

SOUTH AFRICA / JUDGMENT

Hansraj v S (Appeal) (A107/2023)

[2025] ZAGPJHC 349 (19 March 2025)

[2025] ZAGPJHC 349**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Allen, Makamu

CASE / FILE NUMBER

A107/2023

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Policy**IN THE HIGH COURT OF****SOUTH AFRICA****(GAUTENG DIVISION,****JOHANNESBURG)****Case No: A107/2023****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: NO****(3)****REVISED.****SIGNATURE**

DATE: 19 MARCH 2025
In the matter between:-
HANSRAJ,
KISHAN
RAI
Appellant
and
THE
STATE
Respondent

JUDGMENT

ALLEN AJ (MAKAMU J concurring):

INTRODUCTION

- [1] The appellant was convicted in the regional court sitting at Randfontein in the Regional Division of Gauteng on one count of sexual assault.[1] The appellant was legally represented throughout the trial. Appellant pleaded not guilty to the charge and did not give a plea explanation. The appellant was found guilty on 6 December 2021 and sentenced on 14 October 2022 to 36 months imprisonment in terms of section 276(1)(h) of The Criminal Procedure Act, Act 51 of 1977 (CPA).
- [2] The parties filed heads of argument and noteworthy the appellant's heads of argument consisted of 101 pages without referring to any case law. No case law was filed separately either. We were referred to one case at the hearing and during appellant's argument. Appellant was unable to hand up copies and was requested to upload same on Caselines. The case was not uploaded either.

BACKGROUND

- [3] The state brought an application in terms of section 170A of the CPA to make use of CCTV since three of the state witnesses were minors. The application was granted unopposed and proceedings proceeded in camera.
- [4] It was common cause at the trial of the main issue in dispute, the question of touching and consent, whether appellant did indeed commit an act of sexual assault as convicted.
- [5] The common cause facts are:

1 On 6 February 2019 the complainant was attending grade 10 at a High School on the West Rand, 15 years of age, and she was present in appellant's classroom, room 10, during the 6th and 7th period when the incident occurred. Appellant taught CAT (computer application technology).

2 Appellant got angry with complainant and two of her classmates, also witnesses at the trial, for being noisy in his class, whereafter he moved one J to the front. Complainant and K remained seated at the back of the class.

3 Appellant called complainant out of the class and once outside, he asked her to take a walk with him. The parties walked past various classrooms and offices whilst he discussed her transport issue with her.

4 They walked up the stairs to the staff room where he drank water and they then proceeded to the media centre. The parties hereafter went back to the classroom and was away for about 15 minutes.

5 Complainant and J made written statements shortly hereafter (about two hours later) to the deputy headmaster. These statements do not form part of the list of exhibits and at the hearing counsel was unable to enlighten the court why appellant did not disclose same.

6 Appellant attended a disciplinary hearing and, save for mentioning that there was a hearing, nothing was discovered.

GROUNDS OF APPEAL

[6] The grounds for the appeal relied upon are the reasons as set out in appellant's application for leave to appeal:

1.1 It over emphasized that the Appellant/Applicant decided to request the complainant to accompany him to the personnel room which was clearly indicative of his guilt;

1.2 In finding that the evidence of the complainant was the truth and that there were no contradictions in the complaint's evidence;

1.3 In not finding that the evidence of the first report, Jessica, and that of her fellow learner Keano, materially differed from one another in material aspects;

1.4 In not accepting that a motive materialised for the complainant (A[...]), to fabricate the version that the Appellant / Applicant sexually assaulted her which she conveyed to her first report, J[...] and K[...];

1.5 In finding that it was possible that the sexual assault took place in the way the complainant described it;

1.6 Accepting that the sexual assault took place in the way the complainant described it as it is the respectful submission of the Appellant/Applicant that, the chances that the sexual assault took place in the way it was described during the trial proceedings, are highly improbable;

1.7 In not finding that the scenario sketched by the complainant was highly improbable, seen in the light of the fact that a State Witness, Elizabeth Nicolson, gave evidence on behalf of the State, that she is the social worker for the school where the incident took place and that she has her office on the first floor, adjacent to the media centre and personnel room, and that she was

present in her office at the time of the alleged offence, and that her office door was open which not only makes the version of the complaint given during her evidence improbable, but in fact impossible;

1.8 In finding that the sexual assault indeed did take place during the last period of the school day and ignoring the fact that it became apparent that during this time there would be a lot of movement especially in the vicinity where the offence occurred;

