patriarchal societies,...men can access patriarchal power...it is condescending to poor people to suggest that these men cannot be held accountable for choosing to rape. It is also the most pernicious patriarchal lie that men-any

men- cannot help themselves when confronted with women bodies...rape is never mild, never minor, never acceptable...’

[2] *Gqola’s* statement is compelling when viewed, *inter alia*, against the backdrop of rising gender-based violence statistics and the circumstances under which these crimes are committed. Based on available data and experience, the prevalence of rape involving minor children and women is a crisis that can hardly be over-emphasised.

[3] Notwithstanding the grim picture painted above, despondency is not an option. The crisis must be confronted by the imposition of sentences which reflect the gravity of crime, the personal circumstances of the offender and the interests of society.

[4] With the development of our democracy, we have reached a point where it is repeatedly emphasised that the personal circumstances of the victims cannot be excluded from consideration. This principle is consistent with the cornerstone of our constitutional democracy that all persons are equal before the law and are entitled to its equal protection.¹ Moreover, this principle accords with the need to uphold the victim’s rights to a decent life, dignity and privacy.

[5] The Supreme Court of Appeal in *S v Matyityi*², per Ponnann JA, with (Navsa JA and K Pillay AJA) concurring, held:

‘[17] By accommodating the victim during the sentencing process the court will be better informed before sentencing about the after-effects of the crime. The court will thus have at its

¹ See section 9(1) of the Constitution, Act 108 of 1996(the constitution).

² 2011 (1) SACR p40 (SCA) at para 17.

disposal information pertaining to both the accused and victim, and in that way hopefully a more balanced approach to sentencing can be achieved. Absent evidence from the victim, the court will only have half of the information necessary to properly exercise its sentencing discretion. It is thus important that information pertaining not just to the objective gravity of the offence, but also the impact of the crime on the victim, be placed before the court. That in turn will contribute to the achievement of the right sense of balance and in the ultimate analysis will enhance proportionality, rather than harshness. Furthermore, courts generally do not have the necessary experience to generalise or draw conclusions about the effects and consequences of a rape for a rape victim. As Muller & Van der Merwe put it:

'It is extremely difficult for any individual, even a highly trained person such as a magistrate or a judge, to comprehend fully the range of emotions and suffering a particular victim of sexual violence may have experienced. Each individual brings with himself or herself a different.'[my underlining]

[6] Following this jurisprudence, the state had in this instance, obtained victim impact statements in respects of all the three minor children who were sexually violated in this matter. As alluded to in the main judgment, their names shall be withheld to protect their identities in the interests of justice.

[7] It suffices to mention that these were minor girls aged 12, 6 and 9 years respectively. Apart from the victim impact statements which demonstrate the post-traumatic impact of the rape incidents, there is also a medical report that aggravates the circumstances of this case. The Dr noted similarities in relation to the injuries sustained by the three minor children in their vaginae.

[8] All the three minor children had sexually transmitted infections. The contraction of these infections is attributed to the fact that the offender did not use condoms at the time of the commission of the crimes. What aggravates this fact is that there is no evidence that the infections have been permanently cured. Resultantly, the three minor girls may suffer long-term consequences.

[9] All of them lost their virginities, in that their hymens were broken. Most significant to note is that the 06-year-old girl suffered the most serious injuries in her vagina. For completeness, the Dr noted the following: ECB”, a 12-year-old girl 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.

[10] In relation to “ALB’s examination, a 6 -year- old girl, she was clinically well. However, upon gynaecological examination, the Dr 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.

[11] I now deal with the victim-impact statements in turn: According to the report compiled by Ms Nomonde Stamper(Ms Stamper), a registered social worker, with 27 years of experience in the field of social work, ECB’s behavioural patterns have changed tremendously. She drinks alcohol and is always on the streets. She is experiencing outbursts of anger and becomes rude in the manner she speaks to people.

[12] At times she becomes shy, withdrawn and isolated from other learners at school. She has difficulties in handling life skills as a school subject. If the topic is about gender-based violence, she leaves the classroom. Ms stamper noticed feelings of shame during her interview. She struggled to maintain eye contact when the interviewed was centred around the rape incidents. Ms Stamper reports that the interview could not be completed because “ECB” cried uncontrollable.

[13] Ms Stamper concluded that the ordeal affected her psychologically. She is presenting rebellious behaviour, displaying withdrawal symptoms, shame and intense temper tantrums. Although she relied on information she received from the child's mother, Ms Stamper's analysis is corroborated by the school teacher's undisputed evidence. Mrs Nqina, the school teacher, observed a change in the child's behavioural patterns, more specifically, a decrease in her school grades. The fact that Mrs Nqina even went to the extent of suspecting that "ECB" was bullied at school demonstrates that her situation was concerning.

[14] In relation to "ALB", Ms Nontsikelelo Nyembezi ("Ms Nyembezi"), a registered social worker with 15 years' experience in the field of social work compiled a report. Ms Nyembezi interviewed "ALB" and concluded that she suffered emotionally and physiologically. In her report, she stated that the suffering endured by the child as a result of the rape incident cannot be measured. She could not accept what had happened to her. Ms Nyembezi has, therefore, undertaken to continue with the counselling sessions with the hope that the child will understand and cope with the situation.

[15] In relation to "ID" Ms Nyembezi observed that the child presented the symptoms of psychological trauma. In her report, she again has undertaken to deal with the trauma that she noted, through counselling sessions.

