IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Reportable
Case no: A301/2024
Regional Court case no: RCB 70/16

In the matter between:

C[...] W[...] **APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation:
Coram: Allie J and Bhoopchand AJ
Heard: 2 May 2025
Delivered: 13 May 2025

Summary: Criminal Law-appeal- 65-year-old male convicted and sentenced to life imprisonment for rape of 7-year-old step granddaughter-appeal on conviction and sentence dismissed- on conviction: assessment of minor's competency to testify on

appeal if record is missing, on sentencing: whether it is time to elevate consequences to victim on par with triad of factors usually considered, victim impact statements, grooming, missing parts of record on appeal.

ORDER

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1 The Respondent's application for condonation of the late filing of its heads of argument is granted,

2 The appeal against conviction and sentence is dismissed.

JUDGMENT

Bhoopchand AJ (Allie J concurring):

[1] The Appellant appeals his conviction and sentence arising from the rape of his seven-year-old step granddaughter on 8 March 2016. The Regional Magistrate of the Mitchells Plain Court ('the Regional Magistrate') convicted the Appellant on one count of rape and sentenced him to the prescribed minimum life imprisonment under section 3 of the Criminal Law Amendment (Sexual Offences and Related Matters) Act 32 of 2007. The Appellant invoked his automatic right of appeal under section 309(1)(a) of the Criminal Procedure Act 51 of 1977 ('CPA') and augmented his grounds of appeal.

[2] The Appellant's complaint against conviction related to the reliability of the testimony of the Complainant, a single minor witness ('the minor'), the reliance on the statement of the minor's grandmother, who had died before the trial commenced, and the State's failure to call the social worker who received the first report of the rape. The Appellant's complaint against the sentence is that the Regional Magistrate did not cumulatively assess the substantial and compelling circumstances, and the effect of the punishment on him, while overemphasising the severity of the crime and

the interests of society. The Regional Magistrate declined to deviate from the prescribed minimum sentence in circumstances where he could.

CONVICTION

[3] The minor's evidence was led through an intermediary. She testified that she accompanied the Appellant on her birthday in 2016 to Mitchells Plain by train. The Appellant told her he wanted to buy her a birthday cake. He assured her that her grandmother, with whom she lived, had permitted him to take her along. He purchased the cake. He also bought food and drinks for them to consume. The Appellant then led the minor to a secluded bush where he raped her. Seven years had elapsed before the minor testified.

[4] The Appellant told the minor not to disclose the rape to her grandmother or anyone else. On her return home, her grandmother punished the minor for accompanying the Appellant without her permission. The grandmother asked the Appellant to leave her home as he had taken the minor away on a false pretext. The minor did not tell her grandmother or her aunt about the incident in the bush as she feared a further beating.

[5] Shortly after the Appellant had left, news of the minor's rape filtered to the grandmother, but the minor's father was implicated. The minor denied that the father would commit an act of that nature and divulged that the Appellant was responsible. She was taken to a social worker and subsequently to the clinic for an examination. Her grandmother punished her for not disclosing the rape.

[6] Dr Matanda, a medical practitioner, testified on the findings of a colleague who examined and completed the J88 medicolegal report. His testimony included information recorded in the minor's clinic file. The doctor who conducted the minor's examination on 18 April 2016 had passed away before the trial commenced. The medical assessment occurred about a month and a half after the rape. The grandmother accompanied the minor to the examination. The history provided by the minor, as reflected in the clinical notes, was that she accompanied her grandmother's second husband, C[...], to Mitchells Plain on 7 March 2016. She

returned the same night and ‘admitted’ to C[...] touching her genitals and inserting his phallus there. The note records that ‘he gave her money to keep quiet’. A further note in the file referred to repeated vaginal penetration. Another note stated that ‘he raped her many times’. The note does not identify who the ‘he’ is, although the context suggests it was the Appellant. It was also accepted that C[...] was the Appellant.

