IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: AR 200/22

In the matter between:

BAFANA CHRISTOPHER SITHOLE **Appellant**

and

THE STATE **Respondent**

ORDER

On appeal from Ntuzuma Regional Court (sitting as court a *quo*):

(a) The appeal against conviction and sentence is dismissed.

(b) The appellant's conviction and sentence are confirmed.

JUDGMENT

Delivered: 03 July 2024

Madonsela AJ (Sibisi AJ concurring)

Introduction

1. The appeal comes before us by way of automatic appeal as envisaged in Section 309(1(a) of the Criminal Procedure Act 51 of 1977 in that the appellant was convicted and sentenced to life imprisonment for the crime of rape falling within the provisions of Section 3 read with Section 51(1) of the Criminal Law Amendment Act 105 of 1997.

2. On 11 February 2018 the complainant, who was 15 years of age at the time, was undeniably raped, as Dr Kamal Singh who examined her the following day (on 12 February 2018) conclusively determined.

3. The circumstances giving rise to her rape were given by the complainant herself. She was supported by the evidence of her mother, to whom the rape was immediately reported on the very night of the alleged incident (namely, 11 February 2018).

Background and overview of the evidence

4. The complainant gave a detailed background to the ordeal. The thrust of her evidence was the following. She visited the appellant, who was her mother's lover/boyfriend, at the appellant's house in Amaoti. She had gone to the appellant's area to visit her friend. It got late in the day. She decided to go to the appellant's home, in the hope that she will find her mother there. Upon arriving at the appellant's house, she found the appellant with a friend, named Dan. The two were drinking alcohol. After a short while, the friend left. She remained with the appellant inside the house. The appellant encouraged her not to leave as it was already late in the day. He poured her some beverage to drink. She described the beverage as something like *"a stoney type of a drink"*. She drank it. immediately, she got drowsy. However, before she could fall asleep, the appellant made certain lewd utterances. He suggested that she should replace her mother and assume the complainant's mother's duties towards him. She brushed this away as appellant's drunken stupor.

5. After a while, the appellant locked the house and removed the keys. She fell asleep on the floor whilst the appellant went on drinking.

6. The next thing she realized was the appellant, who was now woken up, busy wiping her using a pillowcase. She realized she was bleeding, and the appellant was wiping blood off her vagina. She felt pain in her private parts (vagina). She got shocked; she moved away and realised that her clothing – her panty and dress – were no longer in their normal position. The appellant asked her to show him her thighs. She refused and vowed to relate the incident to her mother. The appellant threatened to kill her if she ever did so.

7. The appellant exited the house with a pillowcase and burnt it outside the house. She managed to exit the house and ran straight to her home, during the night, and told her mother what had transpired.

8. She was subjected to lengthy and grueling cross-examination. Several propositions were put to her in an effort to discredit her account:

   (a) It was put to her that the appellant was not with a friend (Dan) on the day in question, as the complainant had testified. It was suggested that Dan would be called to testify and refute her allegations.

   (b) it was suggested that the complainant arrived at the appellant's place at night, around 20h30 to 21h00, because that the time when the appellant had taken chronic medication - which he normally takes around the identified time;

   (c) much was made of the fact that the complainant had slept over at the appellant's house on more than four or five occasions before, without her mother or her mother's permission. In this regard it was suggested that on one occasion, she had brought a friend. Her mother questioned her for sleeping over at the appellant's place. On another occasion (the fourth occasion) when the complainant came to 'sleep over,' the

appellant called the complainant's mother to report the complainant's persistence in *"sleeping over"*. The complainant disputed this;

(d) it was further suggested that on the date in question (11 February 2018 at around 9pm) when the complainant arrived at the appellant's house, the appellant offered her food, left her to eat, as the appellant went out to buy cigarettes at the nearby tuck shop. On his return, the appellant found the complainant asleep, having made herself a makeshift bed on the floor and slept on it. This conduct, it was put to her, got the appellant fed up with her continued disobedience, and caused the appellant to wake her up and ordered her to leave. The complainant disputed this.

