



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 9 May 2025

Status: Immediate

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Phogole v The State (Case no 370/2023) [2025] ZASCA 54 (9 May 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it dismissed the appellants appeal against conviction but upheld the appeal against sentence.

This appeal concerns the rape of an 8-year-old girl, which occurred in 2010 or 2011, in a toilet at a tavern. The rape occurred during the day whilst she was playing with her friends.

The appellant was convicted of the offence in the Regional Court, Johannesburg, held at Alexandra (the trial court), on 26 November 2014. He was sentenced to life imprisonment on 12 February 2015. Given the fact that a sentence of life imprisonment was imposed, the appellant was entitled to an automatic right of appeal to a full bench of the High Court. The Gauteng Division of the High Court, Johannesburg—per Khumalo J and Matthys AJ (the full court)—dismissed the appeal on both conviction and sentence.

The issues for determination before this Court were whether the appellant was properly convicted on the evidence of a child single witness; whether the trial court was correct to reject the evidence of the appellant as not being reasonably and probably true; and whether the sentence of life imprisonment imposed on the appellant was shockingly inappropriate.

The facts of this case can be summarised as follows. During the year 2010 or 2011, the complainant was playing a game of ‘hide and seek’ with her friends outside her grandmother’s house. The appellant approached her at the hiding place, pulled her away and took her to a toilet at a nearby tavern. The appellant undressed her, undressed himself and raped her. According to the complainant, the appellant lifted her and pressed her against the wall and raped her. This happened inside the toilet, and it was daylight. Thereafter, the appellant ordered her to go home. She went home and did not tell her grandmother about the rape as she was

afraid that she will give her a hiding. She only revealed this incident to her mother much later when there was another incident of children being raped in her community.

The appellant testified in his defence and indicated that he believed that the complainant's mother, Ms Phalane, with whom he was in a secret love relationship with for about 10 years, influenced the complainant to lay false charges against him and falsely implicate him because he refused to give her money that she requested on 31 December 2013.

Makgoka JA, penned a dissenting judgment in which he found that the appeal against conviction should have been upheld. He held that both the trial court and the high court failed to adequately consider, or entirely overlooked, issues that were crucial in determining whether the State had proved its case against the appellant beyond a reasonable doubt.

The minority identified material discrepancies in the complainant's version of how the offence occurred. It found that the trial court's failure to give appropriate weight to these contradictions amounted to a material misdirection. Furthermore, the minority also found that the medical evidence given by the forensic nurse was far from satisfactory in that the nurse could not adequately answer whether the cleft in the complainant's vagina was caused by her own finger, in the light of her evidence that the child told her that she had been scratching her private parts, or by the finger of the appellant.

The minority further noted that the State failed to call crucial witnesses who could have provided much-needed corroboration of the complainant's version. In support of this view, the minority cited *S v Teixeira*, where it was held that in cases relying on a single witness, the State's failure to call other identified and available witnesses may justify the inference that their testimony could have introduced contradictions that would undermine the credibility of the single witness. The minority found that this inference was justified in the present matter.

Ultimately, the minority concluded that the complainant's evidence was not satisfactory in all material respects, and therefore the State had failed to discharge the onus of proving the appellant's guilt beyond a reasonable doubt.

However, the majority was of the view that the appellant had been correctly convicted by the trial court. When evaluating whether the appellant had been correctly convicted, the majority of the SCA (per Mokgohloa JA, with Mothle JA concurring) considered the fact that the complainant was both a single witness and a child, and accordingly, her evidence required to be treated with caution. The Court referred to *Woji v Santam Insurance Co Ltd*, in which it was held that a child's evidence must be found to be trustworthy before it can be relied upon. In assessing the soundness of the conviction, the SCA took into account the complainant's young age but noted that she testified in a coherent and detailed manner in the trial court. Although she was unable to recall the exact date of the incident, she provided a consistent and clear account of the events. The SCA found her evidence to be reliable and trustworthy, and therefore satisfactory in all material respects.

Furthermore, her version was independently corroborated by medical evidence, which confirmed a history of previous penetration. The SCA also upheld the trial court's rejection of the appellant's claim that he was falsely implicated by the complainant and her mother.

Ultimately, the SCA held that the trial court was correct in accepting the complainant's evidence as satisfactory in all material respects, thereby justifying a conviction. Accordingly, the appellant was properly convicted on the evidence of a single witness. However, the SCA found sufficient cause to interfere with the sentence imposed by the trial court. This was due to the fact that the appellant had not been informed that the minimum sentence of life imprisonment was applicable prior to entering his plea. The SCA emphasized that it is not enough for the record merely to state that the applicability of the minimum sentence was explained to the appellant; the record must reflect that he was expressly warned of the penal provisions.

The reconstructed record failed to show that such a warning was given. The SCA regarded this as a serious misdirection, warranting the Court's intervention to reconsider the sentence. In the circumstances, the SCA found that a sentence of ten years' imprisonment—antedated to 12 February 2015 in terms of section 282 of the Criminal Procedure Act 51 of 1977—would be appropriate. The appeal against conviction was thus dismissed and the appeal against sentence was upheld.

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