[7] During the 2016 assessment, the minor cried and was uncooperative, aggressive, and stubborn. Dr Matanda explained that this type of behaviour is common in children who have been abused. Dr Matanda concluded that the clinical findings, as recorded, were old injuries consistent with forcible attempted vaginal penetration. They accorded with the history obtained and the time elapsed since the incident. There was scarring in the posterior aspect of the vagina, and the hymen was irregular with a ‘bump’ on it. The minor had evidence of an ongoing genital infection. The redness in the genital area arose from an infection.

[8] The J88 also recorded that the skin around the anal orifice was hypopigmented with deep scarring at various parts. There was a thickening of the rectal mucosa. Dr Matanda read from the notes that there was forcible attempted anal penetration as well. The clinical signs around the minor’s anal orifice were indicative of anal penetration. The doctor was referred to the minor’s testimony which indicated vaginal penetration alone. He explained that children can confuse the vagina with the whole recto-urogenital area.

[9] The minor’s grandmother died of natural causes on 19 December 2020. The Regional Magistrate allowed the grandmother’s hearsay statement under the provisions of Act 45 of 1988 after hearing the application by the State. The grandmother stated that the minor was last seen at about 10h00 on her birthday and returned at about 17h00. The grandmother’s statement confirmed the minor’s testimony in that she admitted to punishing the minor for accompanying the Appellant to Mitchells Plain. The grandmother did not want the minor to be alone with the Appellant due to his inappropriate interest in women. The minor did not disclose what the Appellant did. The grandmother’s statement was certified on 18 April 2016, the day she and the minor reported to the social worker. The grandmother stated in

her statement that she had ‘recently’ heard that the Appellant had sexually assaulted her. On the timeline of this case, the grandmother’s statement was certified two days before the minor underwent the medical examination. The State closed its case.

[10] The Appellant testified. He was married to the minor’s grandmother under Islamic law. His wife allowed the minor to accompany him to Mitchells Plain. She gave him the money to buy the cake. On arrival at Lentegeur station, they went to the cake shop and bought cake and drinks for her party. He also bought her a pie and a drink, which they ate. He denied that there were any bushes in the vicinity of the cake shop. They returned home to celebrate the minor’s birthday. He estimated that they were away for an hour. It was put to the Appellant that he had corroborated the minor’s version from home to the cake shop and back. He had left out what happened in the bushes. The Appellant denied that he had raped the minor. The Appellant could not explain why the minor would lie about the rape.

[11] The Appellant provided various versions of why he left his wife’s home on the minor’s birthday in 2016. He alleged that his wife and her son were abusing him on an ongoing basis. He took his things that night and went to his sister, who lived in Mitchells Plain. He was asked why he had suddenly left. He changed his earlier testimony about the abuse he suffered at his wife's and her son’s hands and said that he was watching television with her when he told her he would visit his sister. He testified under cross-examination that he left because he was missing his sister. The Appellant did finally admit that he was suspected of wrongdoing on the day the rape occurred.

[12] After departing the grandmother’s home, the Appellant took residence with another woman until he was arrested. During his testimony, the Regional Magistrate warned the Appellant that his story did not make sense, and he was not creating a good impression with the Court.

[13] The Court found that the minor’s evidence was clear, satisfactory, and consistent with the probabilities. Her evidence was supported by the grandmother’s statement and the medical evidence. Her story was not something that she could readily make up. The minor’s testimony that her grandmother beat her was

corroborated in the latter's statement. The Appellant had lured the minor from home with the promise of a birthday cake. The minor was excited about her birthday and had pie and drinks with the Appellant. There was no reason for her to implicate the Appellant for raping her. The Appellant's version was so far removed from the probabilities that it could not reasonably possibly have been true and was rejected by the Regional Magistrate.

