



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: A294/2024

In the matter between:

PHILLIP LAMOUR

Appellant

And

THE STATE

Respondent

Coram: Justice R Henney et Acting Justice V Barthus

Heard: 31 July 2026

Delivered Electronically: 19 August 2026

Summary: Criminal law — Appeal — Rape of minor — Single child witness — Cautionary rule — Credibility — Corroboration — Medical evidence — Mutually destructive versions — DNA evidence — Minimum sentence — Substantial and compelling circumstances.

ORDER

1. The appeal against conviction and sentence is dismissed.
2. The conviction and sentence imposed by the Regional Court, Mitchell's Plain, are confirmed.

JUDGMENT

Barthus AJ (Henney J concurring):

Introduction

[1] This appeal arises from the Appellant's conviction in the Mitchells Plain Regional Court for the rape of a 10-year-old child and the imposition of the statutorily-prescribed sentence of life imprisonment. It is brought in terms of his automatic right of appeal under s 309(1)(a) of the Criminal Procedure Act 51 of 1977 ("the Act"). The Appellant seeks to challenge both the factual findings that led to his conviction and the exercise of the sentencing discretion that resulted in the ultimate penalty.

Legal principles

[2] An appellate court does not approach such an appeal as a rehearing of the matter. It does not reconsider the evidence afresh, nor does it substitute its own view merely because it might have reasoned differently. The law imposes a disciplined and narrow framework within which appellate interference may occur. That framework is well-established.

[3] A court of appeal may interfere with a conviction only where the trial court's findings are clearly wrong, that is, where the record reveals a material misdirection, a demonstrable error, or a conclusion that no reasonable court could reach. This principle, articulated in *S v Ntsele*¹ and reaffirmed in *S v Monyane & Others*² recognises that the trial court is uniquely positioned to assess credibility, observe demeanour, and evaluate the evidentiary mosaic as it unfolds.

[4] The appellate court's inquiry is therefore not whether another court *might* have reached a different conclusion, but whether the conclusion actually reached by the trial court is reasonably supported by the evidence. Credibility findings, in

¹ 1998 (2) SACR 178 (SCA).

² 2008 (1) SACR 543 (SCA).

particular, are entitled to deference and will not be disturbed unless plainly unsustainable on the record³.

[5] The same disciplined approach governs appellate interference with sentence. Sentencing is a discretionary judicial function. An appellate court may intervene only where the discretion was not exercised at all, was exercised improperly, or was exercised unreasonably.⁴ Where minimum sentences apply, the framework in *S v Malgas*⁵ requires that the prescribed sentence be imposed unless substantial and compelling circumstances justify departure.

[6] Against this legal backdrop, the Appellant advances several grounds of appeal, namely that the complainant was a single child witness whose evidence contained contradictions; that the trial court erred in rejecting his version as not reasonably possibly true; that the absence of DNA evidence undermined the State's case; and that his personal circumstances warranted deviation from the minimum sentence.

[7] These grounds must be evaluated within the strict confines of the appellate standard. It is within that framework that the evidence, the credibility findings, and the sentencing discretion exercised by the trial court fall to be examined.

The Evidence

[8] The complainant was 10 years old at the time of the rape. Her evidence, though that of a child, was coherent on the central issue. The Appellant called her outside under false pretences and raped her in the backyard.

[9] The Appellant's attempts to magnify peripheral inconsistencies such as whether the complainant was lying on her bed or sitting under a blanket, whether she initially denied buying cigarettes, and who pulled up her pants. These are not contradictions of substance; they are the ordinary imperfections of human recollection.

³ *S v Sauls* 1981 (3) SA 172 (A).

⁴ *S v Fhetani* 2007 (2) SACR 590 (SCA); *S v Nkosi* 2011 (2) SACR 469 (SCA).

⁵ 2001 (1) SACR 469 (SCA).

[10] The complainant's evidence on the core allegation never wavered. She consistently stated that the Appellant raped her. She consistently described the location. She consistently described the sequence of events, and she consistently described the moment her mother arrived.

