

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL CASE NO. 150/06

In the matter between:

REX

JONASE MKHATSHWA

CORAM

Q.M. MABUZA - JUDGE IN

FOR CROWN

FOR THE ACCUSED

PERSON

SENTENCE 23/4/07

[1] The accused was convicted in the Principal Magistrates Court, Manzini and committed to this Court for sentencing. Having read the evidence presented by the Crown witnesses I am satisfied that the Accused was properly convicted.

[2] The Accused was charged with and convicted of the rape of his daughter T, a minor aged 13 years of age. The charge was attended with aggravating circumstances as envisaged by Section 185 bis of the Criminal Procedure and Evidence Act No. 67/1938 as amended

[3] The aggravating circumstances were that:

(1) The Accused is the biological father of the complainant and therefore betrayed the natural trust and dependency vested in him as a natural father and guardian.

(2) The Accused failed to use a condom as a protective measure thus exposing her to sexually transmitted diseases.

[4] The Accused was unrepresented in the lower court. When he appeared before me he was unrepresented. Having confirmed that he understood the proceedings and as to why he had been committed to the High Court for sentencing I invited him to address me on mitigation which he did.

The Accused advised the Court that he was an epileptic and that there was no one at home to look after his children who were still young. Their mother had passed away and so had their grandparents. The complainant was being looked after by his sister. There was no one to look after the cattle at home. He asked the court to be lenient when passing sentence. He is a first offender and is about 37 years old.

In passing sentence I have to look at the interests of the Accused, the crime and society. In this case I shall also include the nation.

The crime of rape has become so prevalent that it has reached frightening proportions. In this case the rape is incestuous in that the Accused had sex with his own daughter. Incest too is on the rise. I fail to understand how a father can look at his daughter and not only lust after her sexually but even have sex with her. Only a sick mind could conjure up any pleasure in having sex with his own daughter.

The complainant told the court that the sex started when she was 8 years old but then she did not know what sex was. She reported this abuse to the elder members of the extended family several times who repeatedly said

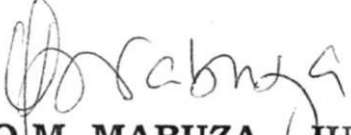
"tibi tendril" meaning that this was family dirt and should be swept under the rug and let the Accused off with a warning until a good Samaritan in the form of her aunt decided that enough was enough and took her to the police to report the matter and the Accused was arrested. The aunt had at first reported the matter to SWAAGA whose help was unsatisfactory or not forthcoming at all.

[9] The doctor's evidence is equally shocking. The doctor's evidence was that on examination of the complainant's private parts two fingers were used and the hymen was absent. The conclusion the doctor arrived at was that for a child so young there was penetration several times. There was also a yellowish discharge. The doctor also tested the complainant for syphilis and HIV and the test was negative.

[10] It is in the interests of society that the Courts are seen to deal sternly with perpetrators of incestuous rape. The phrase "taking the interests of society" does not refer to members of society who make irresponsible statements which mislead and confuse the public. Responsible and mature citizens should read the judgments of the courts first and thereafter make constructive criticisms, which I have no doubt would be

most welcome. The Accused in this case had a parental duty to protect his daughter from would be rapists. She looked up to him and he betrayed her trust. She no longer had a mother so he had a double duty to look after her. He failed her dismally. Instead of him finding a wife he conveniently converted his own daughter for his own use and pleasure and thereby destroyed her life and her future.

[11] The sentence of the court is 22 years imprisonment. This sentence should sent a lesson to all those fathers out there who are having sex with their daughters to refrain from doing so forthwith. The sentence is backdated to the 16 February 2005 which is the date of your arrest. You have a right of appeal and or review. (Rights thereof explained to the Accused).


Q.M. MABUZA - JUDGE