



**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: 28 September 2012
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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EDSON NDOU V THE STATE

The SCA today upheld an appeal against a sentence of life imprisonment and substituted it with a sentence of 15 years' imprisonment.

The appellant the stepfather to the complainant, a girl under the age of 16 years, was convicted of rape by the regional court in Sibasa (Limpopo). In terms of section 52 of the Criminal Law Amendment Act 105 of 1997, the case was referred to the high court for sentence. The high court sentenced him to life imprisonment because it concluded that no substantial and compelling circumstances existed to justify the imposition of a lesser sentence as prescribed by section 51(1) of the minimum sentence legislation.

The SCA having considered all the factors of this case, concluded that the high court misdirected itself by suggesting that the child had been continuously raped on previous occasions. It is not correct that she had been continuously raped on previous occasions; no evidence was tendered to that effect, however, she had been raped once, by the appellant which rape does not form the subject of this case at all. The appellant had been charged and convicted of one count of rape.

The appellant came home one night drunk. He took off his clothes and slept next to his wife, who was sleeping in one of the rooms. In the middle of the night the appellant woke up and proceeded to the room where the children, including the complainant were asleep. He then had sexual intercourse with the complainant. She did not scream or cry. Her evidence was that she waited until he finished as she intended to tell her mother about the incident in the morning. It was not the first time that he had had sexual intercourse with the complainant. After the first occasion he bought her sandals and panties and also gave her money – therefore her submission to the second encounter appears to have been influenced by the gifts she received previously.

This court having found that the high court misdirected itself was at large to sentence afresh. This court found that substantial and compelling circumstances existed to justify the imposition of a lesser sentence. These are inter alia that no threats or violence was used on the complainant. She did not sustain any serious physical injuries. She got married thereafter, her mother went on to live with another man. However an imprisonment sentence for a long period was considered appropriate in the circumstances. This court found that life imprisonment was disproportionate to the crime hence it interfered.