

SOUTH AFRICA / JUDGMENT

Makhubo v S - Appeal (A20/2023)

[2023] ZAFSHC 387 (2 October 2023)

[2023] ZAFSHC 387**COURT**

Free State High Court, Bloemfontein

BEFORE

Van Rhyn, Daniso

CASE / FILE NUMBER

A20/2023

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****FREE****STATE DIVISION, BLOEMFONTEIN****Appeal****Number: A20/2023****Reportable: YES/NO****Of****Interest to other Judges: YES/NO****Circulate****to Magistrates: YES/NO****In**

the appeal of:

THEMBA
MAKHUBO
APPELLANT
and
THE
STATE
RESPONDENT**CORAM:**DANISO,
J et VAN RHYN, J

JUDGMENT

BY: VAN RHYN, J

HEARD ON: 28 AUGUST 2023

DELIVERED ON 2 OCTOBER 2023

[1] The appellant was arraigned in the Regional Court, Harrismith on three counts namely;

Charge1: Robbery with Aggravating Circumstances;

Charge 2: One count of contravening the provisions of Section 3 of the Criminal Law (Sexual Offences and Related Matters), Amendment Act[1], (Rape);

Charge 3: Attempted Murder.

[2] It was alleged that the appellant, on 4 October 2015, at a farm near Harrismith, unlawfully and intentionally assaulted and forcefully robbed the complainant of the

items listed in Schedule “A” to the charge sheet and raped her. The charge of rape is read with the provisions of s 51(1), Schedule 2, of the Criminal Law Amendment Act[2].

[3] The provisions of section 51(1) of the Criminal Law Amendment Act were duly explained to the appellant at the commencement of the trial. The appellant, who was duly represented during the trial, pleaded not guilty to the charges levelled against him. He was convicted on 17 November 2020 of robbery with aggravating circumstances and one count of rape. The appellant was acquitted on the attempted murder charge.

[4] Upon conviction the appellant was sentenced to 15 years imprisonment in respect of robbery charge and to a term of life imprisonment in respect of the charge of rape. He enjoys an automatic right of appeal and filed a Notice of Appeal against the conviction and sentence on 28 April 2022. The grounds upon which the appellant’s appeal rests in respect of the convictions can concisely be summarised as follows:

4.1 The court a quo erred in accepting that the State had proved its case against the appellant beyond reasonable doubt despite the chain of evidence, regarding the forensic evidence presented by the respondent, being broken.

4.2 The court a quo erred in finding, notwithstanding the discrepancies regarding the chain of evidence presented by the State, that no alteration or substitution of the exhibits occurred.

4.3 The court a quo erred in accepting the testimony presented by Mr L G Khoza who testified that the appellant handed to him a Nokia Cell Phone as a gift, despite material contradictions in his testimony.

[5] The grounds upon which the appellant’s appeal rests in respect of the sentences imposed can concisely be summarised as follows:

5.1 The sentences are shockingly inappropriate in that the sentences are harsh and severe.

5.2 The court a quo over-emphasized the seriousness of the offences committed and the interests of society, and failed to take into consideration the

personal circumstances of the appellant.

5.3 The court a quo erred in not finding substantial and compelling circumstances to be present to deviate from the prescribed minimum sentence of life imprisonment in respect of the rape charge and the prescribed minimum sentence of 15 years in respect of the charge of robbery.

