



THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Criminal Trial Case No. 150/2007

In the matter between

REX

VS

ELLIOT MZANYWA MAMBA

Defendant

Coram

Banda CJ

For the Plaintiff

Mr. B. Magagula

For the Defendant

In Person

[1] The accused in this case is sent to this court for purposes of sentence only. He was tried by a Subordinate Court in the District of Lubombo sitting at Big Bend Magistrate Court on one count of Rape and

JUDGMENT

seven counts of robbery. He was convicted on the following charges:

Count 1: Rape

Count 2: Attempted Robbery-

Count 3: Armed Robbery-

Count 5: Robbery.

He was found not guilty on four other counts of robbery and was accordingly discharged and acquitted. As a general principle a court, imposing a sentence of imprisonment, should decide what sentence is appropriate to the offence on which the accused has been found guilty and convicted. Having decided on what is the appropriate sentence the court may then make such deduction from the sentence as may be required to reflect any mitigating factors which may be present like the previous good character of the accused. It is normally not correct to impose a sentence which is more severe than the facts of the offence warrant. A person must be sentenced for the offences he has committed and not for those he committed in the past. In deciding whether the court can properly extend some leniency to the prisoner the court must have regard to those matters which tell in his favour and equally those which tell against him. I have considered the mitigating factors which accused person has put forward. He has informed me that he is a patient suffering from a disease which cannot be treated with medicine from Government hospitals. He says that only drugs

from chemists shops can treat his medical problem. He has asked that he be allowed to serve his sentence near his home.

[2] The prisoner in this case was convicted of very serious offences in which he used or threatened to use a firearm. This prisoner, was between the months of May and September 2004, involved in seven (7) offences of robbery and one of rape. It is clear that he had embarked on this criminal offensive in order to obtain goods and money to which he had no claim of right whatsoever. I have taken into account the factors of mitigation which he has pleaded before this court. There can be no doubt, on the facts disclosed at his trial, that this man is a danger to society who must be taken away from it. In Count III the robbery was particularly serious. He took away a Kombi motor vehicle plus cash in the sum of E20 000. The vehicle was sold in Mocambique and has never been recovered. The rape charge was also committed with aggravating factors. He also used a firearm in sexually assaulting the complainant. In my judgment this prisoner requires a custodial sentence of sufficient severity in order to protect society. I sentence him as follows:- On Count I - That is on the rape charge he is sentenced to a term of imprisonment often (10) years. On Count II - Attempted robbery, he is sentenced to three (3) years. On Count III he is sentenced to a term of imprisonment of fifteen (15) years.

On Count 5 he is sentenced to a term of imprisonment of five (5) years.

The sentences are to run concurrently, i.e. 15 years.

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R.A.  ICE

Pronounced at the High Court sitting at Mbabane on this 15th day of June, 2007.