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Annexure "BSN 3"

A 329/11-MLS  
2011-10-04

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JUDGMENT

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IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

THIS MATTER IS NOT APPLICABLE

|     |                             |        |
|-----|-----------------------------|--------|
| (1) | RECORDABLE                  | YES/NO |
| (2) | OF INTEREST TO OTHER JUDGES | YES/NO |
| (3) | REVISED                     | N/A    |

DATE 21/5/2012 SIGNATURE Sapi AJ

CASE NO: A 329/11

DATE: 2011-10-04

10 In the matter between

BRENDAN SOLLY NDLOVU

Appellant

and

THE STATE

Respondent

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### JUDGMENT

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SAPIRE AJ: The appellant in this matter was convicted of a crime of rape. He is a man of relatively ... [indistinct] years and I say that he is 35  
20 years old and the rape was that of a woman only some years his junior.

The circumstances of the rape have been described and as the appeal against the conviction is not sustainable as was so indicated by counsel for the appellant.

The only question with which this court is concerned is the question of the rape. It was pointed out initially that when the accused

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appeared before the court below he was incorrectly advised as to the provisions of the law applicable in his case and the magistrate indicated that he was facing only a sentence of 15 years' imprisonment.

The provisions of the Act are, however, quite clear and he falls within provisions where the imposition of a life sentence are appropriate and had to be imposed.

A question one has to ask is whether the misinformation imparted by the magistrate to the accused in any way prejudiced him and as he was in fact presented by a qualified attorney and the case was conducted  
10 in such a way that it cannot be said that any other information would have changed it. As we have seen the offence on the merits was unsustainable and the conviction has to be upheld.

It cannot be said that the mere fact that the wrong section of the Act was initially and repeatedly used in any way prejudiced the appellant as far as the sentence is concerned.

The question which has to be asked is whether this court having regard to all facts can and should interfere with the sentence.

The magistrate considered that the life sentence was appropriate. The magistrate took into account that the accused was not a person with  
20 a clean record, that the offence, the commission of the offence was accompanied by a serious assault on the victim before the actual rape took place.

Before this court can interfere the court has to be convinced that the magistrate either misdirected himself which in this case is not possible or that the case is so shockingly inappropriate that it has to be a different

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sentence as to be substituted.

Bearing in mind the seriousness of the assault I am not convinced that the magistrate erred in any way in imposing the sentence he did. The appellant acted with aggression and his assault was a vicious and dangerous one and one can accept that the victim was highly traumatised in the course of the commission of the offence.

It would be wrong in my view for this court to interfere with the sentence and for this reason I would order that the appeal against both the conviction and the sentence be refused.

10 BAM AJ: I agree.

SAPIRE AJ: It is so ordered.



2011 -12- 08 CASE NO: A329/2011

D. M. PIETERSEN  
PRETORIA 0001

**IN THE NORTH GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)**

PRETORIA 04 October 2011

BEFORE THE HONOURABLE MR JUSTICE SAPIRE  
AND THE HONOURABLE MR JUSTICE BAM, AJ

In the appeal of:

BRENDAN SOLLY

APPELLANT

AND

THE STATE

RESPONDENT

HAVING HEARD counsel(s) for the appellant(s) and respondent and having read the record of appeal and other documents filed of record:

**IT IS ORDERED**

1. THAT the appeal against both conviction and sentence is refused.

1. The Magistrate  
Private Bag X01016  
PHALABORWA  
1390

Lower Court No: RP29/08 (03/2011)

Your record is attached

2. The Commanding Officer  
South African Criminal Bureau  
Private Bag X308  
PRETORIA, 0001

CR NO: NONE  
FP NO: NONE

DOCKET NO: NONE  
MR NO: 110/10/2007

3. The Station Commander  
South African Police  
Private Bag  
LULEKANI
4. The Commissioner Correctional Services  
Private Bag X136  
PRETORIA, 0001
5. The Registrar of the Appeal Court  
P O Box 258  
BLOEMFONTEIN, 9000

REGISTRAR