(e) An omission in her written statement to the police was pointed out: namely, that she stated that the appellant was speaking to her like a drunk person. She explained that the omission had occurred because she was confused at the time she laid the complaint;

(f) regarding the burning of the pillowcase, it was pointed out that she did not mention this in her written statement. It was also pointed out that in her written statement she had not mentioned that the appellant had locked her inside the house at the time when he was allegedly burning the pillowcase. Again, she explained that the omission was due to her state of shock and confusion at the time;

(g) it was put to her that there was no pillow-case forming part of the makeshift bed. The complainant insisted that there was always a pillow-case when she came and slept at the house.

9. The complainant's mother was called to testify. She confirmed, by and large, the complainant's version regarding the report of rape to her that night as well as the historical background of their relationship with appellant.

10. For his part, the appellant testified in his own defence. According to him, the complainant came to his house at about 9pm; he was sure of the time because that is the time he normally takes chronic medication. He went to buy cigarette, shortly after her arrival; offered her food (which he had prepared); got inside his bedroom to get some money to buy cigarette; and left to the nearby shop. He found the shop closed; and went to the nearby wagon to buy loose cigarettes. When he came back, the complainant was asleep on the makeshift bed on the floor made of straw mat, bedspread, and a blanket.

11. He woke her up and instructed her to leave the house because her mother had told her before not to ever sleep at the appellant's place. The complainant woke up, apparently upset and left the house. As she exited, she slammed the door behind her. According to appellant, he tried to follow her – wanting to ask her why she slammed the door – but he did not catch up with her. As a result, he came back to the house and slept.

12. Later that very night, the complainant (now accompanied by her mother) returned and confronted the appellant, accusing him of raping the complainant. He said he told the complaint's mother that he had only chased her away because she had breached the agreement reached between them - as a result of previous sleep over: namely, that she would never sleep at the appellant's house ever without her mother's permission. After that confrontation, both the complainant and her mother slept at his (the appellant's) house until morning.

13. In the morning, he advised them to go to the police if they were so minded and report the matter and bring back any results. In that context, the results he was referring to were the DNA or forensic test results. He explained that he gave this advice because he knew that he had done nothing wrong.

Findings of the trial court

14. In its judgment, the Trial Court correctly identified the sole issue which arose for determination: namely, whether it was the appellant (or, I interpose, some other person) who raped the complainant. In answering this question, the trial court recognized that the complainant was a single witness and a child at the time of the rape. For this reason, it reminded itself of the cautionary rules which generally apply to such witnesses and their evidence.

15. In the end, the trial court accepted the complainant's evidence as satisfactory in all material respects. In this regard, the Trial Court noted the detailed nature of the complainant's account right from the time when she left her home; what transpired between her and the appellant whilst at the appellant's house; up to the time when she made a rape report to her mother later that night.

16. The Trial Court rejected the appellant's version – that the complainant had fabricated the rape – as not reasonably possibly true. In this regard it placed great store on the fact that the appellant was a father figure to the complainant. She, her mother and the appellant were, by all accounts, a *"happy family"*. She had previously visited the appellant at his house, without her mother and/or without her permission.

The parties' contentions on conviction

17. Before us, the appellant argued that the Trial Court erred in finding him guilty of rape. He contends that the Trial Court failed to properly analyse and evaluate the complainant's evidence. As such, the appellant contends that the Trial Court failed to apply the cautionary rules applicable to complainant's evidence as a single witness in a rape charge. For this argument, the appellant relies on four (4) misdirection as the basis for his appeal.

18. *Firstly,* the appellant argued that the complainant's evidence was marred by a vitiating omission: i.e. the complainant's omission to point out that which

she had reported to the police in a written statement – that the appellant spoke to her at the house like a drunk person.