[14] The Appellant provided written argument that raised the issue of the minor's credibility. The Appellant submitted that a child's evidence must be scrutinised carefully.[1] The Appellant cited the absent record of the competence inquiry, the State's failure to call the social worker who first heard the report of the rape, the medical evidence suggesting repeated violations, and the minor's description of how the rape occurred. The Appellant's argument included a broad review of the principles of assessing a child's credibility. The danger in children's evidence can be attributed to several factors, including their imaginativeness, memory limitations, emotional distress, and consistency of their statements. Factors such as susceptibility to suggestion can affect how much weight their testimony carries. The danger of suggestibility can be ruled out by asking the person to whom the incident was reported to describe how the child related the incident. The State did not call the social worker to testify, nor could the grandmother testify. The Appellant argued that the mere fact that a child sticks to a version should not be the only measure of truthfulness. The J88 suggested other incidents, and the possibility existed that the minor could not comprehend the action.

[15] The Appellant submitted that the Court *a quo* misdirected itself in finding that the minor's evidence musters the bar set by section 208 of the CPA.[2] The contradictions are of such a nature that they raise concerns about the truthfulness of the minor. The Appellant is entitled to the benefit of the doubt and should be acquitted. Appellant's Counsel could not identify the contradictions in the minor's testimony. Her instructions were to highlight the contradictions between the grandmother's statement, the doctor's report, the act involving the rape, and the minor's testimony.

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1 *R v Manda* 1951 (3) SA 158 (A) at 163

2 An accused may be convicted of any offence on the single evidence of any competent witness

[16] The Appellant invoked the cautionary rules relating to child testimony to support his contention that the Regional Magistrate misdirected. The first concerned the minor's mental competence to testify. The competency test for child witnesses is primarily governed by Sections 162, 164, and 170A of the Criminal Procedure Act 51 of 1977, which includes, among others, the appointment of an intermediary to assist the child. The rationale for the test is to ensure that a child can understand the importance of telling the truth and provide reliable testimony in court.[3] The competency test also assesses the child's cognitive and communicative ability. The Appellant was constrained about addressing the minor's competence to testify as the record of the test performed by the Regional Magistrate was missing.

[17] The absence of the record relating to the child's competence test can pose challenges for the Appeal Court, but it does not necessarily impair the Court in deciding the appeal. If the Appeal Court has access to the transcript of the child's evidence, it can assess the credibility and reliability of the testimony. Courts generally consider whether the trial court properly evaluated the child's ability to testify and whether the absence of the competency test record materially affects the trial's fairness. In some cases, appellate courts have overturned convictions where procedural irregularities in assessing a child's competency were found to be significant.[4] Courts must assess the credibility of a child's testimony based on its reliability and consistency rather than applying rigid cautionary rules. The corroboration of the minor's testimony, her ability to understand and recall details, and her demeanour (the assessment of which is within the Court *a quo's* exclusive capacity), is ascertainable from the evidence and the assessment thereof by the Regional Magistrate. Each child's testimony should be evaluated on its merits.[5]

[18] The assessment of the minor's testimony from the record indicated that she could distinguish right from wrong. She asked to be taken home when the Appellant began molesting her. She was even able to distinguish right from wrong when she

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3 *Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development & others* 2009 (4) SA 222 (CC) paras 165–167, *S v Raghubar* 2013 (1) SACR 398 (SCA) paras 4–5, *Rammbuda v S* (156/14) [2014] ZASCA 146 (26 September 2014) at paras 5-8

4 *S v Rammbuda* supra, *S v Mokoena, S v Phaswane* 2008 2 SACR 216 (T)

5 *Woji v Santam Insurance Co Ltd.* 1981 (1) SA 1020 (A) at 1027 H-1028A

withheld information about the rape from her grandmother fearing that she would be punished for telling the truth whilst knowing that a wrong was perpetrated upon her. The Regional Magistrate lauded the minor's recall of an incident that occurred seven years before her testimony. She remembered the events of that morning, the trip to Mitchells Plain, the Appellant's assurance that her grandmother approved her accompanying him, the details of the visit to the cake shop, the rape and the trip back home. The minor declared that she could not remember or did not know, when the nature of the questions necessitated this response. Her evidence was reliable. The Appellant corroborated her version in every respect bar the excursion into the bushes and the rape. The grandmother's statement and the medical evidence served as further corroboration.

