THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Godfrey Alfred Ntuli v The State (20730/14) [2025] ZASCA 53 (09 May 2025)

Today the Supreme Court of Appeal upheld an appeal against the decision of the Gauteng Division of the High Court, Pretoria, in respect of the conviction and sentence of life imprisonment imposed on the appellant on a charge of rape and substituted the sentence with 15 years' imprisonment.

The Regional Court held in Benoni, convicted the appellant on one count of kidnapping and four counts of rape and sentenced him to terms of imprisonment in respect of each count. On count two, rape of a female allegedly aged 14 years, the regional court imposed life imprisonment and gave leave to appeal only in respect of that sentence. The Gauteng Division of the High Court, Pretoria (the high court), Ismail J and Hassim AJ, held that the regional court had exceeded its sentencing jurisdiction, it set aside the sentence and referred the matter to a single judge for sentence only in respect of count 2. Mavundla J sentenced the appellant to life imprisonment and granted leave to appeal to this Court, in respect of both conviction and sentence on all counts. The appellant, correctly, limited his appeal to the conviction and sentence on count 2 and abandoned the appeal in respect of all other convictions and sentences.

The issues on appeal were whether the state relied on hearsay evidence to prove the complainant's age and in respect of sentence, whether the reference in the charge sheet to s 51(2) instead of s 51(1) limited the minimum sentence that could be imposed to 10 years' imprisonment.

Before the regional court and Mavundla J, the state was called upon to adduce evidence of the complainant's age. It sought to meet that burden by leading the complainant who testified when she was 20 years old and said that she was '14 years old going 15' when the incident had occurred. Although that was hearsay evidence the state did not make application for its admission in terms of s 3(1) of the Law of Evidence Amendment Act, 45 of 1988. The appellant, who was legally represented, did not object to the hearsay evidence or to the mistake in the charge sheet before the regional court. Instead, his legal representative indicated that he had been warned about the applicability of a minimum sentence of life imprisonment.

Bloem AJA writing for the majority of the court (SCA) was not in agreement with the sentence of life imprisonment by the minority and pointed out that the state failed to prove one essential element, namely, that the complainant was under the age of 16 years when she was raped. The appellant could accordingly not be convicted of rape in terms of s 51(1). Since the appellant was convicted under the provisions of s 51(2), it would be unfair to sentence him under the provisions of s 51(1).

The SCA in considering the matter found that the failure on the part of the state to seek a ruling before the close of its case that the hearsay evidence regarding the complainant's date of birth be admitted, means that the evidence of the complainant and Ms Mabunda remained inadmissible. The state accordingly failed to prove an essential element for its reliance on the provisions of s 51(1) of the Criminal Law Amendment Act.

Baartman JA, writing for the minority of the court held that the following is relevant to the enquiry into whether it is in the interest of justice to allow the hearsay evidence: These are criminal proceedings. The nature of the proceedings militates against the admission of the hearsay evidence. The accused was legally represented at the trial by the same representative. He was informed in the charge sheet that the state had alleged that the complainant was 14 years old at the time of the commission of the offence. Sexual intercourse was common cause, and the appellant admitted that he knew it was unlawful for him to have had intercourse with her as she was a minor. He referred to the complainant as a child. Thus, his defence was directed at the allegations in the charge sheet that attracted life imprisonment. Baartman JA held further that errors or omissions in the charge sheet may impact on the accused's fair trial right. However, no error or omission in the charge sheet, per se, impacts the accused's right to a fair trial. The court is required to make a fact-based enquiry considering the entire trial record before concluding whether the accused's fair trial rights have been compromised.

As a result of the majority judgment, the SCA upheld the appeal against conviction and sentence on count 2. It convicted the appellant under the provisions of s 51(2) and replaced the sentence of life imprisonment with 15 years' imprisonment.