1.9 In not accepting the evidence of the last state witness, Elizabeth Nicolson, that if indeed the complainant and the accused had a discussion at the personnel room, she, Nicolson, would have been in a position to hear the conversation between the Appellant / Applicant and the complainant, as her office was within earshot of the personnel room which leads to the conclusion, being the only conclusion, that the social worker would have noticed the activity of the complainant and the Appellant / Applicant whether the complainant entered the personnel room or not;

1.10 In accepting the version of the complainant, which at certain times lacked sense for example – When asked why did the complainant not say anything at the time that the Appellant / Applicant allegedly touched her on her buttocks, the complainant answered “because we were still discussing transport”;

1.11 In finding that the complainant’s version is acceptable, and in totality disregarding the version of the Appellant / Applicant in accepting that it would make sense for a perpetrator of sexual abuse, to ask consent for a hug but not touching the complainant’s buttocks or breasts;

1.12 In accepting the complainant’s version of how her breast was touched by the Appellant / Applicant, as it became apparent that there was no movement or cupping or squeezing of the breast but according to the complainant just touching.

1.13 The conviction of the Appellant/Applicant by the honourable court created a feeling of shock, not only to the Appellant/Applicant and his defence team, but also to court personnel and people in general of example his previous colleagues at the school where the incident occurred.

1.14 It is the Appellant’s/Applicant’s submission that a different court could possibly come to a different finding and as a result the Appellant/Applicant requests the honourable court to allow his application for leave to appeal to proceed.

EVIDENCE FOR THE STATE

[7] It was complainant’s evidence that he touched her buttocks in total three times. They went to the media centre, after the staff room, where he told her that she can work there as a result of transport issues. At the media centre he touched her boobie.

[8] He then asked for a hug, lifted her up, touched her buttocks again and put her down. This took 5 to 10 seconds. She said to him that she was uncomfortable with that. They went back to the classroom where she passed by J (first contact) and broke down with K (first report). She cried with J (second report) when they left class whilst telling

her as well. The reporting to them was consistent although she did not tell them everything. Complainant, urged and accompanied by J, went to the deputy principal to report the incident. Both children made statements of what transpired. In cross examination, complainant testified that outside the class appellant told her that her homework was not up to date and threatened to call her parents. He also warned her against the influence of her two classmates.

[9] J testified next. She corroborated the evidence of the complainant as to what transpired in class. On their return she looked down and her mood was down. Complainant told her that as they were walking up the stairs the appellant touched her inappropriately. J elaborated to mean by touching her breast and stuff. She further testified that when they reached the media centre he asked her for a hug. She hugged him and here he touched her buttocks and breast. According to J she

cried a bit and she felt upset. In cross-examination she testified the complainant was reluctant to report it.

[10] The third witness was K. He testified the complainant told him appellant touched her inappropriately. In cross-examination, he testified that she cried when she came back in the classroom. She told him the appellant sexually harassed her by touching her in the media centre and she reprimanded him not to do it again and after that he hugged and touched her again. On their return to class his observation was that the appellant looked suspicious in his body language whereafter he went out a few minutes. He admitted that whilst the appellant was explaining the work they were talking. The appellant was angry. He also admitted that when the complainant came back, they talked again which disrupted the class. When the appellant came back with complainant, he did not continue with the class.

[11] The next witness to testify was the deputy headmaster. She confirmed that the complainant reported to her that he hugged her in the media centre. According to her observations complainant was calm with even a little smile although she was upset, but not “red lights”. She told complainant and J to write statements.

[12] The last witness to testify was the social worker. She told the deputy headmaster that complainant was sexually assaulted by a teacher. She corroborated that complainant and J were told to write statements of what happened. This is the procedure at the school. The complainant and J were separated whereafter she continued to speak to J. J told her that complainant waited at the door for him of the media centre when appellant hugged her and lifted her with his hands on her buttocks. She corroborated that complainant thereafter told her friends who encouraged her to report it. She also testified that the complainant was very calm considering to what happened to her. The complainant also told her that she was at the door of the staff room and therefore did not enter.

