



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)
(CIRCUIT COURT, EAST LONDON)**

CASE NO.: CC13/2025

Reportable	YES/NO
-------------------	---------------

In the matter between:

THE STATE

versus

VUSUMZI DUKUMBANA

ACCUSED

JUDGMENT

Cengani-Mbakaza AJ

[1] The accused appeared before this court on charges of kidnapping and rape¹ arising from the events of 04 January 2024. He pleaded not guilty to both counts and through his legal representative Mr Nomlala offered a plea explanation in terms of s 115 of the Criminal Procedure Act 51 of 1977 (CPA). In his plea explanation, the accused stated that he had a love relationship with the complainant. He denied that

¹ The rape charge is in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 (SORMA), read with Part 1 of Schedule 2 of the Criminal Law Amendment Act, 105 of 1997.

he kidnapped and raped the complainant as alleged by the state. In summary, he indicated that there was no sexual intercourse between the pair on the night in question. Regarding the kidnapping charge, the accused stated that he asked the complainant to accompany him home, which she did without any coercion.

[2] Indeed, the accused and ZM (the complainant) had a love relationship that lasted for at least 18 months. In their testimonies, both parties acknowledged that their relationship had its highs and lows, with moments of happiness and times of disagreements.

[3] On 04 January 2024, the accused visited the complainant's home. Although both parties agreed that the accused stood outside the complainant's yard and asked a local young man to call the complainant, their version differed in the following respect: the complainant testified that the accused insisted that she be called despite her explicit indications of unwillingness to join him.

[4] He forcefully entered the yard and found her in the company of her sister-in-law NM. As she was attending to her cooking, she was wearing her casual attire with a skirt draped around her chest instead of her waist. While she was in that state, the accused insisted that they should leave. In a fit of anger, he began beating her with open hands on her face, dragging her outside the yard. As he forcibly tried to get her to leave her home, he continued to beat her along the way.

[5] The complainant testified that the accused assaulted her multiple times with open hands and kicked her repeatedly with booted feet all over her body. She stated that he was wearing strong work boots, which he used to kick her while she was lying on the ground as a result of falling. After that, he pulled her by her hair and insisted that they must leave.

[6] As they were walking, they met a group of local young men who appeared scared and did not intervene. The second group of men they met included Nondoda, her neighbour who told the accused to stop what he was doing. The interaction with Nondoda was very brief, and they continued walking to the accused's place which was far from her home. During the walk, the accused continued beating her up and

accused her of having a secret affair with Nondoda. As the accused continued to beat her, she was crying. The accused ordered her to stop crying and warned that no one would help her.

[7] Upon reaching the accused's home, he continued to interrogate, torture and coerce her into confessing to other secret affairs. The complainant testified that under duress, she misled the accused telling him that she had an affair in Southernwood or Quigney. The beatings continued all over her body. The accused further throttled the complainant. In an attempt to placate him, she misled him by claiming that she had an affair with Nondoda, motivated by fear. The accused throttled her for the second time and continued to beat her up. He slammed her against the concrete wall. Subsequently, the accused sat on the couch crying and lamented why the complainant would do that to him, referring to the alleged affair with Nondoda.

[8] The accused made derogatory remarks about her and Nondoda, also suggesting that because she was promiscuous, her dignity as a woman had deteriorated including the quality of her female genitals. The remarks were accompanied by threats to stab her with a knife. He approached her with a knife in his hand, attempting to stab her. The complainant ducked and the knife pierced the wall. He manhandled her, instructing her to go into a dark room in the house and instructed her to tilt against the wall. The accused inserted his penis in the complainant's vagina. He then instructed her to lie on her knees. He forcefully penetrated the complainant's anal orifice. When he realised that there was half insertion, he lubricated the complainant's anus with cooking oil that was nearby.

[9] He then forcefully had sexual intercourse with her, penetrating her anal orifice. Again, he instructed her to tilt on the couch and had sexual intercourse with her *per anum*. Subsequent to that, the accused grabbed a hammer that was under the table. They wrestled over it while the complainant pleaded for forgiveness. They both fell and the accused got on top of her, pushing her face against the hammer, which caused her injuries on the face. The complainant retaliated by grabbing the accused's private parts. While holding the grip, the accused stood up, took the hammer again and re-assured the complainant that he would not do anything to her.

After that, they both went to bed with the complainant still bleeding. The complainant testified that throughout the ordeal she felt pains in her anus. Some pains were as a result of being assaulted all over her body. The bleeding from her face could not stop.

