

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A117/2024

In the appeal of

MOEKETSI DAVID KAFI

APPELLANT

And

THE STATE

RESPONDENT

Neutral citation: *Kafi v The State* (A117/2024) [2026] ZAFSHC 434 (15 September 2026)

Coram: GREYLING-COETZER J *et* HEFER AJ

Heard: 25 May 2026

Delivered: 15 September 2026

Summary: Criminal appeal – application of principles of circumstantial evidence confirmed – accused’s failure to testify.

ORDER

On appeal from: Bloemfontein Regional Court:

The appeal against the convictions and sentences imposed is dismissed.

JUDGMENT

Hefer AJ (Greyling-Coetzer J concurring)

[1] This is an appeal against the convictions and sentences imposed on the appellant by the Bloemfontein Regional Court in respect of three charges.

[2] In respect of the first charge, the appellant was arraigned and convicted of the crime of rape in contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 read with the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA). The appellant was sentenced to life imprisonment on this charge.

[3] In respect of the second charge, the appellant was found guilty of the crime of murder read with the provisions of s 51(2) of the CLAA. The appellant was sentenced to 15 years' imprisonment on this charge. In respect of the third charge, the appellant was convicted of the crime of theft. He was sentenced to five years' imprisonment on this charge.

[4] The appeal served before us on the basis of s 10 of the Judicial Matters Amendment Act 42 of 2013, in terms of which the appellant enjoys an automatic right to appeal his conviction and sentence. The appellant's appeal is premised *inter alia*, on the following grounds:

Ad conviction:

(a) The State's case was based on circumstantial evidence which did not tie the appellant to the commission of the offence;

(b) The evidence led by the State did not lead to the only inference being that the appellant is the one who committed the three offences referred to above based on the following factors:

(i) No one saw the murder of the complainant;

(ii) There is no evidence that the complainant was raped; and

(iii) The appellant provided a reasonable explanation for possessing the deceased's cell phone.

Ad sentence:

- (a) The Court erred in not giving enough weight to the fact that the appellant had never been convicted of any offence before his conviction and that this showed that he was someone who could be rehabilitated;
- (b) The Court also did not find that there were substantial and compelling circumstances that allowed deviation from the prescribed minimum sentence of life imprisonment despite the above circumstances taken cumulatively; and
- (c) The sentence of life imprisonment induced a sense of shock and is excessive.

[5] In opposition to the appeal, the respondent supports the convictions and sentences and submitted that the trial court did not misdirect itself; therefore, the court of appeal cannot interfere with the finding of that court.

[6] Save for denying responsibility for the death and rape of the deceased as well as the theft of her cell phone, the appellant did not make a plea explanation in terms of s 115 of the Criminal Procedure Act 51 of 1977 (CPA). Pursuant to the plaintiff pleading not guilty, the State proceeded to present the evidence of Ms O[...] M[...], the mother of the deceased, Ms J[...] K[...], Mr S[...] M[...], Mr Buti Blom and Constable Tsietsie Thulo, the investigating officer.

[7] In terms of s 212 of the CPA, several documents had been handed in, amongst others, the declaration of death dated 17 October 2019, identification of the deceased being P[...] J[...] M[...], the medico-legal report by Dr I Ferreira, a photo bundle with accompanying key exhibits found at the place of residence of the accused, buccal samples of the mother of the deceased and the accused as well as transcripts of the bail application.

Witnesses

Ms O[...] M[...]

[8] The mother of the deceased testified that the last time she had seen the deceased was at 18h00 in the evening of 15 October 2019 when her daughter went out. When she left, she had her cell phone with her. She described the cell phone as being black with no cover on the back. At about 20h00 the same evening, she phoned the deceased to ascertain her whereabouts, but the phone went to voicemail. She assumed that the deceased had gone to visit her boyfriend. The next morning, she phoned the

boyfriend to ascertain the whereabouts of the deceased again, but the boyfriend informed her that the deceased was not with him at the time. She never saw her daughter again after that night.

[9] She only saw the cell phone of the deceased again when she received it from the police in Bloemspruit. Prior to this, a police officer, Constable Thulo, went to her place of employment, and she identified the phone as her daughter's. She identified it as a Nokia cell phone without a back cover. When asked whether she knew the appellant, she identified him as her neighbour, known to her as 'Rasta'. According to her, the witness had known the appellant for two years, and she had seen him in the company of the deceased on occasions.

