



**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: 29 September 2011
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.

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MUSUSUMELI SAMUEL MAEMU V THE STATE

Today, the Supreme Court of Appeal (SCA) handed down a judgment, in the case of Mususumeli Samuel Maemu v the State, upholding the appeal and set aside the conviction and sentence. The appellant had been convicted of rape of a little girl 6 years of age and referred to the High Court for sentencing in terms of section 52 (1)(b)(1) of the Criminal Law Amendment Act 105 of 1997 (minimum sentence legislation). He was sentence to life imprisonment.

The order and judgment of the trial and high court is attacked mainly on the grounds that it failed to apply the cautionary rule as the complainant was a single witness and also that the State failed to prove the guilt of the appellant beyond reasonable doubt. The medical evidence simply indicates that there was possible penetration with an object but the doctor also testified that ‘there is not much evidence to actually certify a penetration’. In this case the child (complainant) was a single witness regarding the rape and conversely the appellant denies having raped her. It must be remembered that rape requires penetration. However, on the facts of this case it cannot be said that the child was penetrated.

The child was 6 years old while the appellant was an adult. One would have expected the child to have sustained noticeable physical injuries after having been raped. The evidence shows that she walked home with ease without bleeding or crying. The allegation of rape was reported to the aunt later the same day, but she did not examine her. The police came to visit the child at school regarding this allegation without anyone in the family reporting it. The alleged rape is said to have taken place in September 2001 but the complainant was only medically examined on the 28 of November 2001 about two months later.

This court found that the trial court failed to properly evaluate the evidence of the child, having regard that her evidence should be approached with caution. In our view the evidence of the appellant was given very superficial consideration regard being had to the summary of the trial court to the effect that the appellant's version is a bare denial, and 'a mere statement without any flesh'. Therefore a reasonable possibility that his denial may have been true, cannot be excluded. He was indeed entitled to an acquittal.