



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

Reportable:	NO
Of Interest to other	NO
Judges:	NO
Circulate to Magistrates:	NO

Case no: **A176/2022**

In the matter between:

NJANYANA WILLIAM MAHLANGU

Appellant

and

THE STATE

Respondent

CORAM: REINDERS, J *et* BERRY, AJ

HEARD ON: 15 MAY 2023

DELIVERED ON: 10 JULY 2023

JUDGMENT BY: REINDERS J

This judgment was handed down electronically and circulated to the parties' representatives by electronic mail communication on even date.

[1] The appellant, according to the record a 31-year-old male at the time, was tried in the Regional Court in Heilbron on two charges. The allegation in respect of the first charge is that on 15 October 2017 at Mahikeng in the district of Tweeling, he kidnapped the complainant. The second charge is that

on the same date, he raped the same complainant at his residence. The rape is as defined in s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act¹, and read with the provisions of s 51(2) of the Criminal Law Amendment Act².

- [2] Having been convicted on both counts the State proved two previous convictions against appellant. He admitted two previous minor assault convictions, the last being during 2016 and a further conviction for resisting and/or hindering and/or obstructing members of the police in the exercise of their powers as set out in the South African Police Services Act³. The magistrate sentenced him on the first charge to two years' imprisonment of which one year was ordered to run concurrent with the sentence in charge 2, imprisonment for 10 years – the effective sentence imposed being 11 years.
- [3] A summary of the complainant's evidence reveals that during the particular evening, she and a friend were patrons at the Seketeng Tavern where they consumed alcoholic beverages. The appellant was also drinking alcohol at the tavern and at some stage started physically pulling her out of the tavern. She resisted, where after he hit her in the face and eventually put her in his vehicle. She was unsuccessful in her attempts to escape and in the process of pulling her to his vehicle she was dragged on the ground causing her to sustain injuries. He took her to his house where he raped her. Whilst they were still at his house, members of the South African Police Force and family members arrived and assisted her. She was taken for a medical examination and the medico-legal report recorded various injuries, including scratch marks on both arms and an injury to her eye.
- [4] Various other witnesses, including complainant's mother to whom she made the first report, her sister and Capt Booyesen, testified on behalf of the State. I do not intend repeating their evidence herein.

¹ Act 32 of 2007.

² Act 105 of 1997.

³ Act 65 of 1995.

- [5] The appellant testified and called a witness. The crux of his defence was that he and the complainant was in a relationship and that the sexual act was consensual between them.
- [6] The magistrate hearing the matter was aware of the discrepancies between the state witnesses but considered it to be minor. He was of the view that the injuries confirmed by the medico-legal report is consistent with the complainant's version and corroborates that she was hit on her eye and dragged on the ground. He found further corroboration in that witnesses present at the tavern not only confirmed complainant's version, but ultimately were responsible for the police reacting and later arresting the accused. He rejected the appellant's version and was convinced of his guilt on both counts.
- [7] The magistrate did not grant leave to appeal but two judges of this Division granted leave to appeal against both the convictions and sentences.
- [8] On appeal before us it was not contended that the magistrate misunderstood or misinterpreted the evidence on the merits. It was rather submitted that there was insufficient corroboration for the single witness and that there were contradictions and/or inconsistencies in the State's version which should have lead the magistrate to conclude that he had a reasonable doubt wherefore he should have acquitted the appellant. I have carefully considered same but am in no way convinced that the magistrate erred in the conclusions that he came to. On the contrary, I am satisfied that the mentioned medical report and the reporting of the incident constitute more than sufficient corroboration for the version of the complainant. The complainant was a single witness in respect of the rape. Mr Bontes, appearing for the State, referred us to the case of **ICM v The State**⁴ wherein Musi AJA (writing on behalf of the unanimous full bench) reiterated the principles when a presiding officer must adjudicate on the evidence of a single witness⁵ as set out in **S v Sauls**⁶.

⁴ (692/2021) [2022] ZASCA 108 (15 July 2022).

⁵ At para [22] of the judgment.

⁶ 1981 (3) SA 172 (A).

[9] I am therefore not convinced that the magistrate erred in his findings in convicting the appellant as he did. In respect of the sentences imposed I have no hesitation that the sentences could reasonably be imposed. Sentencing is the prerogative of the trial court and a court of appeal cannot at will interfere therewith in the absence of a mistake or misdirection⁷. None of the above scenarios occurred herein and I am of the view that the sentences imposed were proper.

[10] Mr Reyneke, appearing for the appellant, in my view needs to be complimented for his thorough and responsible arguments both in his heads of argument and before us. Notwithstanding this, the appeal cannot succeed. The result is that the appeal against both convictions and sentences stands to be dismissed.

[11] I accordingly make the following order:

The appeal against the convictions and sentences on the counts of kidnapping and rape, is dismissed.

C REINDERS, J

I concur.

AP BERRY, AJ

⁷ Director of Public Prosecutions, Gauteng v Pistorius 2016 (2) SA 317 (SCA).

On behalf of the Appellant:
Instructed by:

Mr D Reyneke
Legal Aid Board
BLOEMFONTEIN

On behalf of the Respondent:
Instructed by:

Mr L Bontes
Office of the DPP, Free State
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