



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL**

16 November 2011

STATUS: Immediate

MAGADLA V THE STATE

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

In a majority judgment, the Supreme Court of Appeal (SCA) dismissed an appeal by the appellant and upheld an order of the Eastern Cape High Court, Mthatha.

The appellant was convicted in the regional court of rape and sentenced to ten years' imprisonment. An appeal against his conviction was dismissed by the high court, and he was further denied leave to appeal further. The appellant was granted special leave by this court.

The issue to be decided on appeal was whether the appellant was correctly identified as the perpetrator of the offence. The appellant did not dispute that the complainant had been raped but a point of law arose regarding the identification of the appellant as the rapist, based on the evidence of a single witness.

On the day of the incident, after an altercation with her boyfriend, the complainant left home and was subsequently offered a lift by a man, whom she identified in court as the appellant. The appellant was driving a red vehicle with tinted windows which had been converted into a van. The appellant proceeded to a homestead in the district of Willowvale, Transkei in an opposite direction to where she was going, after which she became concerned. The appellant, at the homestead, ordered her into a room illuminated by an electrical light, and demanded that she sleep with him. She refused whereupon a struggle ensued; he then overpowered her and began to rape her. Early the following morning he told her to get up and leave before the other people in the homestead awoke, whereafter she went to the home of her friend, the second witness, who provided her with a place to sleep. The complainant did not report the incident to her friend, who observed her demeanour was very subdued. Later on and upon exhortation by her family she finally told her grandmother about

what had happened. The incident was then reported to the police and the complainant made a statement. The complainant later upon seeing the red vehicle notified the police which resulted in the arrest of the appellant.

The evidence of the State was based mainly upon the description of the vehicle given by the complainant, a single witness. The complainant was adamant that it was the appellant who raped her in the room that night, as she had ample opportunity to observe him. The appellant testified that on the day in question, he was attending the funeral of his relative in Fort Malan. The appellant furthermore stated that during the weekend in question, his vehicle was not in operation. The appellant however admitted to owning a red vehicle with tinted windows that had been converted into a van. The appellant's cousin supported his version when he testified. The magistrate rejected the appellant's version as false, and held that the complainant's evidence was credible and accordingly convicted him of rape.

Majority Judgment

The SCA in the majority judgment held that there were certain indicia in the evidence that lent credence to the complainant's version and cast doubt on the appellant's alibi defence. Furthermore, the complainant had had ample opportunity to observe the appellant, both when she travelled with him and when she was raped and kept for a considerable amount of time by him in an illuminated room. The majority therefore found the complainant to be a credible, truthful and reliable witness and that her evidence was sufficiently strong to prove beyond reasonable doubt that the appellant was the perpetrator of the offence. The majority accordingly rejected the alibi defence and held that there was no reason to disturb the finding of the trial court. The appeal against conviction was accordingly dismissed.

Dissenting Judgment

The minority found that the State's case had not been proved beyond a reasonable doubt in that the complainant had been contradicted by her friend with regard to the identification of the red vehicle and the identity of the assailant. The minority held further that the appellant had provided an alibi defence, which had not been disproved beyond a reasonable doubt. The minority stated that as the alibi remained reasonably possibly true, the court could not reject it. It therefore concluded that the appeal should have been upheld.

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