



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: 5 June 2025

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

Japhta v The State (1016/2023) [2025] ZASCA 80 (5 June 2025)

Today the Supreme Court of Appeal (SCA) has upheld an appeal against the order of the Western Cape Division of the High Court, Cape Town (the full court) dismissing the applicant's appeal against conviction and sentence imposed by the Regional Court, Mitchells Plain (the trial court) and set aside the conviction and sentence.

On 10 December 2021, the applicant was convicted of attempted rape and was sentenced to eight years' imprisonment. On 26 January 2022, the trial court dismissed the applicant's application for leave to appeal against his conviction and sentence. On 4 February 2022, the applicant filed a petition in terms of s 309C(2)(a)(ii) of the Criminal Procedure Act 51 of 1977 (the CPA) for leave to appeal against his conviction and sentence. On 5 October 2022, the high court granted him leave to appeal. His appeal was heard on 26 May 2023 and was on 14 June 2023 dismissed. The applicant's petition to this Court for special leave to appeal was dismissed on 30 August 2023. The applicant thereafter applied in terms of s 17(2)(f) of the Superior Court Act 10 of 2013 to the President of this Court for reconsideration of the decision dismissing his petition for special leave. The President granted the reconsideration application.

The applicant, Vincent Japhta, was charged with rape in contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007, in the Regional Court for the Regional Division of the Western Cape, Mitchells Plain (the trial court). The state alleged that he raped Jermaine Raylene Mulder (the complainant) during the early hours of 19 May 2019, at her residence. At the conclusion of the trial the applicant was convicted of attempted rape and on 10 December 2021, he was sentenced to eight years' imprisonment.

The facts of the matter were as follows, the complainant testified that on the night in question she had been drinking alcohol at her home with family and friends. At some stage she felt drunk and went to her bedroom to sleep. She was fully clothed when she got into bed. She wore, among others, tight skinny jeans. At some stage, after she had passed out due to intoxication, she woke up and found the applicant on top of her. She testified that they were both naked below the waist, her pants and panties were on the floor, and that nothing untoward was happening when she woke up. The applicant then allegedly left the room, still undressed. She did not get up to lock the door. She testified that she immediately thereafter passed out because she was heavily intoxicated. She was examined by a medical doctor the following day. The J88 form, however, did not record any injuries or any other evidence of sexual assault.

The day after the alleged incident, the complainant initially called the applicant and demanded that he tells her the truth regarding what transpired the previous night. She threatened that she would lay a

charge of rape against him if he did not tell the truth. She thereafter sent him about 74 WhatsApp messages, threatening to report the incident to the police, and repeatedly asking him what really happened the previous night. Nowhere in those messages did the complainant mention the version she testified to in court, namely, that she woke up to find the applicant naked below his waist and on top of her while her lower body was also naked.

In his testimony, Mr Henrico Botha ("Mr Botha"), who had stayed over at the complainant's house because he was extremely intoxicated, testified that the applicant was wearing boxer shorts when he saw him in the complainant's bedroom; he was not naked. Mrs Bonita Botha, the complainant's sister, had already left the former's place by the time of the alleged incident.

The applicant's version was that he went to the complainant's house on the evening in question with a friend, Mr Andre Pietersen. There were several other persons present and they all consumed alcohol. He and the complainant thereafter twice went to her room to check on Mr Pietersen who had gone there for a nap. They kissed on both occasions. At some stage, after everyone had left, save for the complainant, the applicant, Mr and Mrs Botha, Mr Botha passed out in the living room. Mrs Botha then asked the applicant to take her home. He did so. The complainant then retired to her bedroom.

It is common cause that the complainant was heavily intoxicated at the time of the alleged incident and it is not surprising that evidence shows that she was an unreliable witness. Her statement to the police on 23 May 2019, a few days after the alleged incident, materially differs from her testimony in court. In her statement she only mentioned that she could vaguely recall the applicant being on top of her and having had drinks with family and friends. Under cross-examination she had difficulty explaining how she could subsequently remember all the detail to which she testified in court. She also threatened and coerced the applicant into making admissions. Moreover, she disingenuously brought the applicant under the impression that she had been to a doctor and that semen was found on her.

The trial court found that the complainant's version that she and the applicant did not go to her bedroom on two occasions was corroborated by both Mr and Mrs Botha. This was also a material misdirection. In fact, the versions of Mr and Mrs Botha contradict that of the complainant in this regard. Mr Botha testified that he did not watch the applicant the entire evening. Mrs Botha confirmed that the complainant indeed went to her bedroom to check on Mr Pietersen but could not recall whether the applicant also did so. She could, however, not dispute that he could have done so.

It was common cause that the complainant told several lies and disingenuously made promises with the intention of coercing and deceiving the applicant into admitting that he had raped her. It is also not in dispute that the applicant made the aforementioned admissions - namely that he had used his finger and that 'it was just the head' - solely because of those threats and perhaps to avoid embarrassment for him and his family. It is therefore self-evident that, even if the admissions do not fall foul of the provisions of s 219A of the CPA because they were not impermissibly induced by a person in authority, their admission makes no difference because they have no probative value. The trial court thus correctly found that it could not place any reliance on the admissions, and the full court did not find that it misdirected itself in this regard.

Therefore, having regard to the totality of the evidence adduced in this matter it is manifest that the trial court materially misdirected itself in the various respects mentioned previously. Exceptional circumstances require a high threshold. Errors of fact that turn on an assessment of evidence will not ordinarily amount to exceptional circumstances. Were it otherwise, almost every petition that is refused in the criminal cases that come before this Court would warrant reconsideration. However, where the compounding errors are so extensive that the risk of a wrong conviction is manifest, there is a probability of grave individual injustice. This is such a case.

The Court has found that it is manifest that a wrong conviction on such a serious charge must inevitably result in a grave injustice for the applicant, therefore, that there are exceptional circumstances as contemplated in s 17(2)(f), and the referral to this Court was properly made.

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