19. *Secondly* another discrepancy in her testimony and the written statement: that, according to the written statement, she arrived at the appellant's house around 20h00 (not 18h00 as testified by her during the trial).

20. *Thirdly* the discrepancy between the complainant's mother's evidence and the complainant regarding how many times the complainant had slept in the appellant's house without her mother's presence and/or permission: it was pointed out that the mother had testified that she had slept at the appellant's house only once before, whereas the complainant stated that she had never slept there without her mother at all.

21. *Fourthly* the forensic testing of swabs collected from the complainant and the appellant's DNA were negative, i.e. they did not connect the appellant with the complainant's rape.

The test and proper approach to evidence in a criminal trial

22. The test in criminal cases is well known. It was lucidly set out in *S v Van Aswegen* 2001 (2) SACR 97 (SCA) at para 8**,** where the following was stated:

> "The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the Court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be

found to be only possibly false or unreliable; but none of it may simply be ignored."

23. The proper approach to the evaluation of evidence was also given by the SCA in *S v Chabalala* 2003 (1) SACR 134 (SCA) at para 15 as follows:

"To weigh up all the elements which point towards the guilty of the accused against all those which are indicative of his 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 favour of the State as to exclude any reasonable doubt about the accused's guilt. The result may prove that one scrap of evidence or one defect in the case for either party ... was decisive but ... a Trial Court (and Counsel) should avoid the temptation to latch onto one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence. Once that approach is applied to the evidence in the present matter the solution becomes clear."

24. Pertinent to the evidence of a single witness and the role of the oft quoted cautionary rule applicable to it, the SCA, more recently stated in *Maila v S* [2023] ZASCA 3 (23 January 2023) at para [17] and [18]:

"[17] 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 9 years at the time of the incident. For many years, the evidence of a child witness, particularly as a single witness, was treated with caution. This was because cases prior to the advent of the Constitution (which provides in s 9 for equality of all before the law) stated inter alia that a child witness could be manipulated to falsely implicate a particular person as the perpetrator (thereby substituting the accused person for the real perpetrator). To ensure that the evidence of a child witness can be relied upon as provided in s 208 of the CPA,[3] this Court

stated in *Woji v Santam Insurance Co Ltd*,[4] that a court must be satisfied that their evidence is **trustworthy**. It noted factors which courts must take into account to come to the conclusion that the evidence is trustworthy, 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 of 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 whether the child has the "capacity to understand the questions put, and to frame and express intelligent answers."' (Emphasis added.)

[18] This Court has, since *Woji*, cautioned against what is now commonly known as the double cautionary rule.[5] It has stated that the double cautionary rule should not be used to disadvantage a child witness on that basis alone. The evidence of a child witness must be considered as a whole, taking into account all the evidence. This means that, at the end of the case, the single child witness's evidence, tested through (in most cases, rigorous) cross-examination, should be 'trustworthy'. This is dependent on whether the child witness could narrate their story and communicate appropriately, could answer questions posed and then frame and express intelligent answers. Furthermore, the child witness's evidence must not have changed dramatically, the essence of their allegations should still stand. Once this is the case, a court is bound to accept the evidence as satisfactory in all respects; having considered it against that of an accused person. 'Satisfactory in all respects' should not mean the evidence line-by-line. But, in

> the overall scheme of things, accepting the discrepancies that may have crept in, the evidence can be relied upon to decide upon the guilt of an accused person. What this Court *in S v Hadebe*[6] calls the necessity to step back a pace (after a detailed and critical examination of each and every component in the body of evidence), lest one may fail to see the wood for the trees.[7] This position has been crystallised by the Legislature in s 60 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which provides that:
>
> 'Notwithstanding any other law, a court may not treat the evidence of a complainant in criminal proceedings involving the alleged commission of a sexual offence pending before that court, with caution, on account of the nature of the offence.'"

