



## 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:** 19 January 2024

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Ximba v The State* (957/2022) [2023] ZASCA 6 (19 January 2024)

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Today the Supreme Court of Appeal (SCA) handed down a judgment dismissing an appeal against the decision of the Gauteng Division of the High Court, Johannesburg (the high court).

The issue before the SCA was whether the appellant was the perpetrator, as alleged by the complainant, and whether the trial court was correct to have convicted the appellant on the rape charges against him.

The complainant, an 18-year-old woman, is a vulnerable young woman who had been abandoned at birth and sexually abused from an early age. During September and October 2015 she was sent to Johannesburg from Durban to do domestic work for a friend of her foster mother, Ms N. The appellant was the partner of Ms N, and father of her child. Over this period the complainant alleged she was raped by the appellant and also gang raped by the appellant and his friends on one occasion. The complainant contacted a female captain from a police station in Durban whom she informed about the rapes. The police captain finally fetched her from Johannesburg and took her to a place of safety in Durban. A few days later she was examined by the district surgeon who confirmed that the complainant had been the victim of a brutal sexual assault. He also confirmed that the injuries were recent and that the extent of the injuries ruled out the possibility of consent. The complainant laid charges and the appellant was arrested for rape.

During the trial, the appellant denied that he had raped the complainant and contended that he was never alone with the complainant. The appellant's evidence was supported by Ms N. They both noted that the complainant did not have any friends or acquaintances in Johannesburg. The trial court found that Ms N was a biased witness and that her version that the appellant and the complainant were never alone together fell to be rejected. Following this, the appellant was convicted in the regional court (Germiston) on the charges of rape and was sentenced to life imprisonment. The matter was appealed to high court which also rejected the version of the appellant and confirmed the conviction and sentence of the trial court. The appellant was granted special leave to appeal at the SCA. The appellant withdrew the appeal against sentence and therefore the appeal is against conviction only.

The SCA held that, in rape matters, the complainant is usually a single witness. The SCA held that 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, decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt.

Adopting this approach and considering the evidence holistically, the SCA took into account the following undisputed facts. The complainant knew no-one in Johannesburg. Initially, she was loving and communicative with Ms N but this changed to such an extent that in the end she would go into her room and only communicate with Ms N by WhatsApp messages. The first time that she went back to Durban

she told her foster mother that she did not want to return to Gauteng to live with Ms N. This request was ignored. The complainant informed the captain that she was being repeatedly raped by the appellant. The captain fetched her from Johannesburg and placed her in a place of safety in Durban. A few days later, the complainant was seen by a district surgeon who found evidence of a violent rape having taken place in the previous few days.

The SCA held that the reports that the complainant made to the captain supported the consistency of the version of the complainant, and thus her credibility. The district surgeon corroborated the complainant's version that she had been the victim of a violent sexual assault. There is no suggestion that the complainant was acquainted with people in Gauteng other than Ms N and her family and the appellant.

On the above facts the SCA held that the complainant was brutally raped, and that the appellant was the perpetrator thereof. The appellant's bare denial was not reasonably possibly true. As a result, the SCA dismissed the appeal against the conviction.

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