

SOUTH AFRICA / JUDGMENT

Mokoena v S (A319/22) [2023] ZAGPPHC 1904 (1 November 2023)

[2023] ZAGPPHC 1904

COURT

North Gauteng High Court, Pretoria

BEFORE

T.P. Bokako, L Retief

CASE / FILE NUMBER

A319/22

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THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Case

no: A319/22

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

DATE: 1/11/23

SIGNATURE

In the matters between:

SIFISO JUSTICE
MOKOENA
APPELLANT
and
THE
STATE
RESPONDENT

JUDGEMENT

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to Parties their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be 1 November 2023.

BOKAKO AJ (RETIEF J CONCURRING)

INTRODUCTION

1. The appellant is appealing against the conviction and sentence. He was convicted in the Benoni Regional Court on a count of rape in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 ("SORMA"). The appellant pleaded not guilty to the charge of rape preferred against him but admitted he had consensual sex with the complainant. On 25 May 2021, he was convicted as charged and subsequently sentenced to life imprisonment on 8 October 2021. The appellant has an automatic right of appeal under life imprisonment imposed in the Regional Court. The Respondent opposed his this applicant.

Preliminary Issue

2. Initially, the appellant raised a preliminary issue regarding an incomplete record. Such was subsequently resolved. The additional portion of the record was since received and uploaded to Case-lines. This court is satisfied that the record is complete.

Grounds of Appeal

3. The appellant contends that the State did not prove its case beyond a reasonable doubt. It failed to apply cautionary rules to single witnesses, nor did it attach enough weight to the contradictions and improbabilities in the State's case, particularly the complainant's evidence.
4. Further, the sentence imposed is shocking and disproportionate to the facts of the case; the learned Magistrate also over-emphasized the seriousness of the offense and the interests of society by failing to consider the prospects of rehabilitation and by finding that the minimum sentence of life imprisonment is applicable.

RELEVANT BACKGROUND FACTS AND EVIDENCE LEADING TO THE CONVICTION AND SENTENCE

5. The complete background facts were comprehensively set out by the court a quo, which we adopt and briefly repeat. The charges against the appellant originate from an incident dated 14 September 2019. The complainant gave a detailed description of the sexual assault; she testified that she was 15 when this incident occurred.

6. At approximately 19h00 and in aunt's company, the complaint came across Brian and Ashley, young men with whom she was acquainted. Brian and Ashley intended to accompany them both home.
7. Along the way, and without provocation, the appellant and his companion accosted the complainant and her aunt. The appellant slapped the complainant on her face for no apparent reason and started pulling her.
8. Brian enquired what the appellant was doing, upon which the appellant and his companion pulled out what appeared to be okapi knives and threatened both Brian and Ashley. They both fled the scene. Whereafter, the appellant and his companion, with force, took the complainant and her aunt against their will to the appellant's home. Upon arrival, the appellant took the complainant to his bedroom while the appellant's companion and her aunt stayed behind in the dining room. The appellant and his companion exchanged words regarding a request for condoms.
9. The appellant undressed, directed his attention to the complainant, and instructed her to undress. She refused, and the appellant started forcefully undressing her and tearing her t-shirt and stockings. He then threw her on the bed and ordered her to open her legs and hit her on her thighs. The appellant penetrated the complainant, and she tried to push him away. At the time, she was a virgin and informed the appellant of the fact.
10. Undeterred, the appellant had intercourse with the complainant. The complainant said the penetration was forceful and painful, and she bled.
11. After the incident, the appellant was crying and left on the bed. In the morning, till the following day when she returned home.
12. The complainant reported the incident to her mother and subsequently went to the police to report the incident. She was then taken to Far East Rand Hospital, where Dr. Ndugwa examined her.
13. The complainant's mother confirmed that her daughter insisted she had been raped.
14. Dr Ndugwa also testified. She stated that she saw the complainant on 17 September 2019 around 17h00. She further testified about a J88 medical report that she compiled, confirming that upon examination of the complainant that upon examination of the complainant, the following was noted and was apparent:
 - 14.1. The complainant's history was not as not sexually active
 - 14.2. That the complainant had been penetrated:
 - 14.3. The presence of abnormal findings were that the complainant's clitoris, as well as the frenulum to the clitoris, were all tender, and there was a superficial tear at the posterior fourchette; the hymen was swollen and tender and presented with a fresh tear at seven o'clock. Such findings concluded that the penetration was with force and not consensual.

