

SOUTH AFRICA / JUDGMENT

Sediane and S (A167/2024) [2025] ZAFSHC 151 (29 May 2025)

[2025] ZAFSHC 151

COURT

Free State High Court, Bloemfontein

BEFORE

Chesiwe, Deane

CASE / FILE NUMBER

A167/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Not

reportable / Reportable

Case

no: A167/2024

In

the matter between

ISAAC

MASHESHEMANE SEDIANE

APPELLANT

and

THE

STATE

RESPONDENT

Neutral

citation: Sediane v S (1167/2024)

[2025] ZAFSHC

Coram:	Chesiwe J et Deane AJ
Heard:	26 May 2025
Delivered:	This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13:00 on 29 May 2025.
Summary:	In looking at whether a trial court erred one must have regard to the record and judgment as a whole. The record demonstrates that the trial court was fully cognisant of the fact that the rape charge was based on single-witness testimony. The judgment of the court a quo clearly reflects that the complainant's evidence was subjected to appropriate scrutiny and that the cautionary rule was appropriately applied in assessing her testimony as a sole witness. While the court may not have explicitly reiterated the standard terminology concerning single-witness testimony, it is evident from the reasoning and findings within the judgment that this principle was duly considered and factored into its determination. The trial court correctly found the evidence of the complainant to be satisfactory in all material respects. ORDER 1 The appeal against both the conviction and sentence is dismissed. 2 The conviction and sentence imposed by the Regional Court on the appellant are confirmed.

JUDGMENT

Deane AJ (Chesiwe J concurring)

Introduction

- [1] This is an appeal against both conviction and sentence as handed down by the regional court magistrate on 16 August 2022, on two counts of rape, read with the provisions of s 51(2) of the Criminal Law Amendment Act 105 of 1997. The appellant, being legally represented at all material times of the trial, was sentenced to 22 years' imprisonment. His petition against conviction and sentence was granted on 27 August 2024.
- [2] The appellant's grounds for challenging his conviction and sentence can be briefly summarised as follows:[1]
- (a) The court was biased towards the appellant and the state did not prove their case beyond a reasonable doubt.

- (b) The court erred in finding that the complainant and the state witnesses were credible witnesses and that there were no material contradictions in their testimony.
 - (c) The court erred in not accepting the version of the appellant and his witnesses and making a negative inference against him and not accepting that evidence as credible.
- [3] The following facts are not in dispute:[2]
- (a) That the complainant and the appellant knew each other for an extended period prior to this incident.
 - (b) The complainant boarded the appellant's car in order to be taken home from the tavern.
 - (c) They eventually ended up at the appellant's place.
 - (d) The appellant engaged in sexual intercourse more than once with the complainant on the day in question.
- [4] What is in dispute is whether the complainant was raped or whether there was consensual sexual intercourse between the appellant and the complainant.

Factual

background

- [5] The complainant and the accused stay in the same area and the two are friends or were friends before the incident. They used to drink together, and the accused is also well known to the complainant's younger sister, F[...]. F[...] testified that they regarded the accused as a brother. On the 7th of December 2020, the accused and the complainant met at a tavern, and they drank together. Together with others at the end of the drinking session, they boarded the accused car and went home. The accused

dropped the others off before heading to the complainant's place. The complainant did not alight, and the accused drove the car to a spot next to the clinic where they engaged in sexual intercourse in the accused's vehicle. Thereafter, the accused started the vehicle, but it stalled. He then sought help from Mabotsane Vinger, who came and assisted in starting the vehicle. The three then left in the car and dropped the complainant off at her home.

- [6] It is not in dispute that on the same night the complainant then told her sister that the accused raped her. She also went to the police to lay charges against the accused.

