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

Not reportable/~~Reportable~~
Case no: A211/2024

In the matter between

MBUTI PAUL SEDI **APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation: *Sedi v The State* (A211/2024) [2025]
Coram: Van Zyl J, et Deane AJ
Heard: 19 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 **14:30** on **29 May 2025**.

ORDER

The following order is made:

1 The appeal against both convictions and sentences are dismissed.

2 The convictions and sentences imposed by the regional court on the appellant are confirmed.

JUDGMENT

Deane AJ (Van Zyl J concurring)

Introduction

[1] This is an appeal against both conviction and sentence as handed down by the regional court magistrate on 8th May 2023, on two counts of rape read with the provisions of section 51(2) of the *Criminal Law Amendment Act* 105 of 1997.

[2] The appellant's grounds for challenging his conviction and sentence can be briefly summarised as follows:[1]

> (a) The court *a quo* erred in finding that the State proved its case beyond a reasonable doubt.
> (b) The court *a quo* erred in finding that there were no improbabilities in the State's case and that the State witnesses gave evidence in a satisfactory manner.
> (c) The court *a quo* erred in not properly evaluating the State witnesses' evidence.
> (d) The court did not properly evaluate the contradictions found in the State witnesses' evidence.
> (e) The court *a quo* erred in accepting the version of the State and rejecting the version of the appellant and by finding that the contradictions between the

[1] Notice of Appeal, pp. 307-309.

appellant and his witness were material.

(f) The court *a quo* erred in finding that the sentence of life imprisonment is the only appropriate sentence.

(g) The court *a quo* erred in not finding that there are substantial and compelling circumstances present for the deviation from the minimum sentence.

(h) The court *a quo* did not properly consider the appellants' personal circumstances or the element of rehabilitation.

(i) The court *a quo* erred in over emphasising the seriousness of the offence, interest of society, the prevalence of the offence, the deterrent and retributive effect of the sentence and the effect of the offence on the complainant.

Factual background

[3] It is not in dispute that the appellant had sexual intercourse on the dates mentioned in both the complainant's evidence.[2] It is also common cause that the appellant met with the complainants at different places and taverns and on different days. In both instances before the appellant met with the complainants, he did not know them, and they also did not know the appellant. It is also not disputed that the appellant had multiple intercourse with both complainants on each occasion.[3]

[4] The issue in dispute was whether or not there was consent.

Evidence

[5] Complainant 1 testified that, on 23-26 February 2017, she was at the tavern in Bothaville drinking when she saw the appellant sitting with a friend.

[6] Complainant 1 approached the appellant and asked for a cigarette from the appellant. After chatting casually with the appellant, the complainant went back to where she had been sitting. Complainant 1 left the tavern around 21h00 to board a taxi to go home. While still in the taxi, but before it left, the appellant arrived and

[2] Judgment, p 255.
[3] Judgment, p. 256-257.

boarded the same taxi which then left. Complainant 1 was the first to disembark. As she did, the appellant asked her if the location was her home, to which she confirmed.

[7] A few days later, the complainant was at home at night while others were asleep when the appellant and another man arrived, knocking forcefully on the door. They entered the residence and forcibly removed her, taking her to a shack where the appellant repeatedly raped her. He later allowed her to leave but threatened to kill her if she reported the incident. The complainant did not report the matter to the police but disclosed it to her partner, who took no action.

[8] Complainant 1 further testified that, days later, the appellant again arrived at her place with another man. He forcefully opened the door and took her by force to the same place he had taken her before. He also raped her, but this time, he raped her only once. The appellant and his companion then threatened the complainant with violence, locked her inside the place, and left her there. Later that day, she escaped through the window and proceeded directly to the police, where she laid charges against the appellant. She further testified that the appellant did not use a condom at any stage during sexual intercourse.

[9] In brief, Complainant 2 testified that, on the night of 25 to 26 March 2017, she was at the tavern in Bothaville with a friend who later disappeared. She then went outside to look for him but was unable to find him. While searching for her boyfriend, the appellant approached her and told her that they must go. As she did not know the appellant, she refused and asked why she should go with him. The appellant then took out a knife, threatened her, and insisted that she must go. He then forcibly took her to his place, where he led her into his shack and repeatedly raped her until the next morning. At all times, the appellant never used a condom.

[10] The appellant's version is that he met the two complainants at different taverns on different days and at different times. According to the appellant, the two complainants were friendly towards him. He then proposed to each complainant, and both accepted his proposals. The appellant further testified that all was well between him and the complainants on both occasions, and he even purchased some items for

them. He admitted that he had sexual intercourse with each complainant several times, but he asserted that it was with their consent and denied having raped them.

[11] The State called four witnesses, two in each count. For the defence, the appellant testified and called one witness who is his mother. Thereafter, the defence closed its case.