15. Dr Ndugwa's evidence corroborated the complainant's evidence that she was a virgin, she had endured sexual penetration without her consent, and that it was painful. Dr Ndugwa's evidence was not disturbed during cross-examination: on the contrary, it amplified her evidence in chief.

APPELLANT'S

SUBMISSIONS

16. It is the appellant's submission that the learned Magistrate misdirected himself in finding that the evidence presented could be relied upon to convict him on the count brought against him. He points out that the State carries the onus to prove his guilt beyond a reasonable doubt. It was submitted that the State must exclude all reasonable possibilities other than those consistent with the accused's guilt.
17. It was further submitted that even though he referred to cautionary rules and certain safeguards that he found, the Regional Magistrate needed to correctly apply the relevant cautionary rules applicable, to wit, the cautionary rule about single witnesses.
18. From the onset, it ought to be pointed out that the Magistrate did consider cautionary guidelines when considering the evidence of the single child witness. I am satisfied that the child could recall the incident and what followed with sufficient clarity and adequate observation. She gave evidence of the crime of rape with maturity and composure; despite her young age and the trauma that she experienced, her evidence was clear and satisfactory, and where there were some inconsistencies, it was not material to the case.
19. The Magistrate then concluded by saying the appellant corroborated the evidence of the complainant to a certain extent; the fact that the complainant immediately made a report to her mother shows consistency and evidence of Dr. Ngudla, who noted various gynecological injuries to the genitalia of the complainant which can be ascribed to having forceful sexual intercourse. The court a quo concluded that it could not find any improbabilities and discrepancies in the complainant's evidence.
20. Cautionary rules are rules of practice and must be followed whenever evidence of certain witnesses gets evaluated, emphasizing that cautionary evidence that practice has taught should be viewed with suspicion and, secondly, that the court should seek some or other safeguards reducing the risk of a wrong finding based on the suspect evidence.
21. Counsel for the appellant further submitted on behalf of the appellant that the medical evidence does not corroborate with the complainant's version. It only affirms that recent penetration occurred, contending that the medical report does not any external injuries consistent with assault. Further submitted that the complainant's testimony was not clear and satisfactory in every material respect and that the court could not have relied on her evidence.

22. Further contending that the two young men, Brian and Ashley, were not called by the State Prosecutor to corroborate the complainant's version regarding the incident when the appellant and his companion confronted the complainant and her aunt. It was then submitted that the absence of evidence by these witnesses gives credence to the appellants' version to the effect that the incident did not unfold in the manner the complainant testified. Besides, there is an explanation by the State regarding why these witnesses were not called to testify. They could not be traced.
23. It is trite that the onus is on the State to prove the case against the accused beyond reasonable doubt. Finally, it was submitted on behalf of the appellant that failure to call relevant witnesses should lead to an adverse inference against the State. It was also submitted that the State did not place reliable evidence before the court to prove the appellant's guilt beyond reasonable doubt.

ANALYSIS

OF EVIDENCE

Ad Conviction

24. The issue for determination before this court is whether the appellant was properly convicted and sentence on the evidence of a single witness.
25. *R v Dhlumayo*[1] clarifies that a court of appeal will only be willing to interfere with the trial court's evaluation of oral evidence if misdirection occurs. The trial court has the advantage of seeing and hearing witnesses, which is not the case in the appellate court will only be hesitant to interfere if there is a misdirection in applying the law to the facts, in which case the appellant court will interfere. This court thus needs to consider whether there is such a misdirection.
26. The evidence in this case was based on the evidence of a single witness, the complainant. Apart from being a single witness to the act of rape, the complainant was a girl child aged 15 years at the time of the incident.
27. The appellant claims that he had consensual sexual intercourse with the complainant. It is important to note that the complainant was unfamiliar with the appellant. She barely knew him, only by sight at school, and they never spoke to one another. She was not dating him and had no reason to consent to sexual intercourse with the appellant.
28. According to Section 208 of the Criminal Procedure Act 51 of 1977, the court can accept such evidence if it is satisfactory. To ensure that the evidence of a child and single witness can be relied upon as provided in s 208 of the CPA,[2] the court stated in *Woji v Santam Insurance Co Ltd.*[3] That a court must be satisfied that their evidence is trustworthy, it noted factors that courts must consider to conclude that the evidence is reliable without creating a closed list. In this regard, the court held:

“Trustworthiness...depends on factors such as the child’s power of observation, his power of recollection, and his power of narration on the specific matter to be testified. . . . His capacity to for observation will depend on whether he appears” intelligent enough to observe.” Whether he has the capacity of recollection will depend again on whether he has sufficient years of discretion “ to remember what occurs,” while the capacity of narration or communication raises the question of whether the child has the “capacity to understand the questions put, and to frame and express intelligent answers.”

