

HIGH COURT OF SWAZILAND

CRIMINAL CASE NO.311/02

In the matter between:

REX

VS

SANDILE MAGAGULA

CORAM

MATSEBULA J

FOR THE CROWN

MS. M. DLAMINI

FOR THE DEFENCE

IN PERSON

JUDGMENT ON SENTENCE 08th JUNE 2004

You have been convicted of four very serious crimes. I offered you an opportunity to address me in mitigation. You have only told me that you came back to show that you are innocent after you had been released in terms of Section 136(b). You have said nothing that can help me find something in your favour to mitigate the sentence that I intend imposing.

The court agrees with Mr. Fakudze that you have not shown any sign of remorse. In other words, if you walk out here you are going to commit the same crimes because you feel that you are very smart that you have been able to get out of court without being found guilty. I

further agree that the provisions of the Section 185 (bis) should be called into operation. What that means is that this court is bound, in terms of our law to give you nothing less than nine (9) years in account one. That is the minimum sentence. The court can go up and even multiply that nine (9) years by two.

The court also agrees with the Crown that it is not at large to spend any of the sentence that may be imposed on you. The court also agrees with the Crown that these counts are so prevalent that some people have even called for young men, like yourself, to be castrated. That is too much of a society to ask that such laws be passed because no civilised country can allow such a thing to happen. The only option that we have is to try and follow the law of civilised country and such brutes like yourself be kept in custody as long as it is possible so that members of the society can live in peace without being harassed by people of your type.

These are times of the AIDS epidemic and people who go about raping other people are equivalent to people who are spreading this causing people unnecessary suffering for not only the victims but even the dependants. I do not know how many other people you raped in that rural area where one would expect law abiding citizens unlike areas in towns where there are sheebens and prostitutes. People of your type should be removed from the society because they are rotten potatoes.

The complainants in this case were very decent looking and law abiding citizens old enough to be your mothers. They were subjected to the most barbaric and inhuman treatment by you and your companion. They were forced to be stark naked, raped twice in broad daylight in the view of each other and yourselves. I cannot even imagine how they must be feeling as decent women to have been subjected to this inhuman brutish fashion by you and your companion.

Crimes of rape and robbery by their very nature encroach and deprives one's privacy and leaves an indelible scar which the victim carries on her for the rest of her life. I cannot begin to imagine what these women are feeling like and their next of kin and their husbands. They have nothing left of their dignity and respect they had before you subjected them to this brutish act. These are women who were minding their own business, law abiding citizens as Mr. Fakudze has correctly pointed out. Employed and contributing to the economy of the country and they are robbed by two scums of your

type and your friend who is at large and I hope that the police will be able to get hold of him so that he may also be brought to justice.

You should never expect the court to have any measure of mercy on people who are brutes like yourselves. The court wishes to send a very clear message to you and your other companion that if they engage in this type of crimes and they are brought to court and convicted they will be severely punished so that they are kept away from the society for a very long time.

The court is going pass a very severe, deterrent sentence on you which will be exemplary to other people, young people like yourselves, who behaved in the manner you did so that they must know that if they are brought here they are going to be dealt with and the society must have confidence in the court - that if you are arrested and brought to court you will be dealt with severely.

The court considers the following sentence:

On count one – rape

You will be imprisoned for 15 years imprisonment without an option of a fine.

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On count two, three and four

You are sentenced to an imprisonment for 5 (five) years on each count. The court orders that these sentences run consecutively. However, on each sentence the court will backdate each sentence to the 13th October 2001

J. M MATSEBULA