



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

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Shusha v The State (609/2010) [2011] ZASCA 171 (29 September 2011).

The Supreme Court of Appeal (SCA) upheld an appeal against an order of the KwaZulu-Natal High Court, Pietermaritzburg. The appellant was convicted on one count of rape and sentenced to eight years' imprisonment, two of which were conditionally suspended.

The question before the court was whether the complainant had consented to sexual intercourse with the appellant. In their testimonies, the complainant and the appellant gave contradicting evidence of whether consent was in fact given. The SCA held that at the time of conviction the magistrate applied the wrong standard of proof when rejecting the appellant's version on the basis that it was improbable. The SCA held that it is trite that an appellant's version can only be rejected if the court is satisfied that it is false beyond reasonable doubt.

The court relied on *S v Shackell* 2001 (4) SA 1 (SCA) where it was held that an appellant's version cannot be rejected merely because it is improbable; it can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true. The SCA held unanimously that the appellant's version cannot be found to be inherently improbable. Therefore, the appellant was entitled to an acquittal and the appeal was upheld, and the conviction and sentence was set aside.