[19] The State's failure to lead evidence from a witness who received the minor's first report of the sexual incident is less significant when it presented other evidence to corroborate the minor's rape. An assessment of the evidence does not reveal the identity of the recipient of that first report. It could have been the doctor who performed the medicolegal examination, the social worker with whom the minor consulted, or the person who reported an alleged sexual incident affecting the minor to the authorities. The first report, which is hearsay, is admitted into evidence to show consistency in the complainant's testimony and reject a defence of consent; the latter being inapplicable in the circumstances of this case. It is not proof of its contents or corroboration of the complainant. It serves to rebut any suspicion that the complainant has lied about being raped.[6] The Regional Magistrate indicated that the absence of a first report witness testimony is insignificant in determining whether the Court *a quo* should accept or reject the minor's evidence.

[20] The Appellant then asserted that there was a contradiction between the minor's testimony and the medical evidence. The medical evidence suggested repeated sexual penetrations, whereas the minor testified to just one incident. Whilst the Appellant is correct about the medical testimony, nothing turns on this aspect as the State preferred one charge of rape against the Appellant and proved this charge through the minor's testimony.

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6 Milton, South African Criminal Law and Procedure, volume 111, 1997, Juta

[21] The Appellant further asserted that there were contradictions in how the rape occurred. The Appellant suggested that the perpetration of the rape whilst the minor remained seated was improbable. This was a theme that the Court pursued. The minor's testimony was that the Appellant lay on top of her whilst she remained seated. The Appellant's legal representative did not sufficiently question the minor to clarify this. A failure to adequately interrogate an aspect of testimony cannot be ascribed as a contradiction or reflect on the minor's credibility.

[22] In oral argument, Appellant's Counsel accepted that the Regional Magistrate had thoroughly assessed the child's competence to testify.

[23] The Court cannot fault the Regional Magistrate's judgment on conviction. The Magistrate applied the necessary cautions to single witnesses and children's testimony.[7] The minor's evidence was trustworthy and of a high standard, and she did not shy away from answering questions, no matter whether they were easy or hard. The minor remembered what happened when she and the Appellant arrived in Mitchells Plain. The medicolegal evidence corroborated her allegation that she was raped. The Appellant's version correlated with the minors' except for the act of sexual penetration. The Appellant's version was removed from the general probabilities to the extent that it could not reasonably possibly be true. The minor, the grandmother, and the medical evidence contradicted him. His testimony, viewed holistically, was improbable and had to be rejected. This Court agrees. The Appellant has not persuaded this Court to uphold his appeal on conviction.

SENTENCE

[24] The Appellant was 57 years old at the time of the rape and a 65-year-old pensioner at sentencing. He left school in grade 4. He was employed at a bakery and later as a painter for the City of Cape Town. He was married for ten years and in a relationship before the trial. He has one adult daughter and three grandchildren.

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[7] *Y v S* (537/2018) [2020] ZASCA 42 (21 April 2020), section 208 of the Criminal Procedure Act 51 of 1977, *Woji* supra

The Appellant suffers from high blood pressure, diabetes and Parkinson's disease. He was a first offender.

[25] During sentence proceedings in the Regional Court, the Appellant's attorney argued that the Appellant's deteriorating health, the fourteen months he spent in custody, and his being a first offender constituted substantial and compelling circumstances warranting a deviation from the prescribed minimum sentence of life imprisonment that applied to the offence perpetrated against the minor. The Appellant did not submit a medical or probation officer's report.

[26] The State argued for the minimum sentence. It presented the minor's victim impact statement, comprising a simple hand-drawn image of two people on grass in a jagged circle with the overhead sun. The expressions captured on the faces of the two people and the sun are conspicuous. The older male is smiling while the younger female is sad, as the smiling sun looks away. The Regional Magistrate described the image as haunting in the circumstances.