29. Applying the Woji principles to this case, the court found that the evidence of the complainant was trustworthy and, thus, supported by evidence of the mother and medical doctor satisfactory beyond reasonable doubt.
30. Despite her young age, the complainant informed the court that she was very disturbed by the fact that she was raped as the complaint was still a virgin and did not plan to lose her virginity that way as she still wanted a ritual to be performed.
31. The complainant immediately, the next day after the incident, reported to her mother about the rape incident, and her evidence was consistent to the extent that it was supported by independent medical evidence set out in the J88 form and the report she made to her mother. The medical doctor who examined the complainant noted that there was penetration of the hymen further noted various gynecological injuries to the genitalia of the complainant, which can be described as having forceful sexual intercourse.
32. However, according to the doctor’s evidence, she did not observe any external physical injuries, as contended by the complainant in that she was assaulted, slapped and dragged on the street. This court agrees with the trial court that discrepancies in her evidence on external physical injuries are not a material misdirection. The complainant’s evidence was satisfactory in all material respects.
33. Coming to the appellant’s version. It is trite that the proper approach to evidence is to look at it holistically to determine whether the accused’s guilt has been proven beyond reasonable doubt.
34. This approach was reaffirmed by this court in *Tshiki v S*.^[4] As follows: ‘In a criminal trial, a court’s approach in assessing evidence is to weigh up all the elements that point towards the guilt of the accused against all that which is indicative of their innocence taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and having done so, to decide whether the balance weighs so heavily in favor of the State as to exclude any reasonable doubt around the accused’s guilt.
35. There are improbabilities in the appellant’s version in general and, in particular, the consensual sexual intercourse aspect. The appellant’s contentions that he proposed to the complainant, which she accepted and that led to sexual intercourse, is a fallacy. The complainant denied the appellant’s contentions. The complainant was a 15-year-old child; it is highly improbable that she could have consented to have sexual intercourse with the appellant. He informed the court that he knew the complainant from school as he was

selling cakes; the complainant was one of his customers and had never had a conversation with her.

36. The appellant stated during cross-examination that when he met the complainant on the day in question, it was by accident, and he had never spoken to her. She was a stranger to him, and he did not know why she voluntarily consented to having sex with him. The appellant cannot be described as a credible witness; it is highly improbable the complainant would be willing to go with the appellant to his place, hardly knowing him, and end up having consented to sexual intercourse with him at the age of 15 years and is keen and committed to preserving her virginity. If that is the case in that she consented to having sexual intercourse, why would she then report the matter to her aunt, mother, police, and the doctor.
37. The trial court correctly found him to be a poor and evasive witness. The appellant's version had discrepancies, inconsistencies, and improbabilities. The appellant said he saw the complainant at the shop with another lady and two males; upon approaching them, the two males decided to run off for no apparent reason. Even though the complainant informed him that the two males were tenants in her residence, he threatened Ashley and Brian. He further denied that he and his friend had knives, which is contrary to what was submitted by the complainant. She further told the court that the two males ran away because the appellant and his friend confronted them with knives. The trial court was correct to accept the complainant's evidence as satisfactory in all material respects.
38. Brian and Ashely, the two males in the company of the complainant and the aunt, were never called as witnesses. Given what happened inside the appellant's house, Brian and Ashely would not have assisted the court. Both the complainant and the appellant approached the complainant, Ashely and Brian ran away. This court does find that court a quo correctly rejected the appellant's testimony, as it was fraught with improbabilities and inconsistencies.
39. I agree with the trial court that the discrepancies in her evidence regarding assaults, whether the appellant assaulted her or not, are irrelevant and immaterial. The fact of the matter is that the appellant raped the complainant.
40. Thus, I find no basis for concluding that the State did not discharge the onus of proving the appellant's guilt beyond a reasonable doubt or that the Magistrate erred in her finding. This court can therefore see no reason to interfere with the trial court's determination on the conviction.
41. Concerning the totality of evidence tendered, this court finds that there was no misdirection, which justifies the interference regarding the appellant's conviction as charged, and that the appeal against the conviction ought to be dismissed.

