



**THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA**

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 24 March 2015  
Status: Immediate

*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.*

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**MUZI GONYA V THE STATE**

The SCA today granted an appeal to the appellant to appeal against his sentence to the Gauteng Division of the High Court. The appeal originated from the regional magistrates court, Benoni, Gauteng where the appellant was convicted of raping a minor twice and sentenced to 20 years imprisonment. The sentence carried a non-parole period in terms of s 276B of the Criminal Procedure Act 51 of 1977. He was required to serve a minimum of two thirds of the sentence amounting to 13 years and four months before he would be eligible for parole

On 1 March 2013 the applicant's petition on conviction and sentence to the Judge President of the North Gauteng High Court, Pretoria was refused. At the time of the appellant's conviction and sentence the Superior Courts Act 10 of 2013 had not been promulgated. The Superior Courts Act was promulgated on 23 August 2013 during the course of the petition process. In terms of s 52 of the Superior Courts Act the relevant date is determined when the proceedings commenced. Consequently the appeal provisions of the Supreme Court Act No 59 of 1959 apply.

The appropriate appeal procedure, when a petition is refused by the high court, in terms of s 20(4)(b) of the Supreme Court Act is that leave must be given by the SCA. The order appealed against is the refusal of leave. In the result this court cannot decide the appeal itself. It would fly in the face of the hierarchy of appeals for this court to hear an appeal directly from magistrates' court without that appeal being adjudicated in the high court and thereby serving in effect as the court of both first and last appeal.

The complainant, aged 15 years, was walking along a street in Chris Hani Township when a male person wearing a balaclava and wielding a knife came up from behind, grabbed her and then subdued by stabbing her three times in the back and forced her to walk to his room blindfolded. There he raped her and kept her captive from early Sunday morning till 17h00 the same day. The appellant's version that the complainant had been his lover and knocked on his bedroom door in the early hours of the morning claiming she had been raped and stabbed was correctly rejected as false. If the appellant was her lover he would have taken her to a doctor or police station: he failed to do so. This court has refused leave to appeal against the conviction.

As regards the appeal on sentence, the principle in *S v Stander* 2012 (1) SACR 537 (SCA) by Snyders JA confirmed that although s 276B of the Criminal Procedure Act grants courts the power to venture onto the terrain traditionally reserved for the executive, it remains generally undesirable for a court to exercise that power save in exceptional circumstances as it may affect any future decision about parole. An accused person and the State must be given an opportunity to place facts before the court in respect of a non-parole sentence. The regional court magistrate failed to do so.

Accordingly, this court upheld the appeal against the refusal of leave, and granted leave to appeal to the Gauteng Division against sentence.