

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 8 March 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.

M M v The State

The Supreme Court of Appeal (by a majority) set aside the appellant's conviction of rape and substituted a conviction of indecent assault. His sentence of life imprisonment was altered to one of ten years imprisonment. The court criticised the officials who had failed to assist the appellant in pursuing his appeal, with the result that it took five years for his application for leave to appeal to be heard and further three years before the appeal could be heard. In the result the appeal was only disposed of after the appellant had already served eight years of his sentence.

The appeal succeeded because of the inconclusive nature of the complainant's evidence as to the precise nature of the assault perpetrated on her and the equivocal terms of the doctor's report. The court stressed that unless the doctor's report is unequivocal in its terms and accepted a correct it is desirable to call the doctor as a witness and not simply to hand in the medical report by consent. Only by the doctor giving evidence can the court be informed of the nature and effect of the doctor's observations and conclusions from the examination of the complainant. The failure to call the doctor as a witness, where the

medical report is equivocal, may lead to an injustice either to the complainant or to the accused.