[11] Although the complainant was a single child witness, the so-called cautionary rule no longer applies as a rigid formula. The proper approach, as affirmed in *S v Jackson*⁶, is a holistic evaluation of the reliability and credibility of the child's evidence, assessed in light of the totality of the circumstances. Courts must guard against both undue suspicion and uncritical acceptance. What is required is a careful, reasoned assessment of the child's account, the presence or absence of corroboration, the probabilities, and the consistency of the evidence. When these factors collectively support reliability, the evidence of a single child witness may safely be accepted.

[12] The appellant's reliance on minor discrepancies in the complainant's evidence is misplaced. As the SCA held in *S v Mkhle*⁷, contradictions must be evaluated in context, and trivial inconsistencies do not undermine credibility.

[13] The Respondent correctly notes that nearly five years had passed before the complainant testified. This is an unavoidable delay in sexual offences involving children. Delayed reporting is a well-recognised feature of sexual offences, particularly those involving children. Fear, shame, confusion, and the dynamics of power between the child and the perpetrator often inhibit immediate disclosure. Courts must therefore approach delays with sensitivity and an appreciation of the psychological impact of sexual trauma. A delay does not, in itself, render the evidence unreliable. The proper inquiry remains whether, despite the passage of time, the child's account is credible, coherent on material aspects, and supported by the probabilities and corroborative evidence.

[14] The complainant disclosed the rape to her mother within minutes of the incident. This is a powerful indicator of reliability, especially in child sexual assault cases.

⁶ 1998 (2) SA 984 (SCA).

⁷ 1990 (1) SACR 95 (A).

[15] The mother's evidence is compelling. She testified that upon entering the yard she saw *"her daughter still struggling to pull her pants up and the appellant fastening his pants and belt."*

[16] This is not ambiguous. It is not open to innocent interpretation, and it is not consistent with the Appellant's version. It is direct, eyewitness corroboration of sexual misconduct.

[17] The mother further testified that she immediately confronted the Appellant, grabbed him, and fought with him. This reaction is entirely consistent with a parent discovering her child in a state of undress with an adult male neighbour fastening his belt.

[18] The Appellant's version that the mother was present earlier, that the child left with her, and that the mother later fabricated the allegations is contradicted by the record and by the mother's evidence. It is also contradicted by the complainant's evidence and the medical evidence. The probabilities overwhelmingly contradict the appellant's account.

[19] Dr Koen's evidence is objective and clinically grounded. She examined the complainant within hours of the reported incident and recorded erythema at the vaginal entrance and urethral orifice, the absence of a hymen consistent with prior penetration, and vaginal bruising indicative of recent trauma.

[20] The doctor noted that the complainant reported she *'does not feel pain anymore'*. While this may suggest prior sexual trauma, the court is not required to make a finding on prior incidents. The medical evidence is, however, entirely consistent with recent penetration.

[21] The nature, location, and timing of the injuries are not consistent with accidental causes or with the Appellant's version of events. The medical evidence therefore forms a significant part of the evidentiary matrix and must be assessed as such within the broader context of the case.

[22] The Appellant's version, as presented during his testimony, consisted primarily of a bare denial of any sexual contact with the complainant. He stated that he had

been walking in the street, allegedly avoiding police patrols because he had dagga and mandrax in his possession, when the complainant approached him asking for R2. He claimed to have given her R5 and sent her to buy two cigarettes. According to him, the complainant later returned, and it was at this point that her mother confronted the Appellant and accused him of rape.

[23] The manner in which this version was introduced and developed during the trial is significant. It was not consistently or coherently put to the State witnesses. The complainant was confronted with a version that differed materially from the one ultimately presented by the Appellant in his own evidence.

[24] For example, during cross-examination, it was put to the complainant that she had gone to buy cigarettes and that upon returning home she falsely accused the Appellant of rape. Yet the Appellant later testified that the complainant's mother was present during the alleged cigarette transaction; a detail not put to either the complainant or her mother. This inconsistency undermines the reliability of the Appellant's account and raises concerns about its reconstruction after the fact.

[25] The Appellant's version is further at odds with the mother's evidence. She testified that the complainant was asleep when she left the house earlier that evening, and that the Appellant was walking up and down the street at that time. She denied that the complainant left the house with her or that she was present during any alleged interaction involving cigarettes. The Appellant did not challenge these aspects of her evidence in any meaningful way.