Ad Sentence

42. I now turn to the question of sentence. The Legislature of life imprisonment prescribed the punishment imposed by the regional court as it found that the appellant raped the complainant and was under the age of 18 years. When setting out minimum sentencing for certain offenses, ‘the Legislature aimed at ensuring a severe, standardized, and consistent response from the courts to commission such crimes unless there were, and could be seen to be, compelling, substantial and convincing reasons for a different

determination.

43. As for the sentencing, the appellant submits that the sentence of life is harsh disproportionate, and unjust under the circumstances and induces a sense of shock. The court further erred in finding that there are no substantial and compelling circumstances and that the appellant’s personal circumstances and the circumstances cumulatively constitute substantial and compelling circumstances.
44. The rape of a child below 18 carries a minimum sentence of life imprisonment. “Substantial and compelling circumstances[5] must be present for a court to depart from the prescribed measure[6].
45. The prescribed sentence is the point of departure – the court starts the sentencing process with legislatively specified periods of imprisonment. The assumption is that these sentences are ordinarily appropriate[7] and should not be lightly departed from. These minimum sentences are meant to send out a strong message that there are certain crimes that society finds so repugnant that lenient sentences will not be tolerated. The accused must prove that “substantial and

compelling circumstances” are present. *S v Malgas*[8], the locus classicus on the interpretation of “substantial and compelling circumstances”. stated that only the factors

traditionally considered when an appropriate sentence is determined cumulatively justify a departure from the statutorily prescribed

minimum should a court consider imposing a lesser sentence.[9] Said the court: “Substantial and compelling circumstances” may arise from a number of factors considered together- taken one by one, these factors need not be exceptional. If the sentencing court considers all the circumstances and is satisfied that the prescribed sentence would be unjust, as it would be “disproportionate to the crime, the criminal, and the needs of society,” a court may impose a lesser sentence.

46. Regarding sentence, it is trite that a court of appeal will only interfere with the sentence imposed by the trial court where the punishment imposed is disturbingly inappropriate or out of proportion to the magnitude of the offense or where it is sufficiently disparate or is vitiated by misdirection, illustrating that the trial court exercised its discretion unreasonably or is otherwise such that no reasonable court would have imposed it.

47. At the commencement of the trial proceedings, as per the record, the State invoked the provisions of sections 51(1) and (2) of the Criminal Law Amendment Act 105 of 1997. To that end, the State seeks for the imposition of the minimum sentence of life legislation, and he confirmed that he understood the relevant provisions of minimum sentence.
48. When the court is imposing a sentence, even when a prescribed minimum sentence of life imprisonment. The trial court advised the accused about the minimum sentence legislation, and he confirmed that he understood the relevant provisions of the minimum sentence.
49. This is achieved by consideration of, and an appropriate balancing of, the well-known case of *S v Zinn*.^[10] described as a ‘triad consisting of the crime, the offender, and the interest of society^[11]’.
50. In considering whether the sentence imposed upon the appellant is appropriate, one must bear the appellant's circumstances in mind. The appellant was approximately 22 years of age at the time of the offense and 24 years old at the imposition of sentence. He was single with no dependents and unemployed. He left school after failing grade 10. The appellant was a first offender.
51. During the sentencing proceedings, counsel for the appellant argued that substantial and compelling circumstances could be found in that appellant was a youth, 22 years old, and a first offender. Further contending that the minimum sentence of life imprisonment is the harshest sentence possible under our law.
52. In his written heads of argument, counsel for the appellant submitted that the cumulative effect of the appellant's personal circumstances should be regarded and treated as substantial and compelling circumstances. Those personal circumstances are the following: he was 22 years old at the time of his conviction and sentence, he was a first offender, he was self-employed selling cakes, and his highest level of education was grade 9. Counsel for the appellant's circumstances.
53. In this case, the appellant took advantage and forced himself onto the complainant since the aunt was also helpless and unable to rescue her, and both were not familiar with the area. The complainant was a 15-year-old virgin, committed to preserving her virginity, with the hope that one day she would proudly celebrate her preservation, and such a dream was taken away from her by the appellant.
54. It is important to note that rape is a grave offense, constituting, as it does, a humiliating, degrading, and brutal invasion of the privacy, the dignity of the victim. The rights to dignity, privacy, and integrity of every person are essential to the ethos of the Constitution and any defensible civilization. Women in this country are entitled to the protection of these rights.
55. The complainant, the aunt, Ashley, and Brian were strolling peacefully until their piece was brutally cut short by the appellant and his companion, even leading to a situation where the complainant lost her virginity.