Ad conviction

[12] It is trite law that the onus rests on the State to prove the guilt of the accused beyond reasonable doubt. If the accused's version is reasonably possibly true, he is entitled to his acquittal.[4]

[13] The guilt of an accused must be proved beyond reasonable doubt.[5] It is also putative that the State bears the onus of proving the guilt of the accused beyond reasonable doubt. There exists no burden on the accused to prove his version or his innocence. The accused's version only has to be reasonably, possibly true.[6]

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

> '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

[4] *S v V* 2000 (1) SACR 453 (SCA) at 455A-C.
[5] Ibid.
[6] *S v Sithole and Others* 1999 (1) SACR 585 (W) at 593F; *S v Van Der Meyden* 1999 (2) SACR 79 (W) at 82C and *S v Mattioda* 1973 (1) PH H24 (NPD).
[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] *S v Mbuli* [2002] ZASCA 78; 2003 (1) SACR 97 (SCA) para 57.

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.'

[15] In considering the judgment of the court *a quo*, this court has to be mindful that a court of appeal is not at liberty to depart from the trial court's findings of fact and credibility, unless they are vitiated by irregularity, or unless an examination of the record reveals that those findings are patently wrong.[10]

[16] 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 proved its case beyond reasonable doubt.

[17] 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.[13]

[18] The appellant argues that the court did not properly evaluate the evidence of the complainant and the State witness in that:[14]

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[10] *S v Francis* [1991] 2 All SA 9 (C); 1991 (1) SACR 198 (A) at 198J-199A and *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645E-F.
[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] *S v Mkhohle* 1990 (1) SACR 92 at 100E.
[14] Appellants Heads of Argument, p. 6.

(a) The State called the complainant in count 2, Ms D[...] E[...] M[...], and her witness, Ms M[...] A[...] K[...] to prove the case pertaining to count 2.

(b)The complainant, Ms M[...], was a single witness with regard to the charge. The evidence of a single witness must be evaluated with caution. The court *a quo* did not properly evaluate the complainant's evidence.

(c)The complainant's evidence was that the appellant took her as she was leaving the tavern. However, it's improbable that, at that stage, there were no people outside the tavern. She testified that there were a lot of people in and outside the tavern while she was there.

(d)The complainant conceded that she was moderately intoxicated at the stage that the appellant took her from the tavern. At no stage, at or near the tavern, did she try to alert anyone's attention for help.

(e)It is further strange that the complainant did not try to complain to the mother of the appellant and inform her that she was there against her will. The reason for her not telling the mother about the rape is improbable. Why, if the mother feared the appellant, would she (the mother) still confront the appellant over a tent and accuse him of stealing her items.

(f) It is therefore more probable that Ms M[...] was with the appellant out of free will and that no rape occurred. The complainant testified that she did not want the mother's help.

(g)The complainant never made a report to Ms K[...] that the appellant raped her and neither did she inform the police. It is submitted that it's more probable that the appellant never raped her and that's why she did not make her report.

(h)According to the complainant's evidence, the appellant told Ms K[...] that he will not rape the complainant again. However, Ms K[...] never testified that the appellant mentioned anything about rape. It is submitted that the complainant was tailored in her version.

[19] The heads of argument of the appellant levels various other criticisms of the court *a quo* including a finding by the court that the J88 of the complainants neither supported or disputed the allegations, contradictions in the evidence of the State witnesses pertaining to count 2, the credibility of the evidence by the State witnesses, the court's failure to properly evaluate the improbabilities in the State's

case and that the court *a quo* erred in rejecting the version of the appellant.[15]

[20] The State on the other hand submitted, and correctly so, that the appeal against conviction is void of merits and that the trial court did not misdirect itself because it had properly evaluated the evidence before it to come to a just decision.

[21] From a conspectus of the judgment, one can clearly see that the trial court carefully assessed the reliability and consistency of witness testimonies, determining that their accounts were credible and corroborated by other evidence. The court held as follows:

> '. . . looking at N[...] S[...]'s version, she never deviated therefrom, and she struck me as a reliable witness. She was so traumatised by what she said accused did to her and was so emotional when she gave account of what happened. She testified and was cross-examined at length by the defence long after the incident happened but never deviated from her version."[16]

The court further wrote that:

> '. . . despite her emotions she could narrate clearly and in full details how and where she met with the accused. She explained how the accused arrived at her place, where he took her and how the accused sexually abused her. Her evidence could not be faulted that the accused had no choice but to build his version around her testimony and only say there was consent.'[17]

[22] Looking at the second complainants' evidence, the court held that:

> '. . . the complainant in count 2, just like N[...] she also stuck to her version and never deviated. She also impressed me as an honest and reliable witness whose evidence could not be faulted. I have no reason not to believe that she