- [6] Both the convictions and sentences are supported by the respondent. Mr Bontes, counsel on behalf of the respondent, contends that there is no evidence on record laying any basis upon which the court of appeal could have doubt regarding the chain of evidence in respect of the custody of the forensic exhibits. He contends that the chain of evidence was properly dealt with taking into consideration the testimony of the witnesses and the contents of the numerous affidavits in terms of the provisions of Section 212 of the Criminal Procedure Act[3] ("CPA"), submitted as Exhibits I, J,K,L,M, N and O, during the trial.
- [7] During the trial the testimony of ten witnesses were presented by the prosecution. During her testimony the complainant, a 61-year old female farmer, explained how she was ambushed by two unknown men when she arrived at the homestead around 16h00 on 4 October 2015. The two men were wearing masks. She was unable to identify her assailants.
- [8] The complainant was stabbed in her left shoulder, assaulted, and threatened by the two men who demanded money and guns from her. She was tied with her hands behind her back and taken to her bedroom. She was severely assaulted, burned with an iron on her breasts, upper body and legs and raped by both men. She testified that both men used a household, yellow plastic glove, modified and cut to serve as a condom, while raping her. She confirmed that the items listed in Schedule "A" to the charge sheet were robbed during her ordeal, one of those items being her black Nokia cell phone. She was left in the house while the perpetrators fled with her motor vehicle.
- [9] Sergeant S I Malinga of the South African Police Services stationed at Harrismith and his colleague arrived at the crime scene during the night of 4 October 2015. They secured the scene. Nothing was removed or touched while they waited for the members of the Local Criminal Record Centre investigate the crime scene and search for forensic evidence.
- [10] Warrant Officer T N Teepa, stationed at the Local Criminal Record Centre at Bethlehem testified that on 4 October 2015, at around 22h00, he was summoned to the crime scene by Sergeant Malinga. He took photographs of the crime scene and compiled a photo album, Exhibit 1. Depicted on photo 22, photo 23, and photo 25 is a yellow plastic glove. He noticed the glove on the bed in the main bedroom. He removed the duvet cover from the bed. On the next photograph, the plastic glove can be seen lying on the floor in the bedroom. Warrant Officer Teepa packed and sealed the duvet cover in a forensic bag marked PA3000709119. He also removed the bedspread which was packed and sealed in a forensic bag marked PA

3000709097.

- [11] Approximately three days after the incident the complainant returned to the farm where she found a yellow plastic

glove provided to her by her employees at the farm. She handed the plastic glove to Captain Mokoena, the Investigating Officer assigned to the case. On 6 November 2015 the complainant identified her cell phone, a black Nokia shown to her by Warrant Officer M J Senje.

- [12] Warrant Officer Teepa testified that he received a yellow plastic glove from Captain Mokoena at the Harrismith Police Station on 7 October 2015. The glove was in a forensic bag marked PA6001140333D. On 9 October 2015 he accompanied Warrant Officer Mokoena to collect buccal swabs from the complainant. The DNA Reference Sample Collection Kit (swabs) was sealed and marked

PA4002441784.

- [13] All the exhibits collected at the crime scene as well as the buccal swabs taken from the complainant were kept under register number 224/2015 at the SAP13 strong room at the Harrismith Police Station. On 12 October Warrant Officer Teepa typed the covering letter addressed to the Forensic Science Laboratory, Pretoria. According to him, Warrant Officer Clarke took the mentioned exhibits as well as several other exhibits to the laboratory at Pretoria on the 15th of October 2015.
- [14] The State presented the testimony of Dr L E Mabaso, a medical practitioner, employed at the Provincial Hospital at Ladysmith, who took 3 swabs from the complainant during the medical examination performed on 5 October 2015. These swabs were packed, sealed and numbered 14D1AB9071TF (Adult sexual assault Evidence Collection Kit), with two separate evidence sealing bags with bar code PA4002232178 and bar code PAD001304257. Dr Mabaso's findings were recorded on the J88 form subsequent to the completion of the medico legal examination which was handed in as Exhibit "B" during the trial. The forensic evidence was handed to Captain A L Morajane, who confirmed the testimony of Dr Mabaso. Captain Morajane took the sealed bags and entered same as exhibits in the SAP 13 register under the reference number SAP1026/2015 with numbers PA 5002169657 and PAD 001304257. A copy of the SAP 13 Register was handed in as Exhibit "D".
- [15] Captain Mokoena, explained that the cell phone of the complainant linked the appellant to the crime. Evidently the appellant gave the cell phone to one of the witnesses who testified during the trial, Lindokhule Goodluck Khoza. The said Mr Khoza testified that he received the cell phone from the appellant during October 2015.
- [16] Subsequent to the arrest of four (4) suspects, one of them being the appellant, Warrant Officer Matile obtained buccal swabs, inter alia, from the appellant while in custody. The affidavit deposed to by Warrant Officer Matile was received as Exhibit "H"

during the trial. From the affidavit and his testimony, it is evident that Warrant Officer Matile took a DNA reference sample 13DBAA2948TF

from the appellant on 14 November 2015 which was placed in a forensic bag and sealed with number PA 5002112160.

