

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CRIMINAL CASE NO. 75/2008

In the matter between:

**REX**

and

**MDUDUZI KHANYEZO MNGOMEZULU**

CORAM : Q.M. MABUZA-%J

FOR THE CROWN : MR. P. MDLULI

FOR THE ACCUSED : IN PERSON

**JUDGMENT ON SENTENCE 20/3/08**

[1] This matter came for sentencing from the Magistrates Court, Siteki, Lubombo District, the Accused having been convicted of rape by the learned Magistrate.

[2] The Magistrate did not give any reasons as to why he could not pass sentence herein and as to why he sent the matter to the High Court for sentencing. All he states is a bland "the Accused is then committed to the High Court for sentencing" after setting out aggravating factors.

[3] At this juncture I am loathe to return the matter to him for sentencing. My short stay on the bench has wisened me as to how long such a process would take where I to order it

back to the Magistrate. Magistrates should not shirk their duties with regard to passing sentence no matter how good their intentions are. If they feel the High Court should pass sentences then they should clearly give reasons why. The law specifies the instances when a Magistrate may send a matter to the High Court for sentencing and this is not one of them.

[4] The offence occurred when the complainant was 17 years old. This fact appears in the medical report of the doctor who examined the complainant on the 1/12/2005. The Accused says he is now 32 years yet the charge sheet states that he was 24 years old at the time of the commission of the offence. As Accused is illiterate I shall use the age on charge sheet when passing sentence as he looks much younger than 32 years.

[5] Even though the Accused had been invited by the Magistrate to address him on mitigation, I also invited him to address me in mitigation. He repeated most of the submissions he had made to the Magistrate. He requested the Court to be lenient on him. He had one child. He was a cane cutter before he was arrested. He was the only boy at home. The Court should be lenient with him. That he had been shot by the complainant's father.

[6] The Magistrate found that there were aggravating factors

involved. He found that there is sufficient evidence that the pregnancy incurred by the complainant was a result of this offence. The Magistrate was better placed to find out why the usual medical interventions that prevent pregnancies in rape cases were not followed nor why the pregnancy was not terminated within the safe period. The doctor who would have enlightened the Magistrate with regard to these queries was not asked why these interventions were not carried out. He also found that the Accused did not use a protective measure when having sex with the complainant which exposed her to unnecessary sexual infections. He also noted that the complainant had to drop out of school as a result of this offence. He also took into account the seriousness of the offence and its prevalence in the country.

[7] I agree with the learned Magistrate that the crime of rape is prevalent as well as that it is serious and that the Court has to take this fact into account when passing sentence. The Court has to also take the victim's circumstances into account. Even though the Magistrate was in a better position to do this having tried the matter. I have also considered the Accused submissions.

[8] The only reason I am passing sentence is because of the potential delay should I send the matter back to the Magistrate. The Accused has been in custody for some considerable time. I shall give the Accused the benefit of the

Magistrates jurisdiction in passing sentence which I am reliably advised in 9 years imprisonment.

[9] In the circumstances I sentence you to 9 years imprisonment. The sentence is backdated to the 30/06/2006. 3948 Detective Constable Khetsiwe Khumalo stated in her evidence that she received a report of the rape on the 30/11/05 and the Accused was arrested some 7 months thereafter which would be around the 30/06/2006.

You have a right to appeal against the sentence. Rights of appeal explained to the Accused.

**Q.M. MABUZA-J**