



IN THE HIGH COURT OF SWAZILAND

Criminal case No: 450/2010

In the matter between:

REX

VS

SOTJA BHEKIMPI MATSENJWA

Neutral citation: *Rex vs Sotja Bhekimpi Matsenjwa (450/2010) [2014] SZHC403 (02 December 2014)*

Coram: **M.C.B. MAPHALALA, J**

Summary

Criminal Law – Rape – accused convicted of rape accompanied by aggravating circumstances in terms of section 185bis of the Criminal Procedure and Evidence Act No. 67/1938 as amended – principles guiding sentencing considered – accused sentenced to fifteen years imprisonment – the period of fifteen months ten days spent in custody prior to bail will be taken into account when computing the period of imprisonment.

**JUDGMENT ON SENTENCE
02 DECEMBER 2014**

- [1] The accused was convicted of rape with aggravating circumstances on the 27th September 2014. The conviction was accompanied by aggravating circumstances in terms of section 185bis of the Criminal Procedure and Evidence Act 67/1938 as amended.
- [2] In mitigation of sentence the defence submitted that the accused was twenty-one years of age; and, that at the time of commission of the offence, he was sixteen years of age. The accused is single with one minor child to support. He is a first offender, young and immature. He was arrested on the 9th February 2010 and kept in custody for a period of fifteen months ten days before he was released on bail on the 19 May 2011.
- [3] The Crown made submissions on aggravation of sentence that the complainant was at the time of commission of the offence a minor of tender age, and, that the accused exposed the complainant to the risk of sexually transmitted infections by failing to use a condom. The Crown further disputed the defence submission that the accused was sixteen years at the time of commission of the offence. The Crown contended that the accused was at the time of commission of the offence twenty years of age; however, no evidence was led as to the age of the accused. However, the court accepts that at the time of commission of the offence, the accused was

relatively young and below the age of maturity, which is twenty-one years in this jurisdiction.

- [4] Section 185*bis* of the Criminal Procedure and Evidence Act 67/1938 as amended provides the following:

“185*bis*. (1) A person convicted of rape shall, if the Court finds aggravating circumstances to have been present, be liable to a minimum sentence of nine years without the option of a fine and no sentence or part thereof shall be suspended.”

- [5] Another relevant legislation to sentencing is section 313 (2) of the Criminal Procedure and evidence Act 67/1968 as amended which precludes the Court from suspending a sentence of imprisonment in respect of offences listed in the Third Schedule to the Act, namely, Murder, Rape, Robbery and any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

Section 313 (2) of the Act provides the following:

“313 (2) If a person is convicted before the High Court or any magistrate’s court of any offence other than one specified in the Third Schedule, it may pass sentence, but order that the operation of the whole or any part of such sentence be suspended for a period not

exceeding three years, which period of suspension, in the absence of any order to the contrary, shall be computed in accordance with subsections (4) and (5) respectively.”

[6] In considering the appropriate sentence, I shall have regard to the triad, that is the personal circumstances of the accused, the interests of society as well as the seriousness and prevalence of the offence of rape in this jurisdiction. The accused is relatively young and immature in view of his age at the time of commission of the offence; he is a first offender, single with a minor child to support. These personal circumstances have to be weighed against the other two factors of the triad in order to arrive at a just and fair sentence. It is common cause that the offence of rape is very serious and highly prevalent in this jurisdiction. Similarly, society as a recipient of this horrendous offence expects the Courts to impose deterrent sentences with a view to eliminate the recurrence of this offence.

[7] His Lordship Justice Stanley Moore JA in the case of *Mgubane Magagula v. Rex* Criminal Case No. 32/2010 made a detailed survey of past rape cases in this jurisdiction and found that the range of sentences for aggravated rape was eleven to eighteen years imprisonment depending on the circumstances of each particular case.

[8] In the case of *Mbuso Blue Khumalo v. Rex* Criminal Appeal No. 12 /2012 at para 44, I had occasion to emphasize the seriousness of the offence of rape:

“44. . . . However, this Court has a Constitutional duty to protect society against the scourge of sexual onslaught committed against defenceless women and children by selfish sex predators who have no regard for the fundamental right to dignity. This jurisdiction is fraught with rape victims as young as three years of age. If this trend continues, the fundamental rights entrenched in the Constitution would count for nothing. The continued prevalence of the crime of rape is an indictment to this court as the highest court in the land to take a decisive action in the fight to restore the dignity of women by imposing appropriate deterrent sentences to rape offenders.”

[9] Justice Stanley Moors JA in the case of *Mgubane Magagula v. Rex* Criminal Appeal case No. 32/2010 at para 14 and 15 had this to say with regard to the seriousness of the crime of rape:

“14. Rape is perhaps the ultimate invasion of human privacy. I use the adjective human because modern legislatures have expanded the definition of rape to include the unlawful penetration of any bodily orifice of a victim of either gender by any part of the body of the perpetrator or with an object or instrument for sexual gratification. Rape has had an inglorious history stemming from the fabled rape of the Sabine women to today's horrific and willfully genocidal impregnation of women with the exterminating intent of extirpating or debasing their ethnic, national or religious identities.

15. Succeeding generations of judges in every jurisdiction, including the judges of this Kingdom, have weighed against the barbarity of rape. They have condemned in the strongest terms its brutality and savagery, its affront to the dignity and worth of its victims, its dehumanizing reduction of women to the status of mere objects for the unrequited gratification of the basest sexual passions of rampant males, and the long term havoc which the trauma of rape is capable of wreaking upon the emotional and psychological health and well-being of ravishment. It is for these reasons, and because of the disturbing frequency of the abominable offence of rape in this Kingdom, that persons convicted of this heinous crime must expect to receive condign sentences from trial courts.”

[10] Accordingly, the accused is sentenced to fifteen years imprisonment. The period of fifteen months and ten days spent by the accused in custody will be taken into account when computing the period of imprisonment.

**M.C.B. MAPHALALA
JUDGE OF THE HIGH COURT**

For Crown
For Defence

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