



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
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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.

MATSHIVHA v THE STATE

The Supreme Court of Appeal (SCA) today upheld an appeal against an order of the Limpopo High Court, Thohoyandou finding the appellant, Mr Jeffrey Khathutshelo Matshivha guilty of rape and murder and sentencing him to life imprisonment and 45 years' imprisonment respectively.

The State had alleged that the appellant had raped a seven year old girl. It was not in dispute at the trial that the child had been raped. The issue was about the identity of the perpetrator. The State called the complainant and her brother, who was also child, as its witnesses. It also called other witnesses. In terms of section 164 of the Criminal Procedure Act 51 of 1977, the high court was required to admonish the child witnesses to speak the truth. The SCA found that the high court had failed to do this. Therefore, the SCA held, no reliance could be placed on the evidence of the complainant and her brother. The SCA also held that the complainant was a single witness whose evidence was subject to the

cautionary and that the high court had failed to give proper consideration to this rule. It then held that the State had failed to prove beyond reasonable doubt that the appellant was the person who had raped the complainant.

In respect of the murder charge, the State had alleged that the appellant had killed the deceased by stabbing him with a knife. The State called two eye witnesses whose evidence was contradictory. The first witness testified that the appellant had stabbed the deceased with a knife three times while the other witness testified that the appellant was not in possession of a knife and denied that the appellant had stabbed the deceased. The appellant had merely pushed the deceased who then fell on a window. The version of the second State witness corroborated that of the appellant and his witness. The police officer who arrested the appellant after the incident, and who was called by the State, testified that the version put by the appellant before court was the version which the appellant gave to him at the time of his arrest. Medical evidence also established that the deceased had sustained only one stab wound, contrary to the evidence of the first State witness that he had been stabbed three times. The high court had rejected the appellant's version as being not reasonably possibly true. Contrary to the high court's finding, the SCA held that the evidence adduced by the State was not such as to justify the conclusion that there was no reasonable possibility that the appellant's version was not true. It rejected the version of the first State witness, who was a single witness regarding the stabbing.

In conclusion, the SCA upheld the appeal and set aside both the convictions and the sentences for rape and murder.