[15] Appellants Heads of Argument, pp. 7-9.
[16] Judgment, pp. 258-259.
[17] Judgment, p. 258-259.

was with her boyfriend and the boyfriend disappeared.'[18]

The court also noted that the complainants' versions were consistent with the various medical reports of both complainants.[19]

[23] The State further submits that single witnesses' evidence must be satisfactory, not perfect. In dealing with acceptance of single witness testimony the court in *S v Artman and Another (S v Artman)*,[20] followed the case of *R v Mokoena*[21] and stated that '[w]hat was required was that her testimony should be clear and satisfactory in all material respects. . .'. Further, in *S v Artman*, the court stated that:[22]

> '. . . while there is always a need for caution in such cases, the ultimate requirement is proof beyond reasonable doubt; and courts must guard against their reasoning tending to become stifled by formalism. In other words, the exercise of caution must not be allowed to displace the exercise of common sense . . .'

[24] It is apparent from the evaluation of the evidence presented that the trial court was indeed alive to the fact that this was single witness testimony in respect of the rape and was alert to the danger's attendant thereto.[23] The record indeed evinces that the evidence of the complainant was properly scrutinised and that the cautionary rule was properly applied in the appraisal of her evidence as a single witness.[24] The court held that 'both complainants in both counts 1 and 2 being Notice (sic) S[...] and E[...] M[...] gave satisfactory account in all material aspects as required by section 208 of the Criminal Procedure Act 51 of 1977'.

[25] The court further held that:

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[18] Judgment, p. 259.
[19] Judgment, p. 263.
[20] *S v Artman and Another* 1968 (3) SA 339 (A) (*S v Artman*) at 341A-B.
[21] *R v Mokoena* 1956 (3) SA 81 (AD) at 85-86 .
[22] *S v Artman* at 341B-C.
[23] Judgment, p. 258.
[24] Judgment, p. 259.

'. . . looking first at N[...] S[...]'s version, she never deviated therefrom, and she struck me as a reliable witness . . . her evidence could not be faulted that accused (sic) had no choice but to build his version around her testimony and only say there was consent. . .'[25]

[26] The court also found that both complainants were single witnesses regarding the sexual intercourse. However, a reading of the transcript and the judgment highlights that the two other witnesses in each case materially corroborated the complainants, and their versions remained consistent with those of the complainants. Both witnesses in both accounts testified that the appellant was violent towards the complainants. They further testified that the appellant, not only threatened the complainants, but also those who attempted to intervene. The court further held that is no doubt from the evidence that everyone around the appellant was afraid of him.[26]

[27] Whilst the court was alive to the fact that there were contradictions in the State witnesses' testimonies, it eventually found these contradictions to be immaterial. The threats of violence and the trauma of events must be considered in the evaluation of all the evidence.[27] The court wrote:

'. . . in cross-examination to Teboho, the defense just stated that he contradicted N[...] however I disagree with this. One should bear in mind that there are two incidents where the accused took N[...] by force from her home. Teboho however testified only on one incident. The incidents happened a long time ago, so Teboho could not exactly say what the date was and if it was the first or the second incident, and could therefore in any way suggest that he contradicted N[...] as his version was materially consistent with the events of one of the incidents (sic). . . Another discrepancy highlighted by the defense in cross examination was what weapons did the accused and his companions use, or what weapons they were carrying. Whether these were knives or screwdrivers. This discrepancy in my opinion is immaterial because at the end

[25] Judgment, pp. 258-259.
[26] Judgment, p 259.
[27] Judgment, p.255.

of the day both N[...] and Teboho corroborated each other that the accused was wild and that he used violence and threats of violence which caused N[...] to go with him.'[28]

In reaching this decision, this court cannot find that there are any signs of misdirection or procedural errors in the court's handling of evidence.

[28] Indeed, regarding the violence, the court wrote that the two witnesses in both counts testified that the appellant was violent towards the complainants and they further testified that the appellant, not only threatened the complainants, but also those who tried to intervene. The court found that there was no doubt, from the witnesses' evidence, that everyone around the appellant was afraid of the appellant.[29]

[29] In this matter, the complainants and other State witnesses provided testimony which proves beyond reasonable doubt that the appellant committed rape offences against the complainants.