[10] The complainant testified that when she realised that the accused was in deep sleep, she swiftly left the house and ran to AN and later to SB for assistance. She slept at AN's place and later reported the incident to SB. The combined evidence of the two witnesses was that in the early morning of 05 January 2025, the complainant arrived at their places on different occasions, visibly distraught, injured and traumatised. She reported that her boyfriend had assaulted her. Both witnesses provided comfort and support, with AN offering her temporary accommodation soothing her injuries and SB assisting her by approaching a neighbour for R20 to help her take a taxi to the police station. SB confirmed that the complainant reported the details of the rape incident to her.

[11] During cross-examination, the complainant testified that she could not run straight to her home after the incident because her home was far away and the path to her home was overgrown with bushes. She feared that the accused might catch up with her. When asked about her unwillingness to go with the accused, the complainant testified that she wanted to end the relationship.

[12] NM, the complainant's sister-in-law testified that the accused did visit their home on the day in question. She stated that the complainant was unwilling to go with him, which appeared to anger the accused. According to her testimony, the accused then entered the yard, bumped into her while standing in the doorway and proceeded directly to the complainant. The accused assaulted the complainant with open hands and dragged her out of the house, taking her away. NM who was with her minor children at the time, testified that they all witnessed the incident.

[13] After realising that the accused had taken the complainant, she reported the matter to one of the members of the local police forum. However, the report yielded no positive results due to lack of signal in the area, which prevented them from contacting the police through the phone. The next day she waited with the hope that

the complainant would return home. After several days, the complainant briefly returned to fetch her clothes before going to live in an undisclosed shelter.

[14] It is common cause that the complainant reported the matter to the police. She was later examined by Ms Nomvuyo Makinana, a forensic nurse at Makiwane hospital. Subsequently, she was hospitalised for six months for emotional healing. The physical injuries sustained by the complainant, as described by her and later documented by the forensic nurse are not in dispute. These are: the laceration on the upper lip with bleeding, bleeding laceration and bruises on the left eye, abrasion on the left cheek, abrasion on the neck, bruising on the breast, redness and swelling on the nose as well as swollen middle finger.

[15] The forensic nurse further noted the following gynaecological injuries: the hymen had multiple healed tears at 3, 6, and 9 o'clock. There were no fresh injuries in the complainant's vagina. However, she noted multiple injuries in the anal area. There was redness of the anal orifice with a laceration at 12 o'clock. Furthermore, there were lacerations at 12 o'clock of the peri-anal area.

[16] The forensic nurse's undisputed credentials are as follows: she is employed by the Department of Health, Thuthuzela Emergency Centre at Cecilia Makiwane hospital. She had obtained advanced Diploma in Forensic nursing at Free State University. She has been a forensic nurse for 08 years, with 20 years' experience as a nurse. When asked to explain the cause of the neck injury, she suggested it may have been due to strangulation. She attributed the other injuries to the use of a blunt force.

[17] After the state closed its case, the accused testified in his defence. He stated that on the day before the incident he and the complainant spent time together. On the next day, he woke up and went to work as usual. He later discovered that an amount of R450 was missing from his wallet. He suspected that the complainant had taken the money.

[18] He went to the complainant's place to inquire about the missing cash. He asked the young man to call the complainant. The complainant did not come, instead

the young man brought his jersey or sweater to him. The accused acknowledged the complainant's unwillingness to join him but denied forcibly dragging her. He stated that he discussed the missing money with the complainant and they went to his home together peacefully.

[19] The accused confirmed that they met two groups of young men on the road, including Nondoda. He stated that no assault occurred on the way to his home. Upon reaching his home, he confronted the complainant about the money. The complainant started assaulting him leading to a fight. He stated that she hit him with a hammer multiple times. When the complainant grabbed her private parts, he bite her on her breast. Feeling overpowered and exhausted, he appealed to the complainant to stop the fight.

[20] The accused testified that although he is physically fit than the complainant, he felt overpowered during the fight as a result of his drunken state. He further stated that the complainant was also drunk due to the 5 litres of wine that she had consumed with one of her friends. Furthermore, the confrontation between them was as a result of the complainant's drunken state. When asked to explain the complainant's anal injuries, he testified that they were self-inflicted. After the fight ended, they reconciled and went to sleep. He denied that he ever raped the complainant or had sexual intercourse with her on the day in question. The accused testified that although he sustained injuries, he did not seek medical help from the practitioners or nurses.