EVIDENCE FOR THE DEFENCE

- [13] The appellant was the only witness that testified for the defence. The appellant's version was that he denied everything.
- [14] Appellant testified that they passed a number of offices and classrooms. The social worker's office is about half a metre away from the entrance to the staff room, half a metre away from the media centre and a metre away from the staff kitchen. Her testimony did not corroborate appellant's version.
- [15] He also testified that on the way back to class he was walking in front. Appellant further testified that when they re-entered the classroom on their return, he carried on assisting the learners contrary to the evidence for the state.
- [16] According to appellant he was in class for another few minutes when the bell rang and the class dismissed. He then continued with his grade 11 learners for the last period of the day. This incident occurred during the second last period.
- [17] Appellant testified that the complainant was behind him the entire time, did not touch her inappropriately and did not have any contact with her whatsoever. Appellant further testified that they never entered the media centre and stood at the entrance. He also testified that all the classroom doors were open including that of the social worker as the school has an open-door policy. According to appellant the deputy headmaster and social worker were in their offices during the incident. No evidence was proffered to substantiate these allegations and he did not call any witnesses.
- [18] The appellant also testified that on the day of the incident he assumed that the complainant had transport problems, which was therefore discussed during school time, during class time and not in between periods and whilst walking down the passage.
- [19] Appellant, outside class, also threatened to call her parents, because her homework was not up to date. He testified that her homework was not up to date for a week, but was later rectified to not up to date for one day only. It is appellant's case that this threat was her motive to get back at him. In our view the threat should not be conflicted with the seriousness of the transgression, homework behind for a week is much more serious than for a day and appellant incorrectly inflated this to bolster his case.

ISSUES FOR

DETERMINATION

- [20] The central issue for determination in this appeal is whether the trial court erred in finding that the state had proved its case beyond reasonable doubt that the sexual assault indeed took place.

[21] Section 5 of the Sexual Offences and Related Matters Amendment Act, Act 32 of 2007 reads as follows:

“5 Sexual Assault

- (1) A person ('A') who unlawfully and intentionally sexually violates a complainant ('B'), without the consent of B, is guilty of the offence of sexual assault.
- (2) A person ('A') who unlawfully and intentionally inspires the belief in a complainant ('B') that B will be sexually violated, is guilty of the offence of sexual assault”.

[22] The definition of 'sexual violation' in section 1 of the same Act reads: “includes any act which causes:

- (a) direct or indirect contact between the-
- (i) genital organs or anus of one person or, in the case of a female, her breasts,

and any part of the body of another person or an animal, or any object, including any object resembling or representing the genital organs or anus of a person or an animal”.

[23] The onus of proving its case rests upon the prosecution. In *S v Van der Meyden* 1999(1) SACR 447 (W) at page 450 a-b it was said: “What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored”.

[24] And on page 449j-450a it was stated: “The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it”.

[25] Proof beyond reasonable doubt does not, however, equate to proof to an absolute degree of certainty. In the case of *R vs Mlambo* 1957(4) SA 727 (A) page 737G to 738B it was said: “This method of stating the rule that the Crown must discharge the onus resting upon it beyond reasonable doubt has gradually gained in popularity, especially at the Bar where it is a recognised refuge for counsel for the defence who are harassed by strongly inculpatory evidence and attempts are frequently made to interpret it as an intention to depart from the rule.

It is obviously impossible to formulate the principle in language which will produce any measure of certainty and endeavours are made to afford more definite and reliable guidance to those engaged in the solution of tantalising problems by unravelling inferences from circumstantial evidence. The language employed in the more popular way of enunciating the principle does not appear to offer much relief. It is no more precise than, and it is exposed to the same dangers of

misinterpretation and misapplication as, the form which at one time found almost universal favour and which has served the purpose so successfully for generations.

In my opinion, there is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused.

An accused's claim to the benefit of a doubt when it may be said to exist must not be derived from speculation but must rest upon a reasonable and solid foundation created either by positive evidence or gathered from reasonable inferences which are not in conflict

with, or outweighed by, the proved facts of the case”.

[26] Beyond reasonable doubt means a high degree of probability, and not proof beyond a shadow of a doubt or proof beyond all doubt. The state does not have to close every avenue of escape, and fanciful or remote possibilities can be discounted as these do not lead to reasonable doubt. The doubt must not be based on pure speculation, but must be based upon a reasonable and solid foundation created either from the positive evidence or gathered from reasonable inferences not in conflict with or outweighed by the proven facts.

[27] In the case of *S v Ntselé* 1998(2) SACR 178 (SCA) it was said on page 180: “..the onus which rested upon the State in a criminal case was to prove the guilt of the accused beyond reasonable doubt - not beyond all shadow of a doubt. Our law did not require that a Court had to act only upon absolute certainty, but merely upon justifiable and reasonable convictions - nothing more and nothing less.