[27] The State argued that the minor was seven years old when the Appellant, her grandfather, committed the offence. The Appellant's demeanour during the trial was devoid of remorse. The Appellant did not divulge the reason for committing the offence against the minor. The minor sustained injuries to her genital area. She was too afraid to disclose what happened to her as she feared her grandmother would punish her. The invasive violation of females continues unabated. The Appellant was placed in custody as he did not comply with his bail conditions.

[28] The Regional Magistrate regretted the absence of a probation officer's report but noted that the Appellant agreed to proceed without it. The Court *a quo* considered all submissions by the Appellant in mitigation and the State in aggravation of sentence. The Regional Magistrate considered the Appellant's betrayal of the minor's trust, the medical evidence of multiple rapes and injuries to the minor's anus, as aggravating factors. The minor's parents did not live with her, entrusting her upbringing to her grandmother and the Appellant. He held a position of trust with his step-granddaughter, and even though he had an adult daughter and grandchildren, he betrayed the minor's trust in a reprehensible manner. Instead of

showering the minor with love, affection, and protection, he raped her and left her with injuries and a genital infection. The latter led the Regional Magistrate to conclude that the Appellant did not use a condom.

[29] The Regional Magistrate considered each of the factors presented on behalf of the Appellant, particularly his age and medical conditions. He concluded that on the probabilities, the Appellant perpetrated the multiple rapes on the minor. Society is revulsed and outraged by the rape of young children. The crime should be punished in the interests of justice. The Regional Magistrate considered the crime, the personal circumstances of the accused, and the community's interests and reminded himself that each factor should be proportionally balanced in sentencing.

[30] The Regional Magistrate then focused on whether this case had substantial and compelling circumstances for deviation from the minimum sentence. He considered the Appellant’s legal representative's emphasis on the Appellant’s personal circumstances, but found nothing that stood out as substantial or compelling, singularly or cumulatively. The Appellant’s advanced age and seemingly poor health did not detract from the abhorrence of the crime. The Appellant maintained his innocence and did not display remorse or regret for what he did. He put the minor through the secondary trauma of reliving her experiences with him in a deserted field. He reasoned that for the rape of a young, defenceless, and vulnerable child, the minimum sentence is not disproportionate to the crime. The Regional Magistrate pondered the impact of the scars on the minor and stated that the sexual abuse of the minor will scar her for the rest of her life.

[31] The Regional Magistrate cited sufficient authority to inform his conclusions. There were no cogent reasons to deviate from the prescribed sentence. The Magistrate considered the Appellant’s period of incarceration and, as a measure of mercy, antedated the sentence of life imprisonment to 23 December 2022. Sentence was imposed on 19 March 2024. The Magistrate ordered that the Appellant’s particulars be included in the National Register for sex offenders, that he was found to be unsuitable to work with children, and that he was declared unfit to possess a firearm.

[32] Appellant's Counsel tried valiantly to persuade this Court to find that the Regional Magistrate misdirected on the grounds alluded to in sentencing. Given the exemplary judgment on conviction and sentence handed down by the Court a quo, this was a mammoth task. To her credit, Appellant's Counsel acknowledged the futility of her endeavour even though she would not concede that there was no discernible fault with the lower Court's judgment on conviction and sentence, as her instructions forbade her from doing so. Appellant's Counsel argued that the imposition of a sentence of life imprisonment meant that the Appellant would only be eligible for parole after 25 years, at the age of 90. Even if he is considered for parole after 15 years, he will be 80. Given his health, this could equate to the Appellant never leaving prison.

[33] Appellant's Counsel submitted that this Court should reduce the sentence from life imprisonment to a sentence between 15 and 18 years. The State reminded us that the Appellant did not provide medical evidence to prove his chronic medical ailments. The State resisted any change in the sentence imposed by the Regional Court. The State argued that the appeal stood to be dismissed.

