



THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

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

29 November 2011

STATUS: Immediate

**AD V THE STATE (334/2011)**

*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 (the SCA) today upheld the above appeal against a refusal of a petition for leave to appeal and granted the appellant leave to appeal to the Free State High Court, Bloemfontein against his convictions and sentences.

The appellant was convicted in the regional court of two counts of indecent assault and one count of rape. He was sentenced to five, ten and 15 years' imprisonment in respect of these offences. These sentences were ordered to run concurrently. He applied unsuccessfully to the trial court for leave to appeal against both the convictions and the sentences.

He petitioned the Judge President of the Free State High Court for leave to appeal. His petition was refused. He then applied for leave to appeal against the refusal of the petition. Having found reasonable prospects of success in respect of both the convictions and the sentences the high court granted the appellant leave 'to appeal to the Supreme Court of Appeal against his convictions and sentences'.

The SCA stated that a petition for leave to appeal to a high court is, in effect, an appeal against the refusal of leave to appeal by the court of first instance. Hence the high court's order was made in error: the high court had stated that it was dealing with an application for leave to appeal against the dismissal of the appellant's petition but then contrary to this, it granted leave to appeal against the convictions and sentences. The SCA stated that it was open to it to deal with the appeal on the basis that the court below intended to grant leave against the refusal of the petition and not in the terms in which it ultimately expressed itself.

The SCA then considered whether the appellant had reasonable prospects of success on appeal. Whether the complainant was a satisfactory witness in all material respects was challenged by the appellant's counsel who pointed out a number of contradictions and other unsatisfactory aspects of her evidence. Whether the evidence of an expert to the effect that, in her opinion, the complainant had told the truth was admissible, and could serve as 'corroboration', was arguable. The magistrate rejected the appellant's version as not being reasonably possibly true in the most perfunctory way and without any analysis of his evidence. Furthermore, the State conceded that there was no evidence that count three was committed after the date on which the new statutory offence of rape came into effect. The SCA therefore found that the appellant had reasonable prospects of succeeding on appeal against his convictions. The SCA was further of the view that the appellant's sentence in respect of count three would have to be reassessed, even if the conviction was replaced with one of indecent assault in terms of the common law. It held that the appellant had reasonable prospects of success on appeal against the sentences imposed on him. The SCA also cautioned that it was perhaps time for thought to be given to legislative reform so that petitions could be finalised speedily at the high court level.

**-- ends --**