... when a Court was dealing with circumstantial evidence, as in the present matter, the Court was not required to consider every fragment of evidence individually to determine how much weight it had to be afforded. It was the cumulative impression, which all the fragments made collectively, that had to be considered to determine whether the accused's guilt had been established beyond reasonable doubt.

[28] In the case of *Seedat v S* (A547/12)

[2015] ZAGPPHC 286; 2015 (2) SACR 612 (GP) it was stated: “[23] The complainant in casu was a single witness on the essential aspect of the charge of rape. The evidence of a single witness needs to be approached with great caution. The legal position was aptly stated by Makgoka J in the matter of *S v Mayisela*[2] as follows:

"[7] The issue in this appeal is whether or not there was penetration — a key consideration which has a bearing on the conviction. This aspect is dependent on the evidence of CD, who was a single witness. In terms of s 208 of the Criminal Procedure Act 51 of 1977, an accused may be convicted of any offence on the single evidence of any competent witness. The court can base its findings on the evidence of a single witness, as long as such evidence is substantially satisfactory in every material respect,[3] or if there is corroboration[4]. See further R v Mokoena 1956

(3) SA 81 (A) at 85; R v T 1958

(2) SA 676 (A) at 676; S v Sauls and Others 1981

(3) SA 172 (A) at 180E - G; and S v Banana 2000

(2) SACR 1 (ZS) H (2000

(3) SA 885).

[8] Furthermore, CD was a child witness. When dealing with the evidence of children, our courts have developed a cautionary rule which is to be applied to such evidence. The court must therefore have a proper regard to the danger of an uncritical acceptance of the evidence of a child witness. See the rationale for this approach in R v Manda 1951

(3) SA 158 (A) at 163E - F. The state's case also consisted of circumstantial evidence, as there is no direct evidence of penetration.

[10]it is helpful to restate the approach to be adopted by a court of appeal when it deals with the factual findings of a trial court. The proper approach is found in the collective principles laid down in R v Dhlumayo and Another[5] by the then Appellate Division. They are the following. A court of appeal will not disturb the factual finding of a trial court, unless the latter has committed misdirection. Where there has been no misdirection on fact by the trial judge, the presumption is that his conclusion is correct. The appeal court will only reverse it where it is convinced that it is wrong. In such a case, if the appeal court is merely left in doubt as to the correctness of the conclusion, then it will uphold it."

[29] The state witnesses' accounts of events were given with sufficient clarity and cogency and notwithstanding extensive cross-examination, the core of the evidence on the probabilities remained unshaken.

[30] The state's case included peripheral issues such as:

1. Whether the complainant's friends would corroborate the complainant's testimony, what she had reported to them as well as the deputy headmaster and social worker.
2. Complainant's transport issues raised whilst the class was in session and took her outside of the class and stayed away 15 minutes.

3. The incident occurred in the open but nobody was called to testify about what they saw, notwithstanding children at school, an open-door policy and people that were in the administration office.
4. The children being naughty in class.
5. What transpired with the first contact, first report and second report.
6. Complainant's homework was not up to date and appellant threatened to call her parents.

[31] In the matter of *S vs Morgan* (271/2008) [2008] ZASCA 147; [2009] 2 All SA 158 (SCA) (27 November 2008) it was said regarding the issue of contradictions: “[18] It is convenient to deal first with the submissions relating to the contradictions. There is no doubt that the witnesses Leghlo, Baardman and Kiranie contradicted themselves in certain respects. Both the trial court and the court a quo were alive to this aspect in their assessment of the evidence. Bham AJ in dealing with the contradictions in their evidence said the following in a passage

which I adopt:

‘Whilst it is important to consider, in determining whether the state has proved its case beyond reasonable doubt, the component parts of the evidence tendered on behalf of the state, one should be careful not to sink into the detail of such component parts in a manner which obviates the totality of the picture.’”

[32] In *S v Sithole* (54/06)

[2006] ZASCA 173 (28 September 2006) the court addressed the issue of witness contradictions and held: “[7] It is trite that not every error made by a witness will affect his or her credibility. It is the duty of the trier of fact to weigh up and assess all contradictions, discrepancies and other defects in the evidence and, in the end, to decide whether on the totality of the evidence the state has proved the guilt of the accused beyond reasonable doubt. The trier of fact also has to take into account the circumstances under which the observations were made and the different vantage points of witnesses, the reasons for the contradictions and the effect of the contradictions with regard to the reliability and credibility of the witnesses”.