Discussion

25. I agree with the Trial Court's characterisation of the appellant's defence. Essentially, the appellant contrived his claims that the complainant had fabricated her allegations that he had raped her.

26. The Trial Court had no hesitation to reject that defense as far-fetched, given the relationship between the complainant, her mother and the appellant.

27. In the view I take of the matter, the discrepancies and contradictions highlighted by the appellant in argument did not detract from the veracity of the complainant's evidence that the appellant raped her on the night in question (see *S v Mkhohle* 1990 (1) SACR 95 (A) and *S v Oosthuizen* 1982 (3) SA 571(T)). In other words, not every contradiction or discrepancy in a witness's evidence leads to the rejection of evidence. I say this bearing in mind that when evaluating evidence, it is imperative to evaluate all the evidence, and not to be selective in determining what evidence to consider.

28. As Nugent J (as he then was) in S v Van der Meyden 1999 (1) SACR 447 (W) at 450, stated

> "What must be borne in mind, however, is that the conclusion which is reached whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false, some of it might be found to be unreliable, and some of it might be found to be only possibly false or unreliable, but none of it may simply be ignored".

29. In In S v Chabalala 2003 (1) SACR 134 (SCA) para 15, the Supreme Court of Appeal added;

> "The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his 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 favour of the State as to exclude any reasonable doubt about the accused's guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as the failure to call a material witness concerning an identity parade) was decisive but can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence. Once that approach is applied to the evidence in the present matter the solution becomes clear."

30. In this case, the complainant's evidence was, in my judgment, 'satisfactory in all material respects' notwithstanding the alleged discrepancies. To borrow from the definitive findings by the SCA, in *Maila v S* **(**supra) at para 18, quoted above:

> 'Satisfactory in all respects' should not mean the evidence line-by-line. But, in the overall scheme of things, accepting the discrepancies that may have crept in, the evidence can be relied upon to decide upon the guilt of an accused person'.

31. The omission in evidence to state that the appellant was drunk is neither here nor there. It is an immaterial detail that does not detract from the trustworthiness of the complainant's account regarding the core issue. Similarly, the time difference highlighted in argument is immaterial. Both the appellant and the complainant made common cause that the complainant arrived at the appellant's house during the night of 11 February 2018. It matters not whether it was at 6pm or 8pm. The fact is, as the complainant testified, it was already dark.

32. Far from discrediting the complainant's evidence, the number of times when the complainant visited the appellant's house prior to the 11th of February 2018, with or without her mother, underscored what the Trial Court referred to as *"happy family"* atmosphere which existed between the complainant, her mother and the appellant.

33. There is much to be said about the appellant's reliance upon the fact that the forensic testing proved negative. The advice for the complainant to undergo a medical/forensic testing curiously emanated from the appellant (on his own version). Why the appellant gave this advice in the face of the accusations that he had raped the complainant is bewildering. Nevertheless, the doctor explained that the likely reason for the negative result could be either that the perpetrator (who, on the complainant's version, is the appellant) may not have ejaculated, alternatively, had used a condom. This was the doctor's speculation. However, there is no need to speculate in respect of the issue which the doctor had been called upon to address, namely whether the patient (being the complainant) had been raped. The medical evidence placed it beyond dispute that the appellant was raped by forceful penetration. That finding alone suffices to establish the complainant's rape.

34. The determination of who had raped the complainant depended, in my view, upon the assessment of the probabilities and improbabilities of the versions given by both the complainant and the appellant. Who else could raped the complainant, that is, other than the appellant? Between the time of the

complainant's arrival at the appellant's house and her prompt report of the rape incident to her mother later that very night, it is improbable that anyone could have perpetrated the rape. This is even more so, given the appellant's own apparent claim that Dan was not at the appellant's premises when the complainant arrived on the fateful evening. Could it have occurred earlier (before her arrival at the appellant's house)? Such a conclusion, in my judgment, is inherently improbable. It would entail a finding that the appellant went out of her way to protect the real culprit and, instead, resorted to implicate someone she regarded as her 'father figure'. Why? For what reason? To achieve what? To wreak havoc in her other home and drive a wedge between the appellant and her mother? I can think of no reason, nor could I discern a sustainable one from the appellant's version.