[10] Ms M[...] further testified that she made a statement to the police at Bloemspruit Police Station. In this statement, the witness confirmed that the body of the deceased was recovered on the 17th of October 2019 next to a tree. No cell phone had been recovered at the scene. The statement further corroborated the visit to Ms M[...] by Constable Thulo, which had been referred to previously regarding the identification of the deceased's cell phone. The witness concluded her testimony by saying that apart from knowing that her daughter had been murdered, she does not know anything further.

[11] In cross-examination by Ms Sephiri, appearing on behalf of the appellant, it was put to the witness that according to the appellant, the deceased earned a living as a prostitute in more or less the same area where her body had been recovered. The witness responded by saying she does not know anything about this. She also did not have knowledge of the fact that the particular area where the body of the deceased had been recovered is a so-called 'high prostitute area.'

[12] According to the witness, the deceased's boyfriend sent the deceased a call-back on the evening before she left home. The impression which she had at the time was that she was going to see her boyfriend when she left. She further testified that this boyfriend informed her the following day that the deceased had been looking for him the previous day.

[13] It was further put to the witness that, according to the appellant, the deceased was a mandrax user along with the appellant. To this, the witness responded that she knows that the deceased used to go to the appellant, but she does not have any knowledge of any drugs being used. She only knows that the deceased was smoking cigarettes.

Ms J[...] K[...]

[14] The next witness to testify was Ms K[...]. Ms K[...] testified that the deceased was her sister-in-law. She further testified that she and her late husband, A[...], resided in the same yard as the appellant during October 2019. She knew that the deceased and the appellant were friends.

[15] The witness testified that she saw the appellant on the morning of 15 October 2019 when he left for work. On that day she was at home with her late husband, and she did not leave her residence. During her evidence in chief, it was put to her that the investigating officer, Constable Thulo, was told by the appellant that, on 15 October 2019, the witness and her late husband, A[...], had gone to visit the appellant. The witness denied this and testified that she only saw the appellant on Wednesday, being the 16th of October 2019. This was around 17h00.

[16] Ms K[...] testified that on this particular day, when the appellant returned from his place of employment, the appellant approached her and wanted to sell her a cell phone. The phone was a black Nokia without a cover on the back. According to her knowledge, the appellant did not have a cell phone at the time. When asked whether the appellant indicated where he got the cell phone from, the witness testified that the appellant told her that he picked it up in a taxi. She asked the appellant how he came across the cell phone in a taxi, whereas he usually walks to his place of employment. The appellant allegedly then just laughed.

[17] The witness did not recognise the phone at the time the appellant showed it to her. She, however, did see it again at the Bloemspuit Police Station when it had been shown to her by Constable Thulo, who indicated to her that he had found the phone with the appellant. During cross-examination it was put to the witness that according to the appellant, he occasionally takes a taxi to go to work. On the particular day, he in fact

was exhausted, so he decided to take a taxi and not walk. It was further put to the witness that the appellant did not deny that he tried to offer to sell the cell phone to the witness.

[18] Regarding the alleged use of drugs by the deceased, the witness testified that her late husband, A[...], used to sell the drugs. When she met him, he was already selling the drugs, but according to Ms K[...], he stopped selling these drugs when they got married. She testified that sometimes, in the absence of her late husband, she also used to sell drugs. Ms K[...] confirmed that the deceased used to buy drugs from her and her husband. Both the deceased as well as the appellant used to buy drugs from her and the late A[...].

[19] Although she had a good relationship with the deceased, it appears that sometimes they did have disagreements regarding domestic matters. In this respect, the witness was confronted with the fact that, according to the statement she made to the police, it appears that she did in fact also have a fallout with the deceased regarding some drugs which the witness' late husband left under her care and which were apparently stolen by the deceased. According to the witness, 'the argument over or the misunderstanding for the drugs did not necessarily cause a huge fight. It was actually an argument that was addressed domestically within the family.' The value of the drugs which were allegedly stolen by the deceased was approximately R 450. It was put to Ms K[...] that she and her husband had the motive to kill the deceased because of this argument.

Mr S[...] M[...]

[20] The next witness who testified on behalf of the State was Mr S[...] M[...]. He testified that he knows the appellant from both being detained at Grootvlei Prison. He testified that he met the appellant whilst he was a cleaner at Grootvlei Prison. He interacted with the appellant when going to the kitchen or for exercises.