[17] The buccal swabs obtained from the appellant was kept in the SAP 13 strong room as is evident from the SAP13 register, serial number 1196 CAS 35/10/2015. One transparent and blue SAPS plastic, containing exhibits 13DBAA2948EP was received and booked into the SAP13. Captain Mokoena testified, with reference to the original SAP13 register, that he took the forensic evidence to the Forensic Science Laboratory

at Pretoria.

[18] Captain Mokoena received and signed for a receipt, Exhibit “F”, subsequent to delivering the exhibits to officials at the laboratory at Pretoria. Evidence bag PAD 000790369 and PAD 001304257 were received at the laboratory on 27 November 2015 without being tampered with.

[19] Although Captain Mokoena initially testified that he did not receive any plastic gloves during his investigation, he subsequently confirmed that a yellow plastic glove was found by the complainant after she returned to the farm. She brought the plastic glove, with other exhibits, to the police station.

[20] By agreement between the defence and the prosecution the following exhibits pertaining to the chain of evidence were accepted as evidence during the trial:

20.1 An affidavit in terms of the provisions of Section 212 (8) (a) of CPA deposed to by Selina Khelina Ntuli (Exhibit “K”) stating that she received two sealed evidence bags, one with reference number PAD001304257 and another with reference number PAD000790369 from Captain Mokoena on 2 November

2015. The seal was still intact and the sealed evidence bags with contents, in the same condition it was received, were handed over to the Administration component of the Biology Section at the laboratory.

20.2 An affidavit in terms of the provisions of Section 212 (4)(a), (6)(b) and (8)(a) of CPA deposed by Warrant Officer M van Heerden (Exhibit “L”) who, on 11 January 2016, received evidence bag PAD001304257 from the administration

component containing inter alia the forensic evidence collected by Dr Mabaso, being, one swab guard box protector containing one sealed swab box with reference number 14D1AB9071 and marked “Cervix”. During the course of her official duties and examination of the exhibits she discovered and detected possible semen on 3 of the swabs collected by Dr Mabaso.

20.3 An affidavit in terms of the provisions of Section 212 (8)(a) of the CPA deposited to by the administration clerk, R L Booysen (Exhibit “M”), who on 15 October 2015 received a sealed evidence bag with reference number PAB 000167818 marked Harrismith CAS 35/10/2015 from Warrant Officer Clarke. The sealed bag was handed over to the administration component at the laboratory. No breaking of the seal or examination of the contents of the sealed bag was carried out by Booysen.

20.4 An affidavit in terms of the provisions of Section 212 (4)(a), (6)(a) and (b) and (8)(a) of the CPA deposited to by Warrant Officer Willie Mbombo (Exhibit “N”), who on 23 November 2015 received sealed evidence bag with ref number PAB

000167818 from the administration component of the laboratory. This bag contained several exhibits, inter alia, a duvet cover “A” with reference number PA3000709119, a bedspread marked “C”, reference number PA3000709097 and a sealed bag with ref number PA6001140333D marked “Harrismith CAS 35/10/2015” containing a yellow coloured latex glove. The exhibits were examined and semen were detected, inter alia on the Duvet Cover “A” and the Bedspread “C”.

20.5 An affidavit in terms of the provisions of Section 212 (8)(a) of the CPA deposited to by Werner Kemp, a Senior Administration Clerk at the laboratory who, on 1 June 2016, received a sealed evidence bag with reference number PA5002112160, marked” Harrismith CAS 35/10/2015” from a Warrant Officer MOKONE (Exhibit “I”). No breaking of the seal was carried out by Werner Kemp.

20.6 An affidavit in terms of the provisions of Section 212 (4)(a), (6)(a) and (b) and (8)(a) of the CPA deposited to by Warrant Officer S I Manzini (Exhibit “J”) who, on 14 August 2016, received a sealed evidence bag with reference number

PA5002112160 from the administration component containing a sealed reference sample with reference number 13DBAA2948EP.

[21] During her testimony Captain R C Janse van Rensburg, a senior Forensic Analyst and Reporting Officer of South African Police Service stationed at the Forensic Science Laboratory at Pretoria testified that the DNA results from the following exhibits:

1. Cervix swab “Oats” 14D1AB9071 (PAD001304257)
2. Duvet “A” semen PA3000709119; and
3. Bed spread “C” semen PA3000709097

matches the DNA results from the reference sample [13DBAA2948] (PA5002112160) She concluded that the most conservative occurrence from the DNA results from the exhibits as mentioned above is 1 in 160 million trillion people.