35. If indeed she was so fond of or even persistent on visiting the appellant's house without her mother or mother's permission (as the appellant sought to argue), why would she blow that away by suddenly creating enmity between her and the appellant?

36. The weight of evidence, I consider, tilts strongly in favour of the complainant's version rather supporting any of the appellant's bare denials.

37. Of course, if the forensic/DNA tests results were found to be positive, the State would arguably have established the guilt of the appellant 'beyond any shadow of doubt'. But the doctor as the doctor said there could be a number of reasons why the DNA evidence was inconclusive. This does not, of course, discount the rest of the evidence, which points strongly to the accused's guilt. Here, it behooves me to point out that the State does not bear the onus to prove an accused's guilt beyond a shadow of doubt.

38. In *Venter v S* (945/2018) [2020] ZASCA 14; 2021 (1) SACR 454 (SCA) (24 March 2020), Mocumie JA, in a powerful concurrence (at para [209]), reminded us of what was said by Denning J regarding the quantum and cogency of evidence that is required to establish the guilt of an accused

person. In *Miller v Minister of Pensions* [1947] 2 All ER 372 (King's Bench) Denning J (at 373H) said:

> "[The evidence] *need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the cause of justice.* If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible, but not in the least probable", the case is proved beyond reasonable doubt, but nothing short of that will suffice."'
>
> (My Emphasis)

39. On this passage, the SCA (per Mocumie JA) underscored that as far back as 67 years ago, the Appellate Division had already accepted that our approach on the cogency of evidence required to prove the guilt of an accused person in criminal cases 'corresponds with that of the English Courts' (See *R v Mlambo* 1957 (4) SA 727 (A) at 738 A-C). The position remains the same to date (See *S an Another v S* [2014] ZASCA 215). Considering this recognition, Mocumie JA concludes (in *Venter v S*, *supra* at para [209]):

> "It is trite that the State must prove its case beyond reasonable doubt. But it is not expected to close all avenues; particularly where the defence is a bare denial. The ultimate responsibility lies with the trial court and courts of appeal to discern whether the State has discharged this responsibility with what it has before it and dependent on the truthfulness and reliability of the witnesses in assisting it to do so."

40. The majority (per Mabindla-Boqwana AJA as she then was), with whom Mocumie JA concurred, put it thus, at para [5] of Venter v S (supra):

> "As was stated by Malan JA in *R v Mlambo* 'there is no obligation upon the [State] to close every avenue of escape which may be said to be

> open to an accused. It is sufficient for the [State] to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused'.

41. The evidence established, as the appellant himself was constrained to concede, that the complainant was indeed raped. That should be the end of the matter. As the Trial Court correctly pointed out, the question which arose on the evidence was whether the complainant's account that the appellant raped her, viewed against the appellant's defense that he was being framed as a perpetrator, was satisfactory in all material respects.

42. The detailed nature of her testimony attests to her vivid recollection of the events as they unfolded inside the appellant's house. She narrated the incident meticulously.

43. She could observe the inebriated state in which the appellant was in at the time. As already observed, she withstood intense cross-examination and stuck to her version throughout. I am satisfied that the trial court was correct in accepting the complainant's evidence as both trustworthy and satisfactory.