[16] The statement by *Gqola*³ that '*rape is never mild, never minor, never acceptable*' finds application in this case. Infact, a multitude of cases regard rape as a very serious crime. Children are vulnerable members of the society,

³ See paragraph 1 of this judgment.

and as upper guardians, courts bear the responsibility to safeguard their best interests. In *De Reuck v DPP WLD*⁴ Epstein AJ held:

‘The fact that the Constitution regards a child’s best interests as of paramount importance must be emphasized. It is the single most important factor to be considered when balancing or weighing competing rights and interests concerning children. All competing rights must defer to the rights of children unless unjustifiable. Whilst children have a right to inter alia, protection from maltreatment, neglect, abuse or degradation, there is a reciprocal duty to afford them such protection. Such a duty falls not only on law enforcement agencies but also on right thinking people and, ultimately the court, which is the upper guardian of all children.’

[17] In the matter under consideration, the offender was regarded as a father figure in the family, holding a position of trust and providing for the family since the mother was unemployed. He took advantage of the situation preying on the disadvantaged family set up. He planned the commission of the crimes and even went to the extent of concealing them. The fact that he ordered “ECB” to bath after the rape, coupled with throwing pillows and blankets over the children’s faces during rape, reinforces my finding in this regard.

[18] The story does not end there. The threats to kill and the use of knives against “ECB” on two occasions exhibit the violent nature of these crimes. In *S v Abrahams*⁵ Cameron JA made a very powerful statement regarding a rape charge committed by a family member. The court held:

‘Of all the grievous violations of the family bond the case manifests, this is the most complex, since a parent, including a father, is indeed in a position of authority and command over a daughter. But it is a position to be exercised with reverence, in a daughter’s best interests, and for her flowering as a human being. For a father to abuse that position to obtain

⁴ 2003 (1) SACR 448 (WLD) @ 457b-d.

⁵ 2002 (1) SACR 116 (SCA) at para 123.

forced sexual access to his daughter's body constitutes a deflowering in the most grievous and brutal sense and it constituted an egregious and aggravating feature of the accused's attack upon his daughter. Family member is also a member of the wider public and equally deserving as the rest of the public of protection against rapists. Rapist may think the home offers him a safe haven for his crime, with an accessible victim, over whom he may feel he can exercise a proprietary entitlement. The family victim may for reasons of loyalty or necessity feel that she must conceal the crime and may internalize the guilt or blame associated with the crime, with lingeringly injurious effects...'

[19] The offender's personal circumstances are as follows: He was born on 30 December 1973 at Nqanqarhu. He has two daughters who live in Cape Town after they were informally adopted by his erstwhile employer. The two daughters were born in year 2000 and 2003 respectively. Their education is well catered for by his previous employer. He has been in custody since July 2024. Before his arrest, he was employed at Nqanqarhu in a farm earning R5000 a month. He is reported to be a sickly person suffering from a blurry vision and some other ailment that is treatable.

[20] Considering the fact that the three counts of rape attract life imprisonment each, the question is whether the offender has shown the existence of substantial and compelling circumstances. While the traditional sentencing factors that applied prior to the enactment of the Criminal Law Amendment Act 105 of 1997, must still be considered, it is equally true that the prescribed sentences cannot be departed from on lightly or flimsy grounds.⁶

[21] Given the violent nature of these crimes, the element of retribution assumes particular importance, in my view. There is no indication that the offender is susceptible to rehabilitation, especially in light of the repeated acts

⁶ S v Malgas [2001] ZASCA 30 at para 25D and 25F.

of rape. Moreover, he showed no remorse even after being confronted by the mother when she saw him pulling one of the child's legs at night. This court will send a clear message to would-be offenders and deter the offender before this court from further criminality. Furthermore, an appropriate sentence will serve to encourage rape victims who are reluctant to report sexual offences due to threats and intimidation.

[22] It is noted that the offender has been in custody since July 2024, however, this factor cannot be viewed in isolation. Having properly considered all the facts placed before this court, I find no substantial and compelling circumstances to justify deviation from the prescribed sentences.

[23] Consequently, the following sentences are imposed:

1. **Count 1: Rape-** In terms of section 51(1) Part 1 of Schedule 2, of the Criminal Law Amendment Act 105 of 1997, the offender is sentenced to imprisonment for life.
2. **Count 2: Rape-** In terms of section 51(1) Part 1 of Schedule 2, of the Criminal Law Amendment Act 105 of 1997, the offender is sentenced to imprisonment for life.
3. **Count 3: Rape-** In terms of section 51(1) Part 1 of Schedule 2, of the Criminal Law Amendment Act 105 of 1997, the offender is sentenced to imprisonment for life.
4. By operation of law, the sentences on Counts 2 and 3 shall run concurrently with the sentence on Count 1. The offender shall serve an effective term of life imprisonment.
5. In terms of section 120 (4) of the Children's Act 38 of 2005 and section 41 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 , the accused is declared unsuitable to work

with children. It is directed that his particulars be entered in Part B of the National Child Protection Register.

6. In terms of section 50 (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, the particulars of the accused must be included in the National Register for Sex Offenders.
7. In terms of section 103(1) of the Firearms Control Act 60 of 2000, the offender remains unfit to possess a firearm.

N CENGANI-MBAKAZA
JUDGE OF THE HIGH COURT

APPEARANCES:

For the state	:	<i>Adv Phaliso</i> DPP, Makhanda
For the accused	:	<i>Adv Geldenhuys</i> Legal Aid-SA, Makhanda
Date Heard	:	30 July 2026
Date Delivered	:	31 July 2026