[21] The issues for determination are whether the complainant was raped; whether she was raped more than once and whether there was infliction of grievous bodily harm during the alleged rape incident(s).

[22] In South African jurisprudence, the standard of proof in criminal cases is very high. The burden is on the state to prove its case beyond reasonable doubt. If the accused's version is reasonably possible true, he is entitled to an acquittal.

This requires the court to adopt a more comprehensive approach, namely assessing the evidence in its totality. *In S v Hadebe and Others*², the court said the following:

‘The question for determination is whether, in light of all the evidence adduced at the trial, the guilt of the appellants was established beyond a 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 be set individual part of what is, after all, a mosaic of proof. Doubt about one aspect of the evidence led in a trial may arise 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 indulgence 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 must fail to see the wood for trees.’

[23] The complainant is a single witness in relation to rape and kidnapping, therefore, her testimony must be approached with caution. As fortified by section 208 of the CPA, our courts had on many occasions convicted the accused on the evidence of a single witness. Section 208 of the CPA provides that:

‘An accused may be convicted of any offence on the single evidence of a competent witness.’

[24] The Supreme Court of Appeal (SCA) in *ICM v The State*³ remarked that, although the evidence of a single witness must be clear and precise in all material aspects, it does not mean it must be flawless and beyond criticism.

² 1998 (1) SACR 422 (SCA) at 426 f-h.

³ (692/2021) [2022] ZASCA 108 (15 July 2022) at para [22].

[25] This court acknowledges that there are two mutually destructive versions in this case, therefore the question of credibility forms an integral part of the issues that must be evaluated. I have to follow the approach typically adhered to by our courts in resolving factual disputes. This is outlined in *Stellenbosch Famers' Winery Group Ltd & Another v Martell Et Cie & Others*⁴. The approach involves three-pronged analysis where the court assesses witnesses' credibility, their reliability and probabilities.

[26] To pursue this approach, several factors, while not decisive may still play a significant role. This encompasses various characteristics including the witness' honesty and behaviour while testifying, hidden biases, inconsistencies within their testimony or with previously stated facts, the probability or improbability of specific aspects of their account, the credibility of their performance compared to other witnesses testifying about the same incident.⁵

[27] According to the landmark case⁶, the reliability of witnesses hinges on two key components: their opportunity to experience the event in question and the quality, integrity and independence of their recall.

[28] Mr Vena for the state and Mr Nomlala for the defence presented comprehensive arguments on the merits and points of law. Despite their detailed arguments, this court will highlight some of the key legal issues that are pertinent to the proceedings. Before adopting that approach, it needs to be assessed whether the complainant was a credible and reliable witness. The findings on the key issues raised will be considered thereafter.

[29] I must state from the onset that despite the complainant's intention to part ways with the accused, at the time of the occurrence of the events they were still in a domestic relationship. Her version finds corroboration in NM's version that she was beaten up by the accused before they left home. The complainant's testimony which is corroborated by NM in relation to beating and dragging from her home, indicates

⁴ 2003 (1) SA 11 (SCA) para 141 J - 15 A-D, Mdazane and Another v Nene and Another (EL 799/2020) [2024] ZAECELL 42 (29 October 2024) at para 18-20.

⁵ Fn 4 above.

⁶ Fn 4 above.

that her actions were not of her own volition but rather a deprivation of her freedom of movement which resonates with the elements of kidnapping.

[30] Considering the accused's behaviour at the time he arrived at the complainant's home, a behaviour witnessed by NM, this court has no reason to disregard her evidence that she was further assaulted on the way to the accused's home. The fact that the complainant escaped in the early hours of the morning clearly suggests that something untoward occurred at the accused's home. When assessing the evidence in its totality, it is clear that violent crimes perpetrated against her, including rape that led to her escape and seeking refuge.

[31] It is no coincidence that AN and SM, on separate occasions, witnessed the complainant shivering, with injuries on her face and crying. The totality of the circumstances demonstrates that the complainant was a credible and reliable witness.

[32] In contrast, the accused's version is marred by a series of improbabilities, fabrications and contradictions that defy logic. Specifically, his claim that the confrontation resulted from the complainant's intoxicated state is undermined by the forensic nurse's report which found no traces of alcohol or drugs in the complainant's body during examination.

[33] In my view, it is clear that there was no mutual fight between the pair, but rather an attack on the complainant. In an attempt to free herself from the accused's grasp, she grabbed her private parts during the tussle that occurred between them. I agree with the state's argument that if the complainant was as physically strong as the accused wants this court to believe, she would have resisted leaving him and fought back precisely at the time he was dragging and beating her out of her home.