[26] The Appellant's account is also inconsistent with the objective medical evidence. The injuries recorded by Dr Koen, namely, erythema, vaginal bruising, and absence of hymen are not consistent with the Appellant's version of events, which contains no explanation for recent vaginal trauma. The Appellant did not suggest any alternative cause for the injuries, nor did he engage with the medical findings in a manner that could render his version reasonably possibly true.

[27] The Appellant argues that the absence of DNA results is fatal. This is not a sound legal conclusion. DNA is not required for conviction. It is settled law that sexual offences can be proved through credible testimony and medical evidence. The Appellant's argument is therefore a red herring.

[28] The Appellant testified that the complainant's mother fabricated the allegation because he refused to give her R20. This assertion must be evaluated against the probabilities. It would require acceptance that the mother, upon being refused a small sum of money, elected to initiate a rape complaint, involve the police, and expose her 10-year-old child to the processes of medical examination and later courtroom testimony.

[29] It would further require acceptance that she was willing to subject her child to the secondary trauma inherent in recounting allegations of sexual assault in open court. There is no evidentiary foundation for such a motive, and the inference the Appellant invites the Court to draw is inconsistent with human behaviour and the surrounding circumstances. The suggested motive is therefore not reasonably capable of belief.

[30] The probabilities weigh heavily against the Appellant's account. His explanation requires acceptance of several propositions namely, a) that the complainant spontaneously fabricated a rape allegation within minutes of returning from an errand; b) that her mother coincidentally found both the complainant and the Appellant adjusting their clothing in the backyard; and c) that the medical findings of acute penetration were unrelated to the incident. These propositions are not supported by the record and are inconsistent with the sequence of events described by both State witnesses.

[31] The Appellant's version must be assessed within the framework articulated in *S v Chabalala*⁸ and *S v V*⁹, which requires the court to consider whether the defence version is reasonably possibly true when viewed against the totality of the evidence. The inconsistencies within the Appellant's own account, the failure to put material aspects of his version to State witnesses, the contradictions with the mother's testimony, and the incompatibility with the medical findings collectively render his version untenable.

[32] The trial court's rejection of the Appellant's version was therefore based on a holistic evaluation of the evidence and the probabilities. The record does not reveal

⁸ 2003 (1) SACR 134 (SCA) at 139.

⁹ 2000 (1) SACR 453 (SCA).

any misdirection in this regard, nor does it disclose any basis upon which an appellate court could conclude that the trial court's findings were clearly wrong.

[33] Where an accused is convicted of rape, life imprisonment is mandated in terms of section 51(1), read with Part I of Schedule 2 upon conviction, unless in terms of section 51(3), substantial and compelling circumstances exist which necessitate the imposition of a lesser sentence than the prescribed sentence.

[34] The interpretation of the phrase "*substantial and compelling circumstances*" was met with approval by the court in *Director of Public Prosecution, Pretoria v Tsotesti*,¹⁰ where Coppin AJA (as he then was) referred to *Malgas*¹¹, where it was stated that even though "substantial and compelling" factors need not be exceptional, there must be truly convincing reasons or "weighty justification" for deviation from the prescribed sentence. The Court held that the minimum sentence is not to be deviated from lightly and should ordinarily be imposed. This approach was also confirmed in *S v Dodo*¹² and explained in *S v Vilakazi*¹³.

[35] The Appellant submitted that the *court a quo* erred in finding that no substantial and compelling circumstances existed to justify a deviation from the prescribed minimum sentence. The following factors were advanced:

- a) The Appellant was 49 years old when he was sentenced.
- b) The Appellant was married for 23 years when sentenced.
- c) The Appellant fathered 4 children: twins aged 36, an 18-year-old and 11-year-old who passed away.
- d) The Appellant left school in grade 10 to help support his family when his father became disabled.
- e) The Appellant is a breadwinner.
- f) The Appellant lost his mother at the age of 10 and his father at the age of 24.
- g) The Appellant has Asthma and has difficulty accessing medication in prison.
- h) He has no previous convictions and was sentenced as a first offender.

