

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Review Case No. 14/2007

REX

Vs

MBONGISENI DLAMINI

Coram: MAPHALALA – J

For the Crown: S.B. MISS Q. ZWANE

For the Accused: IN PERSON

REASONS FOR SENTENCE

13th March 2008

[1] The accused appeared before the Principal Magistrate Court in Piggs Peak charged with the offence of rape. He was duly convicted by the learned Principal Magistrate who referred the case to this court for sentencing in terms of Section 292 (1) of the Criminal Procedure and Evidence Act (as amended). The charge alleges that in that upon or about the 6th January 2007 and at or near Herefords area in the Hhohho Region the said accused did wrongfully and intentionally have unlawful sexual intercourse with B M without her consent and did thereupon commit the crime of rape. The said Section of the Criminal Procedure and Evidence Act provides for the committal to High Court for sentence after conviction in a Magistrate's Court.

[2] The Crown further contended that the said rape was accompanied by aggravating circumstances as envisaged by Section 185 bis of the Criminal Procedure and Evidence Act 67 of 1938 because (a) the victim was a minor of very tender age, and (b) at the time of the commission of the offence the accused did not use a condom thereby putting the complainant at risk of contracting sexually transmitted diseases especially HIV/Aids

[3] In mitigation of sentence before this court the accused submitted the following facts:

- (i) He is remorseful for what he did and this was a mistake;
- (ii) He is the sole breadwinner and his parents are sickly people;
- (iii) When he was arrested he was 20 years old and a farm worker earning E200-00 per month.

[4] The court in imposing sentence, must have due regard to the facts of the case, and in addition thereto, must apply certain well-established legal principles relating to the extent and magnitude of punishment.

[5] In Ancient history retaliation and physical abuse were utilized to punish an offender for his crimes. With the advance of society, and its humanistic values, principles of punishment have been considerably ameliorated and indeed save for a few countries have jettisoned in favour of a more human and just approach towards the question of punishment (see *S v Banda and others* 1989 - 90 BLR at page 289 and the cases cited thereat).

[6] After a careful analysis of the principles applicable to this subject, Holmes JA in *S vs Rabie* 1975 (4) S.A. 855 summed up at 862 G, in general, and with admirable brevity, as follows, and I quote:

"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".

[7] In the present case I have also considered the judgments of the Supreme Court including the cases of *Thumbela P. Mhlanga - Appeal Case No. 26/2003*, *Rex vs Kenneth Maseko - Appeal Case No. 7/2004*; *Nicholas Magagula vs Rex - Appeal Case No. 13/2004* and that of *Lawrence Phuphutha Manana - Criminal Appeal Case No. 733/2004* on the range of sentences to be imposed in cases of rape.

[8] I have considered the above-cited legal principles and precedents. This is a very serious case of rape where an adult violates a minor child in this fashion. Young children are entitled to their play and should not be violated in this manner. The courts are duty bound to impose severe sentences to discourage this social evil of adults violating young girls. The sentences imposed in such instances should have a deterrent effect to would be offenders. In the circumstances of this case the accused is sentenced to 18 years imprisonment backdated to the date of arrest.

S.B. MAPHALALA

JUDGE