



## 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:** 10 December 2021

**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*

*DPP, Pretoria v Zulu (1192/2018) [2021] ZASCA 174 (10 December 2021)*

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Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the sentence imposed by the Gauteng Division of the High Court, Pretoria.

On 12 May 2016, the respondent (the step-father of the complainant) was convicted of three counts of rape and two counts of common assault by the regional court. The complainant was a minor when she was raped in November 2011, August 2012, and February 2015. The respondent impregnated her on these occasions and persuaded her to abort the pregnancies.

He was sentenced to life imprisonment on each of the rape counts and three months' imprisonment regarding both the assault counts. All of the sentences were ordered to run concurrently. His appeal against conviction and sentence, with leave of the regional court, was heard by the high court, which dismissed the appeal against conviction. However, the high court upheld the appeal against the sentence, and the life imprisonment imposed on each count of rape was reduced to a sentence of 20 years imprisonment on counts 1, 2, and 3. The concurrency of the sentences remained intact, with the result that the respondent's effective sentence was 20 years.

In coming to its conclusion, the high court bemoaned the fact that the regional court did not consider whether the sentences it imposed were proportional to the rape counts the respondent was convicted of. Further that, the rape counts were not the worst imaginable.

The appellant brought this appeal in terms of s 311(1) of the Criminal Procedure Act 51 of 1977 (the CPA) which confers a party an automatic right of appeal to this Court if it involves a question of law. The nub of the appellant's case was that the reduction of the sentences in the rape counts was based on an incorrect application of the accepted legal principles in sentencing and the provisions of the CLAA, including an incorrect finding that the circumstances of this case were not of a 'worse kind of rape' that warranted a maximum punishment. The respondent argued that the issue raised by the appellant is not a question of law but fact, and that the high court's decision to reduce the rape sentences is unassailable.

The SCA found that the question raised by the appellant is a question of law that entitles it to hear the appeal. Furthermore, the SCA held that there was a material misdirection that warranted it to intervene because the high court failed to apply correctly the provision of the CLAA and the principles laid in *S v Malgas* dealing with the issue of proportionality, coupled with how it underplayed the seriousness of the offences viewed in the context of the circumstances of this matter.

As a result, the SCA concluded that there are more aggravating factors that displayed the respondent's egregious conduct, which justify the maximum sentences prescribed in the circumstances of this matter. The appeal accordingly succeeded.

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