



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

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

23 November 2011

STATUS: Immediate

NDOYISIWE NOTITO v THE STATE (CASE NO 123/11)

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

The Supreme Court of Appeal (SCA) today dismissed an appeal by Mr Ndoyisiwe P Notito (the appellant) who had been convicted by the Free State High Court, Bloemfontein (per Hancke J) of seven counts of rape, eight counts of theft and two counts of indecent assault. He was sentenced to an effective term of 28 years' imprisonment. He was granted leave to appeal against the conviction in respect of five counts of rape (counts 1, 2, 6, 9 and 14) and one count each of indecent assault (count 17) and theft (count 3).

The evidence adduced during the trial revealed that the appellant adopted the same modus operandi in each instance. He would target and approach any female walking alone in town and inform her that she had been bewitched and offer to help her. In order to render help, he told each victim he required hair from her head, armpit and the pubic area. Once the woman succumbed to his request, he would touch her private parts and then have sexual intercourse with her.

This court found that the complainants in counts 1 and 2 had lost consciousness whilst in the company of the appellant. It further held that the only reasonable inference to

be drawn was that the appellant had sexual intercourse with the complainants who were unconscious and that they were in no position to give consent whilst in that state. The SCA also found that the appellant had stolen the personal items of the complainant in count 2. With regard to the other convictions of rape (counts 6, 9, 14) the court found that no consent was obtained from each of the respective complainants. Regarding the indecent assault conviction the court found that the conduct of the appellant was objectively indecent and that the complainant did not have a full appreciation of what she was consenting to.

This court therefore held that the appellant had been correctly convicted in respect of all counts. It accordingly dismissed the appeal against the conviction and confirmed the sentence imposed.

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