56. The facts of this case demonstrate that the appellant wrongly had a sense of entitlement. He felt he owned and possesses the complainant; he locked her in all night and hid keys in his pocket. His violent behavior suggests male control over vulnerable young women. It is indicative that his sexual violence asserts his masculinity and power.
57. The complainant was forced to go with him. She was emotionally tortured for a prolonged period while locked in the appellant's bedroom. She was only released the following morning. This court does not doubt that the complainant suffered grievous bodily harm. She was extremely fortunate to have survived this ordeal, given that the appellant had a knife.
58. In its judgment on the sentence, the trial court considered two reports: a victim impact statement concerning the complainant to reflect her voice in proceedings that affect her directly and a pre-sentence report concerning the appellant. Both reports were handed in as exhibits in court per agreement.
59. The essence of the victim impact report, as stated by the social worker, is that the rape had impacted negatively on the complainant to the extent that her school performance dropped. She was withdrawn. The complainant and her mother were deeply hurt, emotionally scarred, confused, and hopeless due to the rape. The social worker further reports that the sexual assault has caused the complainant and her family to live in extreme fear.
60. This court is unable to speculate how long the trauma will last. The complainant reported to have stress symptoms, such as sadness and sleep disturbances. She is said to have lost trust. Undeniably, the family and the complainant were extraordinarily hurt and traumatized due to the unthinkable conduct of the appellant; he has not tendered any apology for this monstrous crime. The mother of the complainant also testified regarding the impact of the rape on the family and the complainant.
61. The fact that the offense was committed against an innocent, defenseless fifteen-year-old girl aggravates the crime. The Legislature has singled out the rape of children as a serious offense that warrants a minimum sentence of imprisonment. This demonstrates the extent to which the society views this type of offense.
62. It is so that the appellant was relatively young and a first offender, which increases his prospects of being rehabilitated. In dealing with serious and violent crimes, retribution and deterrence, however, overshadow rehabilitation. Sight cannot, however, be lost that the appellant was 22 years old and a first offender, which increases his prospects of being rehabilitated.
63. It seems from the record.[12] in arriving at the conclusion of an absence of substantial and compelling circumstances, the learned Magistrate misdirected herself by searching for factors out of the ordinary.

64. The learned Magistrate stated as follows: “Having regard to what was placed before me, it appears that the age of the accused in other circumstances may have been considered to be substantial and compelling, but that is the only mitigating factor in this instance that he was 22 years at the time of the commission of the offense. His relatively young age, however, is negated by the facts of his matter. When considering all the factors as a whole, the court finds that there are indeed no substantial and compelling circumstances present in this matter which would render the court in a position to depart from the imposition of the minimum sentence.”
65. During sentencing, circumstances to be considered include those factors traditionally considered in sentencing, both mitigating and aggravating. But none of these need to be out of the ordinary. It is also important to note that it was not only the age of the appellant that was said to be substantial, counsel for the appellant also submitted that the appellant was a first offender, and the Magistrate did not take heed of this submission.
66. As for the argument that the appellant has no previous convictions, there is no provision for treating first-time offenders differently in cases involving the rape of a girl under the age of 16. In *S v M*, the court, in line with other matters dealing with a departure of the minimum sentence, stated that a previously clean criminal record can be considered when determining whether there are “substantial and compelling circumstances” present, but warned that this is merely one of the considerations to take into account in conjunction with other facts.
67. This constitutes a material misdirection justifying interference. The sentence of life imprisonment is the most serious that can be imposed. It effectively denies the appellant the possibility of rehabilitation. Moreover, the mitigatory factors above are not speculative or flimsy, mainly when considered cumulatively. Given the aggravating and mitigating factors in this matter, while being conscious that the Legislature has ordained life imprisonment, the prescribed sentence of life imprisonment is disproportionate and unjust.
68. The learned Magistrate suggests that “the appellant’s behavior does not belong in a civilized society and that the offender of this kind should not received any sympathy.”[13]
69. The appellant must, of course, be suitably punished, and society demands this of our courts. At the same time, the imposition of the sentence should not be likened to taking revenge. However, it should be the culmination of a process, having proper regard to the personal circumstances of the appellant, the nature of the offense, and the interests of society, mindful all the while of the sentence that the Legislature has considered appropriate for the rape of a child under the age of 16 years.
70. In *S v Malgas*[14], the ‘determinative test’ espoused by the Supreme Court of Appeal, which the Constitutional Court in *S v Dodo* endorsed,[15] for when the prescribed sentence may be departed from was expressed as follows:

‘If the sentencing court, on consideration of the circumstances of the particular case, is satisfied that they render the prescribed

sentence unjust in that it would be disproportionate to the crime, the criminal, and the needs of society so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.’

