



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: 14 April 2026
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

Pholosi v The State (Case no 128/2025) [2026] ZASCA 49 (14 April 2026)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it upheld an appeal against the refusal of a petition for leave to appeal by the North-West Division of the High Court, Mahikeng (the High Court).

The appellant was charged in a regional court (the trial court) with the contravention of s 3 of the Criminal Law Amendment Act (Sexual Offences and Related Matters) 32 of 2007. It was alleged that he had penetrated the vagina of a fourteen-year-old female, the complainant, with his penis. He was convicted and sentenced to 16 years' imprisonment. His application for leave to appeal against the conviction and sentence was dismissed. He petitioned the High Court in terms of s 309C(2) of the Criminal Procedure Act 51 of 1977 (the CPA) for leave to appeal. The High Court dismissed the petition, whereafter he applied for special leave to appeal to the SCA, which leave was granted.

The SCA confirmed that a petition for leave to appeal to a High Court under s 309C(2) of the CPA is an appeal against the refusal of leave by the trial court. The order of the two judges of the High Court refusing the petition constitutes a 'judgment or order' or 'ruling' and is appealable to the SCA. Such an appeal places before the SCA only the correctness of the High Court's refusal of leave to appeal, and not the correctness of the underlying conviction by the trial court. The test is whether the appellant has reasonable prospects of success in the envisaged appeal. This entails an enquiry whether, based on the facts and the law, a full bench on appeal could reasonably arrive at a conclusion different to that of the trial court.

The SCA considered the facts of the case and the evidence led during the trial. This included the medical evidence presented and whether it established penetration, the fact that the complainant was a single child witness, and the absence of a spontaneous first report. The SCA further listed a number of examples of possible improbabilities and contradictions that appear in the record, which could impact the reliability of the complainant's evidence. The failure of the State to call certain witnesses and whether an adverse inference could be drawn from such failure, were also pointed to.

As a result, the SCA concluded that there are reasonable prospects of success, and accordingly that the appeal against the refusal of the petition should succeed.