Ad Conviction

- [7] It is trite law that the onus rests on the state to prove the guilt of the appellant beyond reasonable doubt. If the accused's version is reasonably possibly true, he is entitled to his acquittal.[3]

[8] The guilt of an accused must be proven beyond reasonable doubt.[4] It is also putative that the state bears the onus of proving the guilt of the accused beyond a reasonable doubt. There exists no

burden on the accused to prove his version or his innocence; it only has to be reasonably, possibly true.[5]

[9] In *S v Mbuli*, [6] the Court, making reference to *Moshephi and Others v R* [7] and *S v Hadebe and Others*, [8] held that:

‘The question for determination is whether, in the light of all the evidence adduced at the trial, the guilt of the appellants was established beyond reasonable doubt. The breaking down of a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. But, in doing so, one must guard against a tendency to focus too intently upon the separate and individual part of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in a trial may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood for the trees.’[9]

[10] It is also accepted that a court of appeal will be extremely reticent to interfere with the credibility findings of the trial court as well as the evaluation of the oral testimony, given the better position of the trial court in hearing and appraising the evidence of the witnesses. It will, however, interfere if it is convinced that the credibility findings made by the trial court are patently

incorrect.[10]

[11] It is further trite law that the evidence of a single witness must be approached and evaluated with the necessary caution.[11] However, the exercise of such caution should and ought not to displace the exercise of common sense.[12] All the contradictions, inconsistencies and probabilities must be weighed up to arrive at a conclusion that the state has proven its case beyond a reasonable doubt.

[12] In casu, the appellant does not agree with the courts finding that the complainant reported the matter as soon as possible and went to the police. He further does not agree that the complainant’s version was corroborated by the version given to her sister and the nurse who filed the J88 report. The appellant also does not agree that there was no material contradictions between these witnesses and that the judgment does not discuss the contradictions of these witnesses.

[13] It is important to note that the appellant's version and defence were premised on the assertion that sexual intercourse did occur between him and the complainant, but that it was consensual. Given the conflicting accounts presented before the court, a credibility assessment was required to determine which version to accept, taking into consideration the totality of the evidence.

[14] A reading of the judgment clearly shows that the court a quo properly assessed all the evidence placed before it, and the court found that the independent evidence of the medical examiner corroborated the complainant's version. The court also found that the complainant's version was corroborated by her sister and that

the sister's testimony was not biased, but factual in nature. The court also found that the explanation of the appellant as to how and why the injuries of the complainant occurred were improbable.[13] It was the appellant's version that the complainant's bruises were old and that she bruised easily, but the medical

examiner found that the bruises were fresh bruises.

[15] It is also noted that a careful examination of the record demonstrates that the trial court was fully cognisant of the fact that the rape charge was based on single-witness testimony. The judgment of the court a quo clearly reflects that the complainant's evidence was subjected to appropriate scrutiny and that the cautionary rule was appropriately applied in assessing her testimony as a sole witness. While the court may not have explicitly reiterated the standard terminology concerning single-witness testimony, it is evident from the reasoning and findings within the judgment that this principle was duly considered and factored into its determination.

[16] The trial court correctly found the evidence of the complainant to be satisfactory in all material respects. A conspectus of the record reveals that the complainant indeed presented a coherent and cogent account of events. Her evidence was forthcoming, and she did not deviate from her version in any way.[14] The court also found that the complainant had no reason to falsely incriminate the appellant.[15] The court found that the complainant testified that she had been drinking before she met the appellant and went on to drink with the appellant. The court found that the complainant 'did not paint a bad picture of the accused, and she did not paint a good one of herself. So, the question, as I indicated is, why if she had consensual intercourse with the accused would she now falsely implicate . . . him? From the evidence, accused was unable to answer this question'.[16]

[17] Furthermore, notwithstanding the contradiction that existed between her testimony and in her statement to the police or any omission in her testimony, the trial court correctly found it to be immaterial having regard to the totality of the evidence tendered.[17] Indeed, the court stated that:

‘. . . Further the defence capitalized on what the complainant did not tell the police, but testified to in court. The thing is, in court, a person testifies in detail, the person is asked about the nitty gritty of the event. So saying the same thing that is said in the statement can never be realistic. . . . what is important is that in both her testimony in court and statement, that she made to the police, she said the accused raped her, and raped her outside the clinic, and that she did not consent to this .’[18]

[18] The court found that the complainant reported the matter as soon as she could to the police[19] and that her version of the incident was supported by the testimony of her sister. [20] It is also clear that the complainant suffered injuries which were consistent with the injuries and bruising as testified to by the complainant.[21]

