

THE HIGH COURT OF SWAZILAND

REX

Vs

SIFISO CORNELIUS NGCAMPHALALA

Criminal Case No. 34/2003

Coram S.B. MAPHALALA- J

For the Crown MR. A. MAKHANYA

For the Accused MR. J. MAVUSO

SENTENCE (09/08/2004)

The accused has been convicted of the rape of a girl of 2 years. It was proved that the said rape was attendant by aggravating circumstances as envisaged under Section 185 bis of the Criminal Procedure and Evidence Act, 1938. It has been proved, firstly that at the time of the commission of this crime, complainant was a female child of two years and; secondly, that at the time of the commission of this crime complainant was a virgin.

At this stage of the proceedings, the court has to pass an appropriate sentence. Three competing interests arise for the proper balance by the court. These are referred to in legal parlance as the triad. The nature of the crime, the interest of the society and the

2

interest of the accused. According to Holmes JA in the case of *S v Rabie* 1975 (4) S.A. 855 (A) at 862 (G):

"Punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances".

Despite their antiquity these wise remarks contain much that is relevant to contemporary circumstances (they were referred to, with approval, in *S vs Zinn* 1969 (2) S.A. 537 (A) at 541) "a judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interest of society which his task and the objects of punishment demand of him. Nor should he strive after severity; nor, on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a human and compassionate understanding of human frailties and the pressures of society which contributes to criminality ..."

This is the legal approach I ought to adopt in casu.

It was stated in mitigation of sentence that the accused is a first offender and that whatever sentence I impose should be backdated to the date of his incarceration for this offence. The accused in the present case pounced on an unsuspecting little girl of 2 years at the time. The accused was also part of the homestead/family of the complainant. In casu, the fact that the accused is a first offender is heavily outweighed by the aggravating factors which have been established in this case.

Rape is a crime of diabolical nature, which offends the sensibilities of every normal decent human being more particularly where the victim is of such a tender age as the one in the present case. There has become a national crisis in this Kingdom. An instance of children of this age group are being victims of rape are on the rise. The courts have in such cases the responsibility to mete out stiff

sentences, which will send clear and unambiguous messages that society is disgusted by such behaviour. The rape is a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim. Women, more particularly small girls are entitled to the protection of these rights.

3

In the present case I am of the considered opinion that a sentence of 15 years would be appropriate in this case.

In the result, the accused person is sentenced to 15 years imprisonment and that such period be backdated to the date the accused was incarcerated in respect of this offence,

S.B.MAPHALALA

JUDGE