[22] Captain Janse van Rensburg testified that the DNA results of the reference sample [13DBAA2948] (PA5002112160) is read into the DNA mixture result obtained from the glove (PA600114033D). The most conservative occurrence for the DNA result from the glove for all possible contributors to the mixture DNA result is 1 in 80 trillion people.

[23] The State closed its case. The accused elected not to testify. He did not call any witnesses to testify on his behalf and closed his case.

[24] The argument raised on behalf of the appellant is the discrepancy in the testimony of Captain Mokoena that he delivered the sealed forensic evidence bags at the laboratory at Pretoria, whereas Warrant Officer Teepa testified that he handed the forensic evidence collected at the crime scene, packed and contained in sealed evidence bag PAB 000167818 to Warrant Officer Clarke who delivered same to the laboratory.

[25] The admission of forensic evidence in the form of a section 212 affidavit is subject to the provisions and prerequisites of sub-sections 212(4)(a), 212(6) and 212(8)(a) of the CPA. In respect of the section 212 affidavit deposed to by R L Booysen the applicable provisions of subsection 212(8)(a) provide as follows:

"In criminal proceedings in which the receipt, custody, packing, marking, delivery or despatch of any fingerprint or palm-print, article of clothing, specimen, specimen (as defined in section 1 of the Anatomical Donations and Post-Mortem Examinations Act, 1970 (Act 24 of 1970), or any object of whatever nature is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges –

(i) That he is in the service of the State or is in the service of or is attached to the South African Institute for Medical Research, any university in the Republic or anybody designated by the Minister under subsection (4);

(ii) That he in the performance of his duties –

(aa) received from any person, institute, State department or body specified in the affidavit, a fingerprint or palm-print, article of clothing, specimen, tissue or object described in the affidavit, which was packed or marked or, as the case may be, which he packed and marked in the manner described in the affidavit;

(bb) delivered or despatched to any person, institute, State department or body specified in the affidavit, a fingerprint or palm-print, article of clothing, specimen, tissue or object described in the affidavit, which was packed or marked or, as the case may be, which he packed or marked in the manner described in the affidavit-fee) during a period specified in the affidavit, had a fingerprint or palm-print, article of clothing, specimen, tissue or object described in the affidavit in his custody, which was packed or marked in the manner described in the affidavit, Shall upon the mere production thereof at such proceedings, be prima facie proof of the matter so alleged:"

[26] It is evident from R L Booysens's section 212 affidavit that he is in the service of the State, attached to the Biology section, at the case reception section of the Forensic Science Laboratory and that he received one sealed evidence sealing bag with reference number PAB000167818 marked "Harrismith CAS 35/10/2015" from Warrant Officer L B Clarke on 15 October 2015. The bag was sealed and no breaking of the seal occurred while he handled the bag. He handed the sealed bag to the administration component at the said laboratory.

[27] The contents of the section 212 affidavit deposed to by Willie Mbombo furthermore complies with the provisions of the subsection 212(4)(a) which reads as follows:

"Whenever any fact established by any examination or process requiring any skill -(i) In biology, chemistry, physics, geography or geology; is or may become relevant to the issue at criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he or she is in the service of the State..., and that he or she has established such fact by means of such examination or process, shall, upon its mere production at such proceedings be prima facie proof of such fact:"

[28] Sub-section 212 (8)(a)(ii)(aa) deal with the receipt of the exhibits by the deponent to the statement. Sub-section 212(8)(a)(ii)(bb) deals with the delivery or dispatch of the exhibits by the deponent. Custody of the exhibits by the deponent to the statement is dealt with in sub-section 212(8)(a)(ii)(cc). From the contents of the section 212 affidavit deposed to by Willie Mbombo it is evident that same complies with the provisions of the above sub-sections.