[21] According to Mr M[...], he spoke to the appellant about the murder of the deceased. He testified that they spoke about this because he was told that he, the appellant, told someone else that he was the one who killed her. Mr M[...], however, testified that when he first heard about this, it was not from 'Buti' but from somebody

else who was on trial, but not in prison. By the time the appellant arrived at the prison, he had already known about these allegations. The witness testified that when he enquired from the appellant whether he was the one who killed the deceased, the appellant confirmed that it was indeed him. According to the witness, the appellant also said that two other males were present at the time the deceased was murdered. He could recall the name of one being 'Loba'. He further testified that, according to the appellant, he said that he killed the deceased because she stole his drugs.

[22] The witness further testified that according to the appellant there were two other people at the time of the murder of the deceased. When asked during his evidence in chief how the police found out that he had this information, he responded by saying that 'Buti' had told the deceased's mother. The deceased's mother then informed the police accordingly.

[23] During cross-examination, Mr M[...] testified that the deceased was a friend of his. When he heard about the fact that she was murdered, it came as a shock to him. When he found out that the appellant was also at Grootvlei Prison, he decided to confront the appellant. It was put to the witness that, according to the appellant, he never told anyone at Grootvlei Prison that he killed the deceased.

Mr Buti Blom

[24] Thereafter, Mr Buti Blom was called to testify. According to him, he knew the deceased since he had grown up with her. They used to call her 'M[...]'. He testified that he knew the appellant from Grootvlei Prison. He met the appellant in 2019. He testified that upon the appellant's arrival at Grootvlei Prison, he asked him the reason why he was arrested. Mr Blom then testified that the appellant said that he murdered the deceased because the deceased wanted to turn the community against him. When the appellant informed him about this, he knew that the person who had been murdered was the person he had known since childhood. Before he had this conversation with the appellant, he knew that the deceased had been murdered. He further testified that, with reference to the deceased wanting to turn the community against him, the appellant informed him that he and the deceased were robbing people on Friday and Saturday. He confronted the appellant for killing the deceased. He then attacked the appellant with his bare hands with other friends of his. This he attributable to the hurt he was

experiencing following the death of the deceased. After this attack, he only interacted with the appellant when the appellant passed him on the way to the kitchen. He did not have any further conversations with the appellant.

[25] Mr Blom testified that he was arrested together with Mr S[...] M[...]. He stated that he had shown Mr M[...] the appellant after speaking to the appellant. He confirmed that he had informed the mother of the deceased about the information he obtained from the appellant. He had done so because he could not keep such information to himself. During cross-examination, it was pointed out to the witness that his evidence differs from that of S[...] M[...] and that S[...] testified that Buti overheard the appellant talking to some people. According to the witness, he only told Mr M[...] that the appellant was the one who killed the deceased.

[26] During cross-examination, Mr Blom was referred to the contents of the statement he made to the police, which confirms his testimony regarding the robbery by the accused and the deceased. In the statement, reference is made to one Loba, who was, according to the statement, with the appellant when he murdered the deceased. It was pointed out that Mr M[...] also referred to this other person, Loba, and it was put to the witness that this version was concocted by the two witnesses. This was denied by the witness.

[27] It was put to the witness that the appellant will testify that he does not know the witness. It was put to the witness that only after he heard the reason for the appellant's arrest, he and Mr M[...] decided to come up with the story of a confession.

Constable Thulo

[28] According to the investigating officer, Constable Thulo, he was the initial investigating officer regarding the murder and rape of the deceased. He testified that he attended the crime scene. He testified that on the discovery of the body of the deceased, he tried to trace the last person who had been seen with the deceased which is the appellant before Court but he was not able to find him at his residential place.

[29] After three days, on 21 October 2019, he met with the appellant. According to Constable Thulo, the appellant then told him that he was with the late A[...] and his wife

on the day of the deceased's death. He also told Constable Thulo that he had phoned A[...] and his wife on that day, upon which the witness then asked the appellant to show him his phone. The appellant then responded by saying that he did not have a phone.

[30] The witness then informed the appellant that the late A[...] denied having met up with the appellant on that particular date. At some point, the appellant then admitted to having met up with the deceased the previous night and stated that he and the deceased were both smoking dagga. The witness further testified that after they had been smoking, according to the appellant, the deceased left. The appellant then further indicated during this conversation with Constable Thulo that he left his cell phone at a particular point across the main road whilst he was relieving himself. Constable Thulo then accompanied the appellant to the place where the appellant said he had left the phone. The phone was on top of a bigger stone covered with smaller stones. When he saw the cell phone, it matched the description that was given by the deceased's mother.