[34] Sentencing is a balancing act between the aggravating factors placed on one end of a scale and the mitigating factors on the other. The more the scale tips towards the aggravating factors, the harsher the sentence should be, or the lesser should be the inclination to deviate from a prescribed minimum sentence. The more the scale tips toward the mitigating factors, the milder a sentence should be, or the greater the inclination to interfere and deviate from a prescribed minimum sentence. Where the analysis leaves the scale equipoised, the Court should exercise its discretion and impose a sentence that considers the quartet of factors of the crime, the criminal, the community, and the consequences for the victim with the requisite mercy the peculiar circumstances require. Where a minimum sentence applies, it should be imposed. In the latter context, an Appeal Court should refrain from interfering with the sentence imposed.

[35] This Court has given the requisite attention to the sentence imposed by the Regional Magistrate. He approached sentencing holistically, having had recourse to the crime, the community's interests and the Appellant's circumstances. The

principles of prevention, retribution, reformation and deterrence are evident in his analysis. He applied his mind to whether the prescribed minimum sentence was proportionate to the crime committed and added a tinge of mercy in the circumstances.[8] All relevant factors were evaluated, and established legal principles and consistency with precedent were followed. The Regional Magistrate provided clear justification for imposing the prescribed minimum sentence. Life imprisonment should not evoke a sense of shock in this case. This Court finds no irregularity or misdirection in the sentence imposed by the Court *a quo*.

MISCELLANEOUS MATTERS

[36] This appeal on sentence lends itself to a further consideration of three issues that have surfaced in this case. They are the victim impact statement, the effect that a sexual crime has on a minor, and awareness of the signs of grooming behaviour. Victims are persons who individually or collectively have suffered harm or substantial impairment of their fundamental rights through acts or omissions that violate criminal laws. The term includes direct and indirect victims, the person directly affected by the commission of the crime, and indirect victims, like the closest family.

[37] The minor's victim impact statement was made when she was eight and in grade 2. The Court described it as a haunting image and pondered about the long-term effects that the rape would have on the minor. Art, in its quiet simplicity, screams truths louder than words do. A defenceless child trapped in an unbroken ring, her face etched in sad sorrow, used and discarded like some inanimate thing, his, a shameless smirk, a serpent's sting. A child lost beneath a smiling sun, trust betrayed, and innocence undone. The unfathomable emotional and psychological sequelae and the developmental and learning impediments cannot be underestimated. The consequences for a rape victim are severe and permanent.[9] A child victim has to endure the stigma and the trauma over a longer period.

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[8] *S v Rabie* 1975 (4) SA 855 (A

[9] *S v Matyityi* (695/09) [2010] ZASCA 127; 2011 (1) SACR 40 (SCA) ; [2010] 2 All SA 424 (SCA) (30 September 2010), *Stephen Bryan de Beer v The State* (121/04) (Delivered on 12 November 2004) (Unreported judgment of the Supreme Court of Appeal) para 18

[38] In contrast, the Court *a quo* devoted a lengthy analysis to the crime, the Appellant's personal circumstances and what the community expects. The Court followed the triad of factors established in *S v Zinn* in imposing a sentence that it thought suitable in the circumstances. The Zinn triad came into existence with just two sentences in the seminal case:

> 'It then becomes the task of this Court to impose the sentence which it thinks suitable in the circumstances. What has to be considered is the triad consisting of the crime, the offender, and the interests of society.'[10]

[39] Society and some of our Courts have agitated about the omission of the consequences for the victim in the triad that devolved into the three c's: the crime, the criminal and the community. The constitutional imperative demands that the impact of crime on the victim is not brushed off lightly in the sentencing regime. Is it not time to replace the triad with a quartet of factors: the crime, the criminal, the community, and the consequences, the latter being the consequences for the victim, both directly and indirectly? As an *aide-memoire*, the four C's are those that a Court must consider and apply in unison without emphasising one over the other.