[29] I am satisfied that the prosecution presented prima facie evidence regarding the custody of the relevant exhibits referred to in the section 212 affidavit deposed to by Willie Mbombo. The State presented the evidence of Warrant Officer Teepa regarding the gathering, packing and safe keeping of the exhibits in the strong room at the police station and delivery of the forensic evidence to Warrant Officer Clarke. From the contents of the section 212 affidavits deposed to by Booysen and Willie Mbombo, who broke the sealed evidence bag with reference number PAB 000167818, it is evident that the sealed an untampered evidence bag arrived and was received from Warrant Officer Clarke at the laboratory on 15 October

2015. The appellant failed to adduce evidence to rebut the prima facie proof.

[30] The further point raised by the appellant is the chain of evidence pertaining to the DNA reference sample obtained from the appellant, marked 13DBAA2948TF. The State presented the evidence of Warrant Officer Matile who accompanied Captain Mokoena on 14 November 2015 when the buccal swabs of the appellant was obtained and sealed. Captain Mokoena confirmed Warrant Officer Matile's testimony. The evidence presented in this regard was challenged by the appellant during the trial in that the sample was taken by Captain Mokoena and not by Warrant Officer Matile and not that no swabs were taken.

[31] The sample taken from the appellant was kept in the strong room at the police station at Harrismith under entry number 1196 in the SAP 13 register on 14 November 2015. The point taken on behalf of the appellant is that the State failed to present evidence regarding the delivery of the sample taken from the appellant to the laboratory at Pretoria. Captain Mokoena testified that he delivered the forensic exhibits to the receptionist at the laboratory. However, from the contents of the section 212 affidavit of Werner Kemp the specific sealed evidence bag with reference number PA5002112166 was received on 1 June 2016 from Warrant Officer Mokone. The prosecution did not present any evidence in this regard.

- [32] Sealed evidence bag PA50021166 was not opened by Werner Kemp and merely received and handed over to the administration component at the laboratory. It is evident that either Captain Mokoena delivered the bag himself and that a misnomer occurred when Werner Kemp compiled his affidavit or that Captain Mokoena made a bona fide mistake when he testified during 2020, approximately 5 years after the incident, and that the evidence bag was indeed delivered by a certain Warrant Officer Mokone. I further take cognisance of the evidence presented during the trial that the rank of Captain Mokoena at the time of the incident, was that of a Warrant Officer.
- [33] The Appellate Division held in *S v Veldthuizen*[4] and *R v Chizah*[5] that the mere challenging of the evidence will not be sufficient to affect the evidential value of prima facie proof. An accused challenging prima facie proof will be obliged to lay a basis for contesting such evidence. There is no proof that the buccal samples obtained from the appellant or any of the other evidential forensic samples and exhibits had been tampered with. The State presented prima facie evidence pertaining to the gathering of the buccal samples from the appellant, the gathering, packing, marking, sealing and storing of the exhibits from the crime scene. The same applies in respect of the forensic evidence obtained during the medico legal examination of the complainant by Dr Mabaso. The prima facie evidence presented during the trial is that the forensic evidence and exhibits were received by Werner Kemp, Selina Ntuli

as well as Booysen, sealed and bore the same seal number as that which had been placed on it by the police officers who collected the evidential material and by the medical doctor.[6]

- [34] I agree with the submission by Mr Bontes that no foundation was laid by the appellant that the evidential material may have been contaminated. The section 212 affidavits submitted are conclusive proof of the lack of any interference or contamination. The evidence by Mr Khoza furthermore links the appellant to the crime. The appellant gave the complainant's cell phone to Mr Khoza during the same month, October 2015, when the crime was committed. Where an accused is faced with credible evidence and he decides not to testify, he leaves the prima facie case to speak for itself. In *S v Chabalala*[7] the Supreme Court of Appeal held as follows:

"The appellant was faced with direct and apparently credible evidence which made him prime mover in the offence. He was also called on to answer evidence of a similar nature relating to the parade ... To have remained silent in the face of the evidence was damning. He thereby left the prima facie case to speak for itself. One is bound to conclude that the totality of the evidence taken in conjunction with his silence excluded any reasonable doubt about his guilt".

