

Supreme Court of Appeal of South Africa

MEDIA SUMMARY- JUDGMENT DELIVERED IN 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.

Zitha Mabuza and Others

v

The State

The Supreme Court of Appeal today dismissed an appeal by three appellants against their convictions on charges of rape and robbery. However, it reduced their respective sentences of life and 15 years' imprisonment which were imposed by the Johannesburg High Court. Each appellant received an effective sentence of 16 years' imprisonment.

The appellants were youths whose ages were 18, 19 and 20 years respectively. The brief facts of the case are that at about 2am on 10 August 1998, while Ms Joyce Mazibuko and her daughter Sibindile were asleep at their Ivory Park home, the three appellants entered their house. Threatening Ms Mazibuko and her daughter with a knife and an axe, the appellants robbed them of a television set, a "hifi" set, a pair of shoes, an engine-pump, three watches and R1 800 in cash. The combined value of the cash and property was R6 859. Also, they had each raped Mazibuko's daughter, Sibindile. One of the appellants raped her twice.

The factual findings upon which the magistrate based the appellants' convictions, which the high court accepted, were not in issue in this appeal. The only issue was whether the absence of a verbatim recording of the pre-trial proceedings indicating that the learned magistrate had explicitly alerted the appellants to the severe penalties prescribed by the Criminal Law Amendment Act 105 of 1997, particularly to the threat of life imprisonment on the rape charge, or any indication that they had properly understood this when electing to conduct their own defence, rendered the trial unfair.

The SCA concluded that while the trial of an unrepresented accused might be unfair if he or she is not properly informed of rights that are relevant, it does not follow that the failure to record the fact that he or she was so informed, (verbatim or otherwise) equally renders the trial unfair. It said that the failure to record what was told to the accused did not impact upon the fairness of the trial and cannot by itself render the trial unfair.

However, on the issue of sentence the SCA concluded that since all the appellants were still juveniles, this was considered a weighty factor in mitigation of sentence. The court said that although the legislature, through the provisions of the Criminal Law Amendment Act 105 of 1997, had clearly intended that youthfulness no longer be regarded *per se* as a mitigating factor, it emphasized that a court cannot lawfully discharge its sentencing function by disregarding the youthfulness of an offender in deciding on an appropriate sentence, especially when imposing a sentence of life imprisonment, for in doing so it would deny the youthful offender the human dignity to be considered capable of redemption.