[40] The Regional Magistrate remarked that the Appellant 'lured' the minor away from her home 'with the promise of a birthday cake'. This Court interpreted that statement and the evidence relating to the minor's rape to suggest that the Appellant had manipulated the minor before sexually exploiting her.

[41] Grooming in the context of child sexual molestation refers to the deceptive process used by perpetrators to gain a child's trust, manipulate and sexually abuse them whilst avoiding detection. It involves the selection of a vulnerable child, building trust by befriending the child and their family, isolating the child by creating opportunities for private interactions, desensitising the child by gradually introducing physical or sexual content, and maintaining secrecy by using threats, guilt, or manipulation to prevent disclosure. Grooming is often subtle, making it difficult to

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[10] *S v Zinn* 1969(2) SA 537 (A), at 540G

detect before abuse occurs. Understanding grooming behaviour is crucial for prevention and intervention.[11]

[42] The State was not convinced that the facts of this case indicated grooming of the child by the Appellant. Apart from raising awareness of this scourge amongst practitioners and society, this Court can take this aspect in this appeal no further.

[43] The State asked this Court to pronounce on the parts of the record that were missing. The Appellant had referred to parts of the record that had not been transcribed, namely the procedure under sections 156, 162-164, and 170A of the Criminal Procedure Act relating to the presence of the accused, unsworn and unaffirmed evidence, and evidence led through an intermediary. The transcript indicated that the competency test performed on the minor and the initial part of the minor's testimony had been omitted due to a mechanical break in the recording. A record must be adequate for the proper consideration of the appeal. The defects in a record must be determined based on the nature of the issues to be decided on appeal.[12] The Appellant volunteered that none of the sections omitted form part of the material relevant to this appeal, and the record is sufficient to enable the Court to find that the proceedings were just. The Court finds that the missing parts of the record did not render it inadequate to decide this appeal.

[44] Respondent's Counsel cited her heavy workload for failing to file the Respondent's heads of argument in time. Infractions of this kind have become increasingly prevalent. Whilst the Court accepts the explanation and condones the infringement on this occasion, it should not be construed by the National Directorate of Public Prosecutions that this will be tolerated inconsequentially. let alone the disrespect it shows to the Court and its rules, the Appellant and the Court are hindered in preparing adequately and timeously for the appeal.

[45] Finally, a word needs to be said about the delays that ensued before this case came to trial. The rape occurred on 8 March 2016. The trial in this matter

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[11] Australian Government: National Office for Child Safety: Grooming. https://www.childsafety.gov.au/about-child-sexual-abuse/grooming

[12] *S v Chabedi* 2005 (1) SACR 415 (SCA) at paras 5-6

commenced in 2023. Seven years had elapsed before the minor gave evidence even though the Appellant was arrested about two months after the rape. The minor was expected to remember the minutiae of an incident which would find more mature brains wanting. This undue delay is completely unsatisfactory and is deprecated.

[46] The Court has considered the Appellant's appeal on his conviction for the rape of his 7-year-old step granddaughter on 8 March 2016. The Court cannot find fault in the Regional Magistrate's judgment on conviction. The Appellant's appeal on his sentence of life imprisonment must suffer the same fate as his appeal on conviction. The Court is not persuaded that the grounds raised by the Appellant warrant any interference in the sentence imposed. The appeal must therefore fail.

[47] In the circumstances, I propose the order that follows.

ORDER

1. The Respondent's application for condonation of the late filing of its heads of argument is granted,

2. The appeal against conviction and sentence is dismissed.

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BHOOPCHAND AJ

I agree, and it is so ordered.

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ALLIE J

Judgment was handed down and delivered to the parties by e-mail on 13 May 2025

Appellant's Counsel: S Kuun

Instructed by Legal Aid, South Africa

Respondent's Counsel: P A Thaiteng

Instructed by the National Prosecuting Authority, Directorate of Public Prosecutions, Cape Town