[31] Constable Thulo then confronted the appellant by informing him that he was in possession of the deceased's cell phone and enquired how he came into possession thereof. According to Constable Thulo, the appellant informed him that the deceased actually left it at his place. However, Constable Thulo grew suspicious because the appellant could not say why the deceased left it at his place. At that point, he decided to arrest the appellant for possession of the cell phone and opened a case of possession of suspected stolen items. Thereafter, the cell phone was identified by the mother of the deceased as the property of the deceased.

[32] According to Constable Thulo, when the appellant testified at the bail hearing, he heard for the first time that the appellant had sexual intercourse with the deceased before the deceased left his place of residence. The witness further testified that according to information which he had received, the appellant was the last person to have been seen with the deceased before her death.

[33] After the State closed its case, the appellant did not testify, and no further evidence was led.

[34] According to the postmortem report by Dr Ferreira, the cause of death of the deceased was described as multiple injuries. Of particular importance is that the postmortem examination revealed a penetrating stab wound to the chest of the deceased as well as swelling and injuries to the genitals of the deceased.

[35] It appears from a further statement handed in in terms of s 212 of the CPA that on 22 October 2019 a wet swab of possible blood was taken from a silver blade of a knife found in a plastic tub that was lying on the floor in the appellant's place of residence. Furthermore, a white cloth with possible DNA was also found on the appellant's bed. From the photographs handed in, it appears that a white torn condom was found at the scene where the body of the deceased had been recovered. Swabs of potential vaginal fluid, semen and blood at the scene were also taken.

[36] After considering the evidence, the court *a quo* held that all five of the state witnesses were credible witnesses and their evidence was reliable and therefore accepted.

[37] In *R v Dhlumayo*¹ Davis JA remarked as follows:

'The trial Judge has advantages – which the Appellate Court cannot have – in seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has he had the opportunity of observing their demeanour but also the appearance and whole personality. This should never be overlooked. Consequently the Appellate Court is very reluctant to upset the findings of the trial Judge.'²

[38] In considering whether the State has discharged the onus of proof of an appellant beyond reasonable doubt, the Court must consider all the evidence and, in conclusion, must account for all the evidence placed before it.³ The court *a quo* dealt extensively with the evidence applicable to the appellant on each charge.

[39] Before dealing with the evaluation of the evidence and findings in respect of each charge, it must be mentioned again, as indicated above, that the appellant has chosen not to testify after close of the State's case. Nor were there any witnesses called

¹ *Rex v Dhlumayo and Another* 1948 (2) SA 677 (A).

² *Ibid* at 705.

³ *S v Van der Meyden* 1999 (1) SACR 447 (W) at 448F-H.

by the defence to testify on behalf of the appellant. The trial court dealt extensively with an appellant's person's right to elect not to testify in Court. It is held:

'That the consequences of such an election may at a later stage prove not to be beneficial, does not assist the accused. That is the inevitable risk involved in choosing not to testify.'⁴

[40] At the outset, I wish to refer to *S v Mtwetwa*⁵ where Holmes JA stated the position as follows:

'Where however there is direct *prima facie* evidence implicating the appellant in the commission of the offence, his failure to give evidence or whatever his reasons may be for such failure in general *ipso facto* tends to strengthen the state's case because there is nothing to gainsay it, and therefore less reason for doubting its credibility or reliability: See *S v Nkombane* and Another 1963 (4) SA 877 (A) at 839G and *S v Snyman* 1978 (2) SA 582 (A) at 588G. In the latter case this court went on to say at 588H:

'The ultimate requirement of cause is proof of guilt beyond reasonable doubt. This depends upon an appraisal of the totality of the facts including the fact that he did not give evidence.'

With these remarks in mind, I will now deal with the convictions on each of the three charges.

Murder

[41] The trial court convicted the appellant on the charge of murder mainly on evidence of S[...] M[...] and Buti Blom. Mr Mokoena, on behalf of the appellant, argued that although the trial court was correct in making a finding that the evidence of the two witnesses amounted to an admission and not a confession, the trial court erred in accepting the evidence of the two witnesses in that their evidence amounts to hearsay.

[42] This argument, however, loses sight of the provisions of s 209 of the CPA which provides that an appellant may be convicted of any offence on the single evidence of a confession by such appellant that he committed the offence in question if such confession is confirmed in material respect or whether a confession is not confirmed if the offence is proved by evidence, other than such confession, to have been actually committed.