[36] The Appellant further submitted that the *court a quo* overemphasised the prevalence of rape and imposed a disproportionate sentence.

¹⁰ [2017] ZASCA 83 (2 June 2017) para 27.

¹¹ [2001] ZASCA 30 (19 March 2001) para 17.

¹² [2001] ZACC 16; 2001 3 SA 382 (CC) para 11.

¹³ 2009 (1) SACR 552 (SCA) para 14.

[37] The State submitted that no substantial and compelling circumstances were present to justify interference with sentencing citing the following factors:

- a) The complainant was only 10 years old when the rape occurred.
- b) the Appellant was a neighbour and friend to the complainant's mother and grandparents.
- c) Based on the doctor's evidence, this was not the only time the Appellant raped the complainant.
- d) The Victim Impact Report revealed that the incident caused the complainant to suffer severe trauma.

[38] Proportionality requires careful balancing of the gravity of the offence, the personal circumstances of the offender, and the interests of society. In the present matter, the complainant was a 10-year-old child, an exceptionally vulnerable victim whose age alone significantly aggravates the seriousness of the offence.

[39] The appellant was not a stranger but a neighbour and trusted family acquaintance, which amplified the breach of trust and the child's vulnerability. The medical evidence revealed recent genital trauma, and the Victim Impact Report recorded severe and enduring psychological harm. These factors underscore the profound intrusion upon the complainant's dignity, bodily integrity, and emotional wellbeing. Against this, the Appellant's personal circumstances, namely, his age, family responsibilities, lack of prior convictions, and medical condition, while not irrelevant, do not carry sufficient weight to displace the legislatively prescribed sentence.

[40] When viewed cumulatively, the seriousness of the offence, the vulnerability of the victim, the abuse of trust, and the lasting harm suffered far outweigh the mitigating factors. The sentence of life imprisonment is therefore proportionate and accords with the objectives of punishment, including retribution, deterrence, and the protection of society.

[41] In *Director of Public Prosecutions, KwaZulu-Natal v Ndlovu*¹⁴, the court reaffirmed that rape is a grave violation of the dignity, privacy, and bodily integrity of the victim, causing lasting emotional and often physical harm. The Constitutional

¹⁴ (2024) ZASCA 23 para 73.

Court has likewise recognised rape as a serious violation of dignity, bodily integrity and privacy. In *Tshabalala v S; Ntuli v S*¹⁵ it described rape as structural and systemic, and in *Masiya v Director of Public Prosecutions, Pretoria and Another*¹⁶ it emphasised that rape is an expression of power through degradation, the effects of which continue to demand a firm and constitutionally grounded judicial response.

[42] On appeal, this Court may interfere with sentence only where the court *a quo* materially misdirected itself, failed to exercise its discretion judicially, or imposed a sentence so disproportionate that no reasonable court could have imposed it¹⁷.

[43] Although the Appellant was a first offender and has family responsibilities, and has asthma, these factors do not, whether individually or cumulatively, amount to substantial and compelling circumstances.

[44] In these circumstances, the prescribed sentence of life imprisonment is not disproportionate to the offences, the interests of society, or the appellant's personal circumstances. There is accordingly no basis to interfere with the sentence imposed by the court *a quo*.

[45] Having considered the record and the submissions advanced, this Court is satisfied that the conviction and sentence was correctly imposed.

[46] The following order is made:

- 1. The appeal against conviction and sentence is thus dismissed.**
- 2. The conviction and sentence imposed by the Regional Court, Mitchells Plain, are confirmed.**

V BARTHUS
ACTING JUDGE OF THE HIGH COURT

I agree.

¹⁵ 2020 (2) SACR 38 (CC) at para 67.

¹⁶ 2007(5) SA 30(CC) at para 51.

¹⁷ S v Bogaards 2013 (1) SACR 1 (CC) at para 41.

R HENNEY
JUDGE OF THE HIGH COURT

Appearances

For Appellant: Mr M W Strauss
Instructed by: Legal Aid South Africa

For Respondent: Adv J A J Swart
Instructed by: Director of Public Prosecutions: Western Cape