

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRI. T. NO. 136/2006

In the matter between:

REX

and

SIFISO MZAMO SITHOLE

CORAM: Q.M. MABUZA-J

FOR THE CROWN: MR. S. FAKUDZE

FOR THE ACCUSED: IN PERSON

SENTENCE 18/8/08

[1] The Accused was charged with the crime of rape in the Magistrate court in Manzini. It is alleged that between January 2004 and September 2004, the exact date unknown to the prosecutor, and at or near Ebunfweni area, in the Manzini Region, the said accused did wrongfully and unlawfully and intentionally have sexual intercourse with N M a female minor aged 8 years who in law is incapable of consenting to sexual intercourse and thus committed the crime of rape.

It is further alleged that there were aggravating circumstances in that the complainant was a minor of tender years and that she was a relative of the accused by virtue of the fact that he is her maternal uncle.

[2] The accused was convicted by the learned Magistrate Ms. N.O. Simelane on the 14th June 2006. She heard the accused on mitigation and committed him for sentencing to the High Court. I invited the accused to address me on mitigation. He stated that he was born on the 15th February 1987 making him 21 years old. That he was arrested on the 3/4/2004. That he had informed the Magistrate that he did not commit the offence. I put to him the doctor's findings in the medical report namely that the eight year old's hymen had been ruptured and that this was not a fresh rupture. That the doctor was able to insert one finger into her vagina when he examined her and that the examination was easy. He responded that he agreed that she may have been sexually molested but it was not him. When this court enquired from him if he knew who may have done so he said that he did not know. He told the court that his father was deceased but his mother was still alive. He never went to school, he was illiterate. He had four siblings. Before his arrest he had lived with his uncle. The accused requested a lenient sentence as he had been in custody since the 3/8/2004.

[4] In passing sentence I have to consider the victim, the accused circumstances, the crime and the interests of society. The accused's father was no longer alive to help the accused deal with his sexuality. At the time he committed the offence he was about 15 years old, seven years older than the complainant. He is uneducated and there is a general pre-occupation with emadlwane in our society. This evil practice must be eradicated. It is wrong to subject any child this young to any form of sexual abuse.

[5] The complainant is very young and the accused is her maternal uncle. She looked to him for protection, instead he abused her trust. The crime of rape is very prevalent in our society. Incestuous rape is on the increase. It is in the interests of society that courts are seen to pass sentences that will meet its expectations by dealing with the perpetrator effectively.

[6] The sentence of the court is 15 years imprisonment backdated to the 3/8/2004. The accused has a right of appeal against the sentence. Rights of appeal explained to the accused.

Q.M. MABUZA-J