



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: 10 April 2008

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.

Mthembu v the State

The Supreme Court of Appeal (SCA) today, in the first case of this kind since the advent of our constitutional democracy, ruled that evidence obtained through the use of torture is inadmissible – even when the evidence was reliable and necessary to secure the conviction of an accused facing serious charges. It held that the Constitution prohibits torture absolutely and that the use, by the police, of electric shock treatment for the purposes of obtaining evidence fell within the prohibition. It ruled further the admission of such evidence would compromise the integrity of the judicial process and bring the administration of justice into disrepute. This is because torture was barbaric, illegal and inhumane and was one of the most serious of human rights violations.

The SCA has referred the matter, for further action, to:

- The Minister for Safety and Security;
- The National Commissioner of the South African Police Service;
- The Executive Director of the Independent Complaints Directorate;
- The National Director of Public Prosecutions;
- The Chairperson of the Human Rights Commission.

The accused, Bongani Mthembu, is a taxi operator and former police officer. Among the charges he faced in the Verulam Regional Court were the theft of two motor-vehicles and armed robbery of approximately R70 000 of pension money from the Maidstone Post Office at Tongaat in 1998. The magistrate sentenced Mthembu to 23 years' imprisonment (eight years for the theft of the two vehicles and 15 years for the robbery). The Durban High Court reduced the sentence to 17 years' imprisonment (five years for the two vehicles and 15 years for the robbery.)

The evidence showed that Mthembu brought both vehicles to Mr Sudesh Ramseroop, a panel-beater from Tongaat, for repairs. Mthembu also handed him an empty metal box, which he used to carry the money that had been taken

from the post office during the robbery. Ramseroop hid the empty box in the ceiling of his home.

The evidence also showed that a post office employee identified Mthembu as one of the robbers at an identification parade. The identification parade had, however, not been properly conducted. This resulted in the SCA holding that the failure to hold a parade with adequate safeguards made this evidence unreliable.

The police discovered one of the stolen vehicles at Ramseroop's home after he admitted that Mthembu brought the vehicle to his home. This was before his arrest. However, the police discovered the second vehicle and the metal box only after beating and torturing Ramseroop at the Tongaat Police Station. The SCA ruled that because Ramseroop had been tortured his evidence relating to these discoveries had to be disregarded. It therefore set aside his convictions for the robbery and the theft of the second motor vehicle.

The SCA, however, confirmed Mthembu's conviction on the theft of the first vehicle, but reduced his sentence on that count from five years' imprisonment to four years because he had spent 23 months in custody awaiting trial.

The SCA concluded that the police had not only failed in their duty to investigate the case properly by conducting an irregular identification parade, but by torturing Ramseroop and probably two other witnesses, had themselves committed serious crimes. The consequence has been that Mthembu will escape the full consequences of his criminal acts and the police must be held accountable for theirs.