44. In that vein I must say that the consistency of the State's witnesses cannot without more be the end of the matter. I remain enjoined to assess the accused's version and to determine whether it is so unreasonable as to warrant rejection. In *S v Selebi*, [2010] ZAGPJHC 53, Joffe J after examining several authorities reiterated the following principles;

> "Even if the State case stood as a completely acceptable and unshaken edifice, a court must investigate the defence's case with a view to discerning whether it is <u>demonstrably false or inherently so improbable as to be rejected as false</u>. The test is, and remains,

> whether there is a reasonable possibility that the appellant's evidence may be true. In applying that test one must also remember that the court does not have to believe her story; still less has it to believe it in all its details. It is sufficient if it thinks there is a reasonable possibility that it may be substantially true (R v M 1946 AD 1023 at 1027)." 189 266.
>
> (My Emphasis)

45. I have already shown that the appellant's version is highly improbable, so much so that it falls to be rejected. The appellant was confronted by positive evidence to the effect that the appellant was raped by him; his version amounted to bare denials, coupled with a fixation on insignificant inconsistencies in the complainant's version. His evidence did nothing material to cast reasonable doubt on the complainant's version.

46. I am accordingly satisfied that the appellant's guilt was established beyond reasonable doubt. The Trial Court was therefore correct in rejecting the appellant's version as false and not reasonably possibly true.

47. For these reasons, I would dismiss the appeal against conviction.

Appeal against sentence

48. The appeal is against the sentence too. The law is very clear that the Appeal Court's ability to interfere with the sentence imposed is very circumscribed. In *S v Hewitt* [2016] ZASCA 100; 2017 (1) SACR 309 (SCA) at paragraph 8 Maya DP (as she then was) held that:

> "It is a trite principle of our law that the imposition of sentence is the prerogative of the trial court. An appellate court may not interfere with this discretion merely because it would have imposed a different sentence. In other words, it is not enough to conclude that its own choice of penalty would have been an appropriate penalty.

> Something more is required; it must conclude that its own choice of penalty is the appropriate penalty and that the penalty chosen by the trial court is not. Thus, the appellate court must be satisfied that the trial court committed a misdirection of such a nature, degree and seriousness that shows that it did not exercise its sentencing discretion at all or exercised it improperly or unreasonably when imposing it. So, interference is justified only where there exists a "striking" or "startling" or "disturbing" disparity between the trial court's sentence and that which the appellate court would have imposed. And in such instances the trial court's discretion is regarded as having been unreasonably exercised" (footnotes omitted)."

49. The established considerations when sentencing a convicted person are as set out in *S v Rabie* 1975 (4) SA 855 (A) at paragraph 25: that the sentence must fit the criminal as well as the crime, be fair to society and blended with a measure of mercy according to the circumstances. Sentencing the accused should be directed at addressing the judicial purposes of punishment which are deterrence; prevention; retribution and rehabilitation (*Rabie* supra). This appears to be precisely the approach adopted by the Court *a quo* in considering the crime and determining the sentence imposed on the appellant.

50. The complaint that there was overemphasis of the seriousness of the crime and no regard for the personal circumstances of the appellant is not borne out by the cursory reading of the trial court's judgment. It is without merit.

51. The sentence, in my view, fits the gravity of the offence. Rape is one of the most serious and egregious of crimes (see *Director of Public Prosecutions v Thabethe* 2011 (2) SACR 567 (SCA) at 577G). It will also be recalled that in recent times, the courts have recognised that, the impact of offence on the victim is a relevant consideration in the context of sentencing (see *S v Matyityi* 2011 (SACR) 40 (SCA). The appellant committed the crime in respect of a minor; this is a scar that the complainant will carry for the rest of

her life. The appellant inflicted this offence on the complainant for his own selfish gratification.

52. The appellant has not shown that the sentence is strikingly disproportionate to the crime as to induce a sense of shock in the society.

53. The appeal against sentence too falls to be dismissed.

54. In the result, I would make the following Order:

‘The appeal is dismissed.’

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MADONSELA A J

I agree and it is so ordered.

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SIBISI AJ

APPEARANCES:

For the appellant: Adv P Mkhumbuzi (LegaL Aid, Durban)
For the State: Adv S Naidu (Director of Public Prosecutions, Durban)
Date of Hearing: 03 July 2024
Date of Judgment: 3 July 2024