[30] In evaluating the totality of the evidence before it, the court *a quo* correctly regarded the appellant's version as false, improbable, and not consistent with the truth and therefore not reasonably possibly true.[30] The court specifically wrote that 'if one looks at the accused, he on the other hand was not a reliable witness as his version was not reasonably possibly true.'[31] On the basis of the improbabilities in the appellant's version, the court found that the State's witnesses were credible and their evidence was accepted as true. The court further determined that these witnesses were honest and reliable, with no apparent reason to doubt their testimony or suggest that they had falsely implicated the appellant.[32]

[31] The court *a quo* correctly weighed up all the probabilities and improbabilities of the State's case and that of the defence and found the appellant's version to be

[28] Judgment, 260.
[29] Judgment, 259.
[30] Judgment, pp. 258-259.
[31] Judgment, p. 264.
[32] Judgment, pp. 263-264.

improbable.[33] The court *a quo*, accordingly, evaluated the evidence of the State and correctly concluded that the State proved its case beyond a reasonable doubt.[34]

Ad sentence

[32] 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.[35] The test to be surmounted in every appeal against sentence is whether the sentence is vitiated by irregularity or misdirection or disturbing inappropriateness.[36] This was seamlessly captured in *S v Malgas*[37] 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 trail 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

[33] Judgment, p. 264.
[34] Judgment, p. 255-278.
[35] *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.
[36] *S v Makondo* [2001] ZASCA 121; [2002] 1 All SA 431 (A); see also *S v Mothibe* 1977 (3) SA 823 (A) at 830D.
[37] *S v Malgas* [2001] ZASCA 30; [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA); 2001 (1) SACR 469 (A) para 12.

would have imposed had it been the trial court is so marked that it can be 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.'

[33] 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.[38] The seriousness of the crime that the appellant has been convicted of was given prominence in *S v S*:[39]

'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.'

[34] In *S v Ncheche*,[40] 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

[38] *S v Banda and Others* 1991 (2) SA (BGD) at 355A.
[39] *S v S* 1995 (1) SACR 50 (ZS) at 61D.
[40] *S v Ncheche* [2005] ZAGPHC 21; 2005 (2) SACR 386 (W) para 35.

courts to punish rapists severely.'

[35] The interests of the community were properly enunciated in *S v Chapman*:[41]

'Woman 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 tranquility 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.'

[36] On sentencing, the court *a quo* stated that:

'. . . society depends on courts for protection of the vulnerable. Courts are expected by the communities to appropriately deal with the offences which are rife and serious. One way of doing this is to impose proper sentences that fit the offences to deter not only the perpetrators, but other would be offenders. We are all aware that somewhere, somehow, daily, members of the society are protesting in an effort to express their dissatisfaction with the lenient ways offenders are treated by the courts. It is for these reasons that minimum sentences, in offences like these, were ordained by the legislature.'[42]

Taking this into consideration the court properly considered, the appellant's personal mitigating factors, including that the appellant was married with a child,[43] the prevalence of the crime[44] and the interests of society,[45] the gravity and type of

[41] *S v Chapman* [1997] ZASCA 45; [1997] 3 All SA 277 (A); 1997 (3) SACR 341 (A) at 345A-DC.
[42] Judgment, p. 283.
[43] Judgment, p, 284.
[44] Judgment, p. 283.
[45] Judgment, p. 284.

offence, the way in which the offence was committed,[46] the seriousness of the offence,[47] and the trauma and injuries suffered by the complainant. Accordingly, it cannot be said that the court *a quo* failed to exercise judicial discretion in a manner that ensures a fair and just sentencing determination. Moreover, the court observed that the appellant demonstrated a lack of remorse, which adversely affects his prospects for rehabilitation.

[37] The court further considered the appellant's established pattern of violent conduct towards women, as evidenced by his prior convictions, in determining the appropriate sentence.

[38] Upon a comprehensive assessment of the evidence, the court determined that the aggravating factors significantly outweighed the mitigating considerations. Consequently, the court correctly concluded that no compelling or substantial circumstances existed to warrant a deviation from the prescribed sentence.

[39] 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'.[48] 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.[49] The trial court correctly took the various factors into account and rightly so imposed what it considered to be a just and appropriate sentence.

[40] Notwithstanding the personal and mitigating factors tendered for consideration, the prescribed minimum sentence was, in the totality of the circumstances encountered here, the only fair and just sentence. The trial court correctly found that there were no substantial and compelling circumstances present. I am of the view that the manner in which the complainants were taken advantage of and the inhumane and degrading treatment they were subjected to under the

[46] Judgment, pp. 284-285.
[47] Judgment, p. 284.
[48] *Ncango v S* [2018] ZAFSHC 108 para 45.
[49] *S v Matyiti* [2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA) para 23.

circumstances cannot justify a deviation from the imposition of the applicable minimum sentence.

[41] Having said that, I am content that the trial court did not err or misdirect itself in any manner. Nor does there exist a disparity between the sentence imposed by the trial court and the one which this court would have imposed if it were the trial court. 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 convictions and sentences are dismissed.

2 The convictions and sentences imposed by the regional court on the appellant are confirmed.

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Deane AJ

I concur

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Van Zyl J

Appearances

For the appellant:	V Abrahams
Instructed by:	Legal Aid South Africa, Bloemfontein
For the respondent:	D Pretorius

Instructed by: National Director of Public Prosecutions, Bloemfontein.