



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

29 November 2011

STATUS: Immediate

S v The State (423/11)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal (the SCA) today upheld an appeal from the North West High Court, Mafikeng and set aside the conviction and sentence of the appellant.

The appellant was convicted on a charge of rape of a minor, his daughter. The appellant was convicted in 2004 but took over two years for the high court to refuse leave to appeal, about two years before the petition to appeal at the SCA was granted and a further two years before the full record of the proceedings was filed before the SCA. The SCA stated that these deplorable delays put the criminal justice system to shame and condemned the ineptitude of the Legal Aid Board in representing the interest of the appellant. The SCA also expressed its dismay at the delays caused in hearing applications for leave to appeal as a result of the recent introduction of s 316 (10) (c) of the Criminal Procedure Act 51 of 1977, which was adopted without consulting the SCA and now requires a record of the full proceedings to be placed before the SCA before an application for leave to appeal can be heard even if not required for deciding the application.

The SCA in considering the merits of the appeal stated that the magistrate court had no regard to any cautionary rule in considering the evidence before it relating to a single witness and child witness. The SCA found the magistrate's court approach to the opinion evidence of the expert psychologist to be fatally flawed. The SCA also found prejudice against the appellant in the manner in which the magistrate court and the high court on appeal failed in allowing state witnesses who had expressed their desire to retract their testimony to testify. The SCA held that the acceptance by

the high court of self-corroboration as evidence in upholding the appellant's conviction carried little evidentiary weight.

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