⁴ *S v Botha* [2012] ZAECPHC 65; 2013 (1) SACR 353 (ECP) para 11.

⁵ *S v Mtwetwa* 1972 (3) SA 766 (A) at 769D-F.

[43] The court *a quo* further dealt expressly with the provisions of s 219A of the CPA in terms of which evidence of any admission made extra judicially by any person in relation to the commission of an offence, if made voluntarily, will be admissible in evidence against such an appellant at criminal proceedings relating to that offence. The appellant admitted to both Mr M[...] as well as Mr Blom that he killed the deceased. Both these witnesses have been found credible, and their evidence had been accepted by the court *a quo*.

[44] In respect of the provisions of s 209 it must also be borne in mind that the admission was supported to a certain degree by evidence, namely a knife wound to the chest of the deceased and a knife which had been found at the place of residence of the appellant on 19 October 2026. The last proverbial nail in the coffin of the appellant's case is that the evidence shows that the appellant was the last person to see the deceased alive and he was in fact in her presence the night of her death.

[45] Mr Mokoena further submitted that the trial court erred in accepting the evidence of both these two witnesses, not taking into account that Buti Blom was not an impressive witness. It is true, as the court *a quo* observed, that Mr Blom made a few mistakes during his testimony. The court *a quo* took into consideration that Mr Blom testified approximately four years after the alleged conversation between the appellant and Mr Blom. As per the remarks by the Court in *S v Oosthuizen*⁶ contradictions *per se* do not lead to the rejection of the witness' evidence. They may simply be indicative of an error. Not every error made by a witness affects his credibility; in each case the trier of fact has to make an evaluation, *inter alia*, of the nature of the contradictions and their number.⁷

[46] The court *a quo* held that in the absence of anything to the contrary from the appellant, the evidence of Mr Blom is both credible and reliable. This finding cannot be faulted. The finding of the court *a quo* in respect of the conviction of murder cannot be faulted.

Charge of rape

⁶ *S v Oosthuizen* 1982 (3) SA 571 (T).

⁷ *Ibid* at 576B-H.

[47] As indicated, because the appellant has chosen not to testify in his defence, no version by the appellant has been placed before the court *a quo* to consider it to be reasonably true.

[48] In this regard it is common cause that a used condom has been found where the body of the deceased had been recovered. It is also common cause that despite buccal samples being taken from the appellant, no DNA results had surfaced which could link the appellant with sexual intercourse or the rape of the appellant. The appellant did not, however, deny that sexual intercourse had taken place with the deceased on the night of her death.

[49] The court *a quo* had to consider all additional evidence which had been placed before it, considering whether this sexual intercourse had taken place with the consent of the deceased. During the evidence of Constable Thulo, he testified that he only became aware of the fact that, according to the appellant, sexual intercourse had taken place between himself and the deceased at the accused's place of residence before they left. In his judgment, the court *a quo* referred to the bail proceedings and quoted the relevant portion thereof.

[50] The physical evidence, however, does not support the version as put up by the appellant during the bail proceedings, which evidence is permissible in terms of s 60(11B)(c) of the CPA. The used condom was found next to the body of the deceased in the veld next to a tree and not in the deceased's place of residence.

[51] The court *a quo* correctly pointed out that the appellant has placed himself 'snap on the murder scene' through his admissions to both Mr M[...] and Mr Blom. The court *a quo* in this regard continued as follows:

'Seldom, if ever, was a woman murdered in a more brutal way. The deceased suffered multiple injuries, a fatal stab wound of the chest that penetrated the lungs, but also a massive blunt blow at the back of her head with subsequent brain bleeding. A multiple fracture of the lower jaw with missing teeth'

and further

'the sexual intercourse and the murder cannot be separated ... The appellant didn't succeed in moving the rape and murder scene to that of 'consensual sexual intercourse in his shack.'

[52] The physical evidence referred to, however, only shows that the version of the appellant is to be rejected to the extent that the sexual intercourse between the appellant and the deceased must have taken place at the scene of the crime. Now the question arises, for what reason did the appellant attempt to show that the sexual intercourse had taken place at his place of residence and not at the crime scene. Can it be that the appellant did not wish to place himself at the crime scene? Importantly, does this untruth necessarily prove that the sexual intercourse with the deceased has taken place without her consent?

