

## RETHEA BIERMAN v THE STATE

---

### Explanatory Note

---

*The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

This is an application for special leave to appeal. The applicant was convicted of murder and the unlawful possession of a firearm and ammunition and sentenced to life imprisonment by the High Court in Pretoria. Her applications for leave to appeal against her conviction were refused by both the High Court and the Supreme Court of Appeal (SCA).

The applicant argues that the High Court infringed her constitutional rights in admitting the evidence of a minister of religion to whom she had confessed that she was guilty of murder. At the trial the judge considered but rejected argument by counsel for the applicant that the evidence was inadmissible and should not be admitted.

An infringement of constitutional rights was not raised in the application for leave to appeal to the SCA, nor was the admissibility of the evidence challenged on common-law grounds.

Leave to appeal to the Constitutional Court is granted only when it is in the interests of justice to do so. O'Regan J for a unanimous Court found that it was not in the interests of justice in this case for the application for leave to appeal to be granted. An important factor in this conclusion was that the applicant had not raised the constitutional issue in her application for leave to appeal to the SCA. Moreover, the applicant had not shown that she had reasonable prospects of success on the merits of the proposed appeal. In refusing leave to appeal, it was made clear that the law governing the admissibility of the evidence of statements made to ministers of religion was not considered. In particular, the Court did not consider whether it is necessary to reconsider the common law rule (as enunciated by the SCA in a decision in 1976) that a minister of religion is a competent and compellable witness, in the light of our Constitution.