[19] As to the defence’s version, the court found that ‘as for the injuries on the person of the complainant, in an attempt to evade the responsibility, the defence said the complainant had always had bruises on her arm, because her skin was sensitive. Complainant testified that she does not bruise easily, and bruises only if hit by or against something.’[22] The court rejected this version of the appellant as improbable, based on the medical examiner’s report, that the bruising was indeed fresh bruises.[23]

[20] The court found that the complainant’s version of the events was satisfactory in all material respects.[24] Having regard to the record, one can see that the corroborating factors and possible contradictions regarding the complainant’s version were discussed, whereby the corroborating factors were accentuated by the trial court.[25]

[21] In evaluating the totality of the evidence before it, the court a quo correctly regarded the appellants version as false, improbable, and inconsistent with the truth and, therefore, not reasonably possibly true.[26] Looking at the record, the court are quo correctly evaluates and rejects the testimony of Mabotsane, finding that Mabotsane was influenced to testify in favour of the appellant

as he is a close friend of the appellant. In all of the above, the state indeed proved its case beyond a reasonable doubt.

Ad Sentence

[22] The cardinal principle governing an appeal against sentence is that punishment of an offender is pre-eminently a matter for the

discretion of the trial court. It is putative that the court hearing an appeal against sentence should be vigilant not to erode the sentencing discretion entrusted to the trial court. It is well established that interference by the appellate court is warranted

only if the discretion of the trial court was not judicially and properly exercised or if there exists a marked disparity between the sentence imposed by the trial court and the sentence that the court of appeal would have imposed had it been the trial court.[27] The test to be surmounted in every appeal against sentence is whether the sentence is vitiated by irregularity or misdirection or disturbing inappropriateness. This was seamlessly captured in *S v Malgas*[28] which articulated the principle as follows:

‘A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates the exercise of that discretion, an appellate court is of course entitled to consider the question of sentence afresh. In doing so, it assesses the sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate court is at large. However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which appellate court would have imposed had it been the trial court is so marked that it can properly be described as ‘shocking’, ‘startling’ or ‘disturbingly inappropriate’. It must be emphasised that in the latter situation the appellate court is not at large in the sense in which it is at large in the former. In the latter situation, it may not substitute the sentence which it thinks appropriate merely because it does not accord with the sentence imposed by the trial court or because it prefers it to that sentence. It may only do so where the difference is so substantial that it attracts epithets of the kind I have mentioned.’

[23] It is trite law that the sentence of an accused person must be balanced between the interest of society, the nature, seriousness and the prevalence of the offence and the personal circumstances of the accused.[29] The seriousness of the crime that the appellant has been convicted of was given prominence in *S v S*: [30]

‘The essence of the crime is an assault on the bodily integrity of a woman’s femininity. If it is a function of the criminal law to protect members of society from those who would employ illegal means to prey on those less able to defend themselves, then rape is rightly regarded as a crime of the utmost gravity.’

[24] In *S v Ncheche*, [31] the court expounded upon the gravity of the offence as follows:

‘Rape is an appalling and utterly outrageous crime, gaining nothing of any worth for the perpetrator and inflicting terrible and horrific suffering and outrage on the victim and her family. It threatens every woman, and particularly the poor and the vulnerable. In our country, it occurs far too frequently and is currently aggravated by the grave risk of the transmission of Aids. A woman’s body is sacrosanct and anyone who violates it does so at his peril and our Legislature, and the community at large correctly expect our courts to punish rapists severely.’

[25] The interests of the community were properly enunciated in *S v Chapman*: [32]

‘Women in [South Africa] are entitled to protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives. The Courts are under a duty to send a clear message to other potential rapists and to the community. We are determined to protect the equality, dignity and freedom of all women and we shall show no mercy to those who seek to invade those rights.’

[26] The trial court herein considered the prevalence of the crime, the gravity and type of offence,[33] the way in which the offence was committed,[34] the interests of society[35] and the trauma and injuries suffered by the complainant.[36] The trial court correctly took these factors into account and, rightly so, imposed what it considered to be a just and appropriate sentence.[37]

[27] It correctly took cognisance of the appellants personal circumstances; the fact that the appellant was known and trusted by the complainant and that he raped the complainant more than once. It is noted that in persisting with his claim of innocence, the appellant wasted the opportunity to show remorse for his actions. His lack of remorse impacts negatively on his prospects for rehabilitation.