71. This court is persuaded that there are substantial and compelling reasons based on which to deviate from the imposition of the prescribed minimum sentence. Therefore, it is concluded that the trial court was incorrect in imposing the maximum sentence.

Conclusion

72. For the reasons stated above, life imprisonment is unjust and disproportionate. However, a lengthy sentence in prison is warranted. I consider that a period of 25 years imprisonment is justified and will send a message to the community that rape, and especially the rape of a young girl, will be visited with severe punishment.

Order

In the result, the following orders are proposed:

1. The appeal against conviction is dismissed
2. The appeal against the sentence is upheld
3. The sentence imposed by the regional court is set aside and substituted with a sentence of 25 years’ imprisonment.
4. The sentence is antedated to 8 October 2021, in terms of section 282 of the Criminal Procedure Act 51 of 1977.

T.P. BOKAKO

Acting Judge of the High Court

Gauteng Local Division, Pretoria

I agree, and it is ordered.

L RETIEF

Judge of the High Court,

REFERENCE:

1. Section 3 of the Sexual Offences Act, Act 32 of 2007.
2. S v Shackell 2001 (2) SACR 185 SCA
3. S v Mokela 2012 (1) SACR 431 (SCA)

4. S v Govender and Others 2006 (1) SACR 322 (E.C.)
5. Johnston v Road Accident Fund 2001 (1) SA 3047 (C)
6. Miguel 2007 (1) SACR 675 and 678 (C)
7. S v Sauls 1981 (3) SA 172 (A.D.).
8. S v Blauw 1999 (2) SACR 295 (WC).
9. S v Mavundla 2012 (1) SACR 548
10. S v SMM, 2013 (2) SACR 292 (SCA) at para [13]
11. S v Zinn 1969 (2) SA 537 (A) at 540G-H ('Zinn').
12. S v Boshoff, unreported judgment of the Eastern Cape High Court, Makhanda, Case No CA&R390/2012 (27 September 2013) para 19.
13. S v Malgas (2001) ZASCA 30 (A) ('Malgas').

On behalf of the Appellant: Mr Alberts, instructed by Legal Aid On behalf of the Respondent: Mr Shivuri of the office of DPP Date of Hearing: 16 AUGUST 2023 Date of Judgment 1 NOVEMBER 2023

- [1] 1948 (2) SA 677 (A).
- [2] Section 208 of the CPA provides: "An accused may be convicted of any offense on the single evidence of competent witness."
- [3] Woji v Santam Insurance Co Ltd 1987 (1) SA 1020 (A) at 1028B-D. Note the caution courts are advised to take note of when they consider the reliability of a child witness in rape cases: Woji by M Bekink' Defeating the anomaly of the cautionary rule and children's testimony – S v Haupt 2018 (1) SACRE 12 (G.P.).
- [4] Tshiki v S [2020] ZASCA 92 (SCA).
- [5] Section 51 (3) (a)
- [6] Criminal Law Amendment Act 105 of 1997 s 51 (3).
- [7] S v Shaik [2006] ZASCA 105; 2007 (1) SACR 247 (SCA) par 225.
- [8] 2001 (2) SA 1222 (SCA)
- [9] A court was required to spell out and enter on the record the circumstances which it considered justified a refusal to impose the specified sentence. (T)hose circumstances had to be substantial and compelling. Whatever nuances of meaning may lurk in those words, their central thrust seems obvious. The specific sentences were not to be departed from lightly and for flimsy reasons that could not withstand scrutiny. S v Malgas 2001 (2) SA 1222 (SCA).
- [10] S v Zinn 1969 (2) SA 537 (A) at 540G-H ('Zinn').

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- [11] S v Boshoff unreported judgment of the Eastern Cape High Court, Makhanda, Case No CA&R390/2012 para 19.
- [12] Record at 115, lines 1-14:
- [13] Record: page 114, lines 4-9
- [14] S v Malgas 2001 (2) SA 1222 (SCA); [2001] 3 All SA 220 (A) para 25.
- [15] S v Dodo [2001] ZACC 16; 2001 (3) SA 382 (CC); 2001 (5) BCLR 423 (CC) para 11
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