[33] The trial court was equally alive to the fact that the evidence of the complainant, who was a single witness regarding the sexual assault, must be viewed with caution. The defence's evidence was also of a single witness. The state's case was supported by circumstantial and hearsay evidence which included peripheral issues.

[34] In terms of Section 208 of the CPA an accused can be convicted of any offence on the single evidence of any competent witness. It is well established in our law that the evidence of a single witness should be approached with caution, his or her merits as a witness being weighed against the factors which militate against his or her credibility.

[35] In the case of *S v Sauls and Others* 1981

- (3) SA 172 (A) at 180D it was held that the omission of the word credible from the old section 256 was of no significance as the witness must still be credible. In the same case at 180E it was stressed that no rule of thumb test or formula can be applied in assessing the credibility of a single witness.

[36] Hearsay evidence is defined as follows [6]:

“Hearsay evidence is defined in section 3(4) as ‘evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person given such evidence’. The crucial question now arises: what is meant by ‘depends upon’? One possibility is that it would suffice if the evidence depended to any or some extent on the credibility of the other person. But this could not have been the legislature’s intention: all evidence depends to some extent on the credibility of someone other than the person testifying, since all testimony is a mix of original and received information, and all transmitted information necessarily borrows from a pool of accumulated knowledge, even if only to the extent that it makes use of the conventions of visual and audial communication and linguistic practice. Another possibility – that it must depend solely on the credibility of the other person – must also be excluded, since the probative value of all testimony depends, at the very least, on the credibility of the person who gives it.[7]

Between these extremes, then, lies the preferred approach. A case may be made for reading the words as meaning ‘depend substantially or primarily upon’, but a more functional approach might be to see the two processes in section 3 – that of definition and admissibility – as related and even inter-dependent. Since the purpose of the expanded definition of hearsay is to bring within the borders[8] evidence that is potentially prejudicial to a party denied the opportunity to subject the maker of an extra-curial statement or act to the standard adversarial devices for promoting truth, accuracy and procedural fairness, why not give the words ‘depends upon’ a meaning that chimes with that purpose? On this view, evidence would be hearsay if its probative value depended sufficiently on the credibility of someone other than the witness to lead a court to believe that its potential for prejudice was sufficiently great to warrant a full examination of all the relevant facts (such as those set out in section 3 (1) (c)).”[9]

[37] Circumstantial evidence is defined as follows[10]:

“All evidence requires the trier of fact to engage in inferential reasoning. [11] Where, in a murder trial, for instance, a witness relates how he or she saw the accused stab the deceased, the trier of fact will have to draw various inferences regarding the truth of the testimony: is the witness to be believed; did he or she have a proper opportunity to observe what he or she described; could he or she be mistaken even though he or she is sincere in his or her account? These inferences, relating to the truth of the testimony, are common to all cases where evidence is led. Frequently, however, the trier of fact is required to engage in a second tier of inferential reasoning – one that arises even on the assumption that the evidence is true. Where, for instance, a witness in a murder trial describes having seen the accused coming out of the victim’s house with a bloodstained sword, [12] the trier of fact is asked to infer more than that the witness was truthful. In order to arrive at a conviction, he or she will

additionally have to infer that the evidence supports the conclusion that the accused stabbed the victim.

Evidence that asks a trier of fact to consider the second tier of inferential reasoning in addition to the first is referred to as circumstantial evidence. [13] Evidence that involves only the first tier is called direct evidence. Direct evidence generally concerns the assertion of a fact by a person who claims to have perceived it with his or her own senses. [14] The assertion may be made orally by a witness in court or (subject to the hearsay rule [15] and the rule against previous consistent statements[16] either orally or in writing by a witness or someone else out of court.

All circumstantial evidence ultimately depends upon facts which are proved by direct evidence”.