[28] It is also correct that a court hearing an appeal in which the minimum sentence legislation has application ‘does not possess the proverbial clean slate on which to scribble its preferred sentence’.[38] The sentencing discretion of the trial court is circumscribed by law. It is further required that the finding of substantial and compelling circumstances must be able to stand scrutiny and not be based on the whim of the presiding officer.[39]

[29] In this instance, the court found that compelling and substantial circumstances exists to deviate from the prescribed minimum sentence.[40] This Court is content that the trial court did not err or misdirect itself. There thus exists no reason that warrants tampering with the sentence imposed by the trial court.

Order

In the result, the following order is made:

1 The appeal against both the conviction and sentence is dismissed.

Deane AJ

I concur

Chesiwe J

Appearances

For the appellant: Adv S Kruger

Instructed by: Legal Aid South Africa, Bloemfontein

For the respondent: Adv WJ Harrington

Instructed by: National Director of Public Prosecutions, Bloemfontein.

[1] Notice of Appeal, pp. 290-291.

[2] Judgment, pp 179-180.

[3] S v V 2000 (1) SACR 453 (SCA) at 455A-C.

[4] Ibid.

[5] S v Sithole and Others 1999 (1) SACR 585 (W); S v Van Der Meyden 1999 (2) SA 79 (W) and S v Mattioda 1973 (1) PH H24 (NPD).

[6] S v Mbuli [2002] ZASCA 78; 2003 (1) SACR 97 (SCA).

[7] Moshephi and Others v R (1980-1984) LAC 57 at 59F-H.

[8] S v Hadebe & Others [1997] ZASCA 86; 1998

(1) SACR 422 (SCA) at 426F-H.

[9] Footnote 6 para 57.

[10] S v Mkhohle 1990 (1) SACR 95 (A) at 100E.

[11] S v M 1992

(2) SACR 188 (W) at 194H-I; J v S

[1998] ZASCA 13; [1998] 2 All SA 267 (A); 1998 (2) SA 984 (SCA).

[12] S v Aardman and Ander 1968 (3) SA 339 (A).

[13] Judgment, pp. 191-192

[14] Judgment, p. 181.

[15] Judgment, pp. 180-183.

[16] Judgment, p. 180.

[17] Judgment, pp. 182-183.

[18] Judgment, p. 183.

[19] Judgment, p. 189.

[20] Judgment, p. 182.

[21] Judgement, pp.191-192.

- [22] Judgment, p. 191.
- [23] Judgment, p. 192.
- [24] Judgment, pp. 182, 185.
- [25] Judgment, pp. 181-184.
- [26] Judgment, p. 184.
- [27] *S v Pillay* 1977
- (4) SA 551 (A) at 535E-G; see also *S v Rabie* 1975
- (4) SA 855 (A) at 857D-F; *S v Shapiro* 1994
- (1) SACR 112 (A) at 119J-120C; and *S v Anderson* 1964 (3) SA 494 (A) at 495D-E.
- [28] *S v Malgas* [2001] ZASCA 30; [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA); 2001 (1) SACR 469 (A) para 12.
- [29] *S v Banda and Others* 1991(2) SA (BGD) at 355 A.
- [30] *S v S* 1995 (1) SACR 50 (ZS) at 61D.
- [31] *S v Ncheche*
- [2005] ZAGPHC 21; 2005 (2) SACR 386 (W) para 35.
- [32] *S v Chapman* [1997] ZASCA 45; [1997] 3 All SA 277 (A); 1997 (3) SA 341 (SCA) at 345A-D.
- [33] Judgment, p. 214.
- [34] Judgment, p. 214-215.
- [35] Judgment, p. 215.
- [36] Judgment, p. 215.
- [37] *S v Reay* 1987
- (1) SA 873 (A) at 877C.
- [38] *Ncango v S* [2018] ZAFSHC 108 para 45.
- [39] *S v Matyityi* [2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA) para 23.
- [40] Judgment, p. 216.

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