



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  
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*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.*

**DIRECTOR OF PUBLIC PROSECUTIONS**

**v**

**MOABI**

Today the Supreme Court of Appeal handed down judgment dealing with an appeal under s 311 of the Criminal Procedure Act. This allows for an appeal to this court from a high court sitting as a court of appeal where that court decided a point of law in favour of the convicted person.

In the present matter, Mr Moabi was convicted of one count of rape in the Klerksdorp regional court and sentenced to life imprisonment. The regional court applied the provisions of s 51(1) read with Part I of Schedule 2 to the Criminal Law Amendment Act. This requires a minimum sentence of life imprisonment if the rape involved the infliction of grievous bodily harm. If no grievous bodily harm was inflicted, s 51(2) read with Part III of Schedule 2 to the Criminal Law Amendment Act prescribes a minimum sentence of 10 years' imprisonment.

He exercised his right of appeal, which came before the Gauteng Division of the High Court, Pretoria. The high court dismissed his appeal against conviction. It held

that the regional magistrate has incorrectly found that the sentence fell under Part I. It said that, for this to be the case, it must be proved that the accused person had the intention to inflict grievous bodily harm. Since it found that no such intention had been proved, it held that the sentence fell under Part III. It then upheld the appeal against sentence and substituted a sentence of 14 years' imprisonment.

The Director of Public Prosecutions invoked the provisions of s 311 of the Criminal Procedure Act. It contended that the conclusion of the high court that intention to inflict grievous bodily harm was necessary amounted to a question of law which the high court found in favour of the respondent. The DPP applied for leave to appeal and the Supreme Court of Appeal required argument on the application and required the parties to be prepared to also argue the merits of the appeal.

The Supreme Court of Appeal found that the high court erred in law in requiring that an intention to inflict grievous bodily harm was required. The requirement was only that, as a matter of fact, grievous bodily harm was inflicted. The provisions of s 311 of the Criminal Procedure Act were therefore triggered. The error of law committed by the high court meant that the respondent's appeal on sentence had not been considered on the merits. The sentence of the respondent was re-instated as imposed by the regional court. The matter was remitted to the high court for it to properly exercise its appeal jurisdiction on sentence.

The majority judgment held, in addition, that an appeal under s 311 was one regulated in terms of the Criminal Procedure Act. The definition of 'appeal' in s 1 of the Superior Courts Act excluded an appeal regulated in terms of the Criminal Procedure Act from the appeal provisions of the Superior Courts Act. It was thus unnecessary to obtain special leave to appeal. The appeal was one of right, without leave.

The minority judgment concluded that special leave to appeal was necessary. It would have granted special leave and would have upheld the appeal under s 311 on the same basis.