[34] Another aspect that undermines the accused's version is the contradiction he made, initially stating that the complainant assaulted him once with a hammer, only to later change his account to thrice. This inconsistency further supports the complainant's version that there was no fight between the two.

[35] Another point raised by the accused as a surprise was his version that the complainant's anal injuries were self-inflicted. This allegation was never put to the complainant nor the forensic nurse during cross-examination, suggesting that it was an afterthought. In any event, the forensic nurse's findings were consistent with the complainant's version, particularly regarding the probable cause of the injuries. I find the accused's version to be highly improbable and indeed false beyond reasonable doubt. Therefore, his version cannot be reasonably possibly true.

[36] Revisiting the issue of whether grievous bodily harm was inflicted, as per Mr Nomlala's argument, it is essential to examine the relevant case law that addresses this aspect. In *S v Tuswa*⁷(Tuswa), the court held that:

'[31] Two further aspects deserve mention. These revolve around the definitions of the words 'involving' and 'grievous' as they present themselves in the construction of this statutory offence. With respect to the word 'involving', in *S v Thole* 2012 (2) SACR 306 (FB) the ordinary dictionary definition is referred to by Molemela J in para 11 at 309 as to- 'to include something as a necessary part of an activity, event or situation . . .'. That quotation seems to be incomplete, as *The Oxford English Dictionary* repeats it but also includes the word 'result'. In other words, the quotation reads:

' . . . include something as a necessary part or result of an activity '

Regarding the meaning of the word 'grievous', I refer to *S v Rabako* 2010 (1) SACR 310 (O) para 7 at 315, where Musi J also accords to the word its ordinary natural meaning, describing it as meaning 'actually serious'. Of this Musi J says:

'In essence then, if the injury inflicted by the accused on the body of the rape survivor is serious, then it involves the infliction of grievous bodily harm It should not be a trivial or insignificant injury Whether an injury is serious will depend on the facts and circumstances of every case.'

⁷ 2013 (2) SACR 269 (KZN).

[37] I agree with the sentiments and the case law referenced in *Tuswa*.⁸ The complainant's injuries as described by the forensic nurse are indeed serious. In any event, in *Tuswa*, the court went on to acknowledge that neither the legislation nor any case law suggests a distinction between gynaecological injuries and other injuries when determining the seriousness of harm. Making such a distinction would be unfounded. Therefore, I am satisfied that in *casu*, the rape incident(s) involved infliction of grievous bodily harm.

[38] The final contentious issue is whether the rape constituted a single act or multiple instances. Following the SCA's guidance in *Blaauw*⁹ and *Tladi*¹⁰ as highlighted by Mr Nomlala, I reiterate the stance that each case is determined on its own facts. The *Blaauw*¹¹ case which was referenced in *Tladi*¹² was decided in 1999 prior to the enactment of SORMA. Despite the fact that *Tladi* was decided in 2012 after the enactment of SORMA, in both matters, the facts are distinguishable from the matter before this court. *Blaauw* focussed more on the issue of ejaculation. The SORMA amended the common law crimes of rape and encompasses statutory sexual offences. In terms of SORMA, one of the key elements of rape are absence of consent and sexual penetration.

'sexual penetration' includes any act which causes penetration to any extent whatsoever by–

(a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person.'

Therefore, in light of the circumstances of this case, I conclude that the complainant was raped more than once. Consequently, the state has proved the guilt of the accused beyond reasonable doubt.

[39] **The verdict is pronounced as follows:**

⁸ Fn 7 above.

⁹ *S v Blaauw* 1999 (2) SACR 295 (W) at 300 a-g.

¹⁰ *Tladi v The State* (895/12) [2012 ZASCA 85 (31 Mat 2013)].

¹¹ Fn 9 above.

¹² Fn 10 above.

Count 1- Kidnapping - The accused is found guilty as charged.

Count 2 – The accused is found guilty to Rape in contravention of Section 3 of the Criminal Law, Sexual Offences and Related Matters Amendment Act 32 of 2007, read with Section 51(1), Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (as amended).

N CENGANI-MBAKAZA

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the State : Adv Vena
DIRECTOR OF PUBLIC PROSECUTIONS
MAKHANDA

Counsel for the Defence : Adv Nomlala
LEGAL AID SOUTH AFRICA
BHISHO

Date Heard : 22, 23, 24, 25, 28, 29, 30 and 31 July 2025

Date Delivered : 31 July 2025