[53] In considering the evidence, the court *a quo* did not deal with how the body of the deceased, together with the used condom, ended up in the veld where her body had been discovered. There is no evidence in this regard. It may well be that the deceased was taken by force by the appellant himself or then together with the other two persons who were also present according to the admission to Mr Blom? But it can also well be that the deceased was lured by the appellant himself with the proposal of sexual intercourse and the intention of murdering the deceased thereafter.

[54] Of particular significance, however, is that the injuries to the reproductive organs of the deceased were described by Dr Ferreira as swelling of the external genitals with injuries. These injuries constitute proof that the sexual intercourse with the deceased was forceful and not by consent. Coupled with this is the fact that, during the bail application, the appellant was confronted with the fact that he and the deceased were never in a physical relationship before the death of the deceased.

[55] The finding by the court *a quo* that the appellant raped the deceased cannot be faulted. According to the appellant, it was only he who had sexual intercourse with the deceased that night. The evidence as a whole is beyond reasonable doubt inconsistent with the innocence of the appellant.⁸

Theft

⁸ *Rex v Blom* 1939 AD 1988 at 202 – 203.

[56] As far as the conviction on the charge of theft is concerned, the cellular phone was the direct link discovered between the deceased and the appellant. According to the witness, Ms K[...], the appellant approached her on 16 October 2019 and tried to sell her a cell phone, which she described as a black Nokia without a cover on the back. At the time she did not recognise it as the phone of the deceased. She never saw the phone again until Constable Thulo showed it to her, and she then identified it as the phone which the appellant had tried to sell to her.

[57] It is common cause that the cell phone of the deceased had been shown to Constable Thulo when the appellant said to him that it was his cell phone. The appellant did not show it to the police officer as being that of the deceased. It was only after the police officer identified the phone as the one previously being described to him by the mother of the deceased and the appellant was confronted with this fact that the appellant said that the deceased had left it at his place of residence. In these circumstances, the discovery of the cell phone of the deceased does not amount to a pointing out, as submitted by Mr Mokoena in argument before us.

[58] According to the witness K[...], the appellant told her that he had found the phone in a taxi. However, when confronted by Constable Thulo, the appellant changed his version and said that the deceased had left the phone at his place of residence before she left. These contradictions are indicative of the guilt of the appellant on the charge of theft. The court *a quo* had found that the appellant walked away with the cell phone of the deceased after raping and murdering the deceased. The appellant's subsequent conviction on the charge of theft is also to be upheld.

Sentence

[59] In sentencing the appellant, the court *a quo* referred to the triad principle as explained in *S v Bunda and Others*.⁹ The Court further took into consideration the fact that the appellant completed Grade 11 and was unemployed since 2019 when he was incarcerated. Furthermore, the appellant is a first offender and has spent five years already in prison awaiting his trial.

⁹ *S v Bunda and Others* 1991 (2) SA 352 (B) at 355A – C.

[60] In *Bailey v S*¹⁰ the court referred to what constitutes substantial and compelling circumstances as was defined in *S v Malgas*:¹¹

‘The greater the sense of unease the court feels about the imposition of a prescribed sentence, the greater the greater its anxiety will be that it may be perpetrating an injustice. Once the court reaches the point where unease has hastened into a conviction that an injustice will be done, that can only be because it is satisfied that the circumstances of the particular case render the prescribed sentence unjust, or as some might put it, disproportionate to the crime, the criminal and legitimate needs of society. If it is the result of a consideration of circumstances the court is entitled to characterise them as substantial and compelling and as such to justify the imposition of a lower sentence.’

[61] Considering the seriousness of the crime in respect of the charge of rape, the Court came to the conclusion that there are no compelling and substantial factors to be considered in deviating from the prescribed minimum sentence in terms of s 51(1) of the CLAA. There is no reason to interfere with such sentences. It appears from the argument presented before us that the appeal against the sentence lies only in respect of the sentence of life imprisonment on the charge of rape.

Order

[62] Therefore, I make the following order:

The appeal against the convictions and sentences imposed is dismissed.

J J F HEFER

ACTING JUDGE OF THE HIGH COURT

I concur:

D GREYLING-COETZER

¹⁰ *Bailey v S* [2012] ZASCA 154; 2013 (2) SACR 533 (SCA) para 21.

¹¹ *S v Malgas* [2001] ZASCA 30; [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA); 2001 (1) SACR 469 (SCA) para 22.

JUDGE OF THE HIGH COURT

Appearances

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