- [38] It is trite that the appeal court is reluctant to disturb factual findings of a trial court. The only time an appeal court would interfere with such findings is if there is a clear misdirection or the trial court was clearly erroneous. Reiterating this principle, the court in the *Ministry of Safety and Security vs Van Niekerk* 2008 (1) SACR 56 (CC) said in para 10: “This court, as any court of appeal, would be slow to interfere with findings affected by a trial court based on a careful assessment of the credibility of witnesses and the probabilities of their respective versions..”
- [39] The trial court found the complainant to be a credible witness whose testimony appeared to be truthful. The undisputed evidence was that she was crying afterwards, she looked down when she went back to the class, her mood was down and that she was touched inappropriately. This was corroborated by her two classmates. The testimony of the deputy headmaster and social worker also did not contradict complainant.
- [40] She stood steadfast on the essential aspects of her evidence against the appellant regarding the incident. In our view the complainant maintained her version of the incident despite the appellant’s version that her homework was not up to date and he was going to phone her parents and this was the motive for making up the incident to get back at him for this threat.
- [41] A helicopter view of the entirety of the evidence paints a tapestry which ties in with the version of the complainant. We find the appellant’s version conforming with the proven facts of the day in question. The submission that complainant made up the story as a result of appellant's threat to phone her parents is without merit. We are not persuaded from a reading of the evidence and a consideration of the written arguments presented that the trial court's credibility finding was clearly wrong. The trial court correctly considered the probabilities against the facts of the case, in concluding that the state had proven the guilt of the appellant beyond reasonable doubt see *S v Chabalala* 2003(1) SACR 134 (SCA) at 135a.
- [42] The circumstantial evidence of the other state witnesses was formulated by Watermeyer JA in *R v Blom* 1939 AD 188 at 202 where the two ‘cardinal rules of logic’ relating to inferential reasoning in cases based on circumstantial evidence

are:

“(1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.

- (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct”.

[43] The only inference to be drawn from all the evidence was consistency with complainant’s version of the incident. The conclusion that the appellant was guilty as charged was a factual finding which the trial court had made without committing any misdirection. It cannot be said that a reasonable court could never have made such a finding, or that the finding was patently incorrect.

Accordingly, we should not interfere with the trial court's finding.

[44] We conclude that the trial court correctly found that the state proved the appellant's guilt beyond reasonable doubt. It is evident that the appellant was correctly convicted and we would propose that the appeal against conviction be dismissed.

ORDER

[45] In the result the following order is made:

1. The appeal is dismissed.

MAKAMU J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

ALLEN AJ

ACTING JUDGE OF THE HIGH COURT

This judgment was prepared by Acting Judge Allen. It is handed down electronically by circulation to the parties or their legal

representatives by email, by uploading to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 19 March 2025.

HEARD ON:

13 March 2025

For the Appellant:

Adv De Beer

Instructed by Dawid M van Wyngaard Attorneys

For the Respondent: Adv Mathebula

Instructed by The State Attorney Johannesburg

[1] That the accused is guilty of the crime of Contravening the Provisions of section 5(1) read with sections 1, 2, 50, 56(1), 56A, 57, 58, 59, 60 and 61 of the Criminal Law Amendment Act (Sexual Offences and Related Matters) Amendment Act, Act 32 of 2007-Sexual Assault. In that on or about the 6 February 2019 at or near Randfontein High School in the Regional Division of Gauteng the said accused did unlawfully and intentionally sexually violate the complainant, to wit A[...] A[...] (15 years old) by touching his hand on her bum and/or by placing/holding his hand on her bum and touching

his hand on her breast.

[2] 2013

(2) SACR 129 (GNP) at 132f-133e

[3] R v Mokoena 1932 OPD 79 at 80.

[4] S v Gentle 2005

(1) SACR 420 (SCA).

[5] 1948

(2) SA 677(A).

[6] The South African Law of Evidence, 3rd edition, by DT Zeffertt and AP Paizes, pages 405 – 406

[7] See Hewan v Kourie NO and Another 1993

(3) SA 233 (T) at 236G-H.

[8] Now, of course, so that a court may properly evaluate it and not, necessarily or even probably, exclude it.

[9] Law of Evidence Amendment Act 45 of 1988.

[10] The South African Law of Evidence, supra, page 101

[11] This has been recognised in S v Zuma [2006] 3 All SA 8 (W) at 71.

[12] The bloodstained sword illustration was a favourite of Roman-Dutch writers. Cf. Matthaeus De Criminibus ad 48.15.6; Voet Commentarius ad Pandectas 22.3.14. The Roman-Dutch writers referred to circumstantial evidence as presumptions.

[13] See, generally, S v Burger and Others 2010

(2) SACR 1 (SCA) at paras 26-27; Freedom under Law v National Director of Public Prosecutions and Others 2014

(1) SACR 111 (GNP) at para. 182.

[14] The term 'direct evidence' is sometimes also used to distinguish the assertions of the witness who is testifying from

hearsay, i.e., his or her narration of the assertions of other people. In this sense, hearsay. It is more usual, however, to use the term 'original evidence' instead of direct evidence in this latter sense.

[15] See ch. 13.

[16] See ch. 14.

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