- [35] No explanation was given how it was possible that the appellant's DNA was found on the swab taken from the cervix of the complainant, the duvet and bed spread from her bed and also on the yellow plastic glove which was used as a condom when she was raped. Accordingly, a very heavy burden was created against the appellant by the evidence presented by the State. This heavy burden was not relieved in any way by the silence of the appellant.
- [36] On a conspectus of all the evidence presented, a prima facie case has been made out against the appellant. In the absence of an explanation by the appellant, the evidence presented by the State became proof beyond reasonable doubt. The conviction of the appellant was based on the factual findings of the trial court. In *Mkhize v S*,^[8] Mocumie AJA held:
- "The approach to be adopted by a court of appeal when it deals with the factual findings of a trial court is trite. A court of appeal will not disturb the factual findings of a trial court unless the latter had committed a material 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. This court in S v Naidoo & others^[9] reiterated this principle as follows: 'In the final analysis, a Court of appeal does not overturn a trial Court's findings of fact unless they are shown to be vitiated by material misdirection or are shown by the record to be wrong.'"*
- [37] There was no material misdirection and the findings of fact were correct. I am convinced that the appeal against each of the convictions should fail.
- [38] The appellant's personal circumstances were placed on record during his legal representative's address on sentencing. He was 27 years of age at the time of sentencing. He was not married and has one minor child, aged 6 at the time of sentencing. His highest scholastic qualification is Grade 9. Prior to his arrest he received a total monthly income of R3 000, 00. He admitted one previous conviction, that of assault with the intent to do grievous bodily harm and was sentenced to 12 months' imprisonment. He was sentenced to 15 years imprisonment in respect of the robbery charge and life imprisonment in respect of the rape charge.
- [39] On behalf of the respondent it was argued that the sentencing court considered all the relevant mitigating factors of the appellant in assessing the appropriate sentence. There is nothing compelling and substantial about the appellant's personal circumstances whether taken individually or cumulatively.
- [40] Before it imposes a prescribed sentence, it is incumbent upon a court in every case, to assess, upon a consideration of all the circumstances of the particular case, whether the prescribed sentence is indeed proportionate to the particular offence.^[10] The determinative test set out in *S v Malgas*,^[11] is whether or not when the circumstances of a particular matter are considered, "the prescribed sentence would be rendered unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice will be done by imposing that sentence".^[12]

- [41] The complainant testified in aggravation of sentence and placed on record the financial damages sustained due to the loss of her property as a result of the robbery. She furthermore explained the immense trauma suffered as a result of the attack, assault and rape by the two perpetrators. She testified that she believed that death was immanent at every stage during the horrific ordeal and that she was confused for a period of two months subsequent to the attack perpetrated upon her during October 2015.
- [42] The complainant testified that she realised that she had been watched by her attackers prior to the incident and since the incident she struggled to feel safe and secure notwithstanding several endeavours to improve security measures on the farm. She feels vulnerable and received specialist treatment from a psychologist while also taking antidepressants.
- [43] From the J88, handed in as an exhibit during the trial, it is evident that there were numerous serious injuries and burn wounds to

her face, left breast, her torso and legs as well as a stab wound to her left shoulder. The complainant did not suffer from injuries to the vaginal area. There is no doubt that the offence forming the subject of this appeal is a serious and appalling crime inflicting severe suffering on the complainant.

- [44] I am therefore not persuaded that the appellant's personal circumstances meet the threshold of substantial and compelling circumstances as provided for in Section 51(3)(a) of the Act. The appeal ought to be dismissed. I accordingly propose the following order:

ORDER:

1. The appeal against the convictions and sentences is dismissed.

I VAN RHYN, J

I concur and it is so ordered:

N S DANISO, J

On behalf of the appellant: Ms. V Abrahams Instructed by: Legal Aid SA Bloemfontein
On behalf of the respondent: Adv. D. W. Bontes Instructed by: Director: Public Prosecutions Bloemfontein

- [1] Act 32 of 2007.
- [2] Act 105 of 1997.
- [3] Act 51 of 1977.
- [4] 1982 (3) SA 413 (A).
- [5] 1960(1) SA 435 AD (at 442 C-G).
- [6] S v Boyce 1990 (1) SACR 13 (T).
- [7] 2003 (1) SACR 134 (SCA) at para 21.

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- [8] Mkhize v S (16/2013) [2014] ZASCA 52 (14 April 2014) at para 14 (Maya, Shongwe, Willis and Saldulker JJA concurring).
- [9] S v Naidoo & Others 2003 (1) SACR 347 para 26.
- [10] S v Vilakazi 2009 (1) SACR 552 (SCA) at [15].
- [11] 2001 (1) SACR 469 (SCA).
- [12] See S v MM: S v .JS: S v JV 2011 (1) SACR 510 (GNP) at [18].
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