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REPUBLIC OF SOUTH AFRICA

**SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)**

CASE NO: SS20/4/2011

DPP REF NO: JPV2011/0022

DATE:07/11/2011

NOT REPORTABLE

In the matter between

THE STATE

and

**JACINTO ANTONIO CHILENGE
FELIX JOSE MACHAVA**

**ACCUSED 1
ACCUSED 2**

**J U D G M E N T
(SENTENCE)**

VAN OOSTEN J:

[1] The accused have been convicted of a large number of atrocious crimes. They must now be sentenced. In the consideration of an appropriate sentence to be imposed, this Court is enjoined to carefully and dispassionately consider and balance the gravity of the offenses, the personal circumstances of the

accused and the interests of society. On the other hand the interests of the victims are equally relevant and should not be overlooked.

[2] The facts of this matter reveal a series of horrific crimes committed in a spree of organised, violent intrusions into private homes, over a period of some twelve months, when seven young adult women became the victims of rape which in the past, has been referred to as the most heinous of crimes. Their houses were broken into and valuable possessions robbed. They were soft targets: defenceless women living in poor conditions, who were asleep. The accused's conduct was pre-planned and purely intended for financial gain, personal gratification and humiliation and degradation of women. The accused acted in concert and were well prepared to overcome any possible resistance by carrying firearms and housebreaking implements. It is true that the firearms were not used except in two incidents when shots were fired. That was merely indicative of the callousness and sadistic nature of the attacks. It may well have been otherwise had the complainants offered resistance. It was only their submissiveness that prevented further tragedies. The cruelty of the attacks extended beyond the sexual abuse of the complainants when M's boyfriend was gratuitously assaulted with a firearm. The complainants, except for the last incident, were deliberately subjected to the indignity of being sexually abused in the presence of others. The ease with which the victims were overpowered and their immediate submission must have encouraged the further incidents. There was more than sufficient time for reflection which the accused did not avail themselves of.

[3] The State, in aggravation of sentence, called five of the complainants to testify as to the affects of the sexual abuse on their lives, their circumstances and their attitudes towards men. One after the other they related the emotional distress, the anxiety it has caused as well as the lasting harm to their relationships and interactions with men. Ms M, who was pregnant at the time, testified that she was advised by her doctor some three months after the incident, to abort the foetus. The medical examination of the complainants in several instances revealed serious gynaecological injuries. The absence of any serious physical injuries to any of the complainants cannot be attributed to the accused but was merely providential as no resistance was offered.

[4] This brings me to the personal circumstances of the accused which were put before me from the bar. Both the accused are from Mozambique where they have grown up. Accused 1 is 26 years old, married and the father of three young children. He was self-employed and financially supported the extended family. He has not had the advantage of proper education and a sophisticated background. He has no previous convictions. Accused 2 is 33 years old, married with three minor children. He admitted one previous conviction in 2003 when he was sentenced to effectively 4 years' imprisonment for the unlawful possession of a firearm and ammunition. Counsel for the defence referred to the hardship incarceration of the accused as the breadwinners of their families will cause. This is undoubtedly so but on the other hand it is one of the inevitable consequences flowing from the breadwinner's involvement in serious crimes.

[4] The State, in aggravation of sentence, led the evidence of Brigadier Labuschagne, the Head of the Investigative Psychology Section, Forensic Services, South African Police Services, who compiled a pre-sentence report in respect of this matter. In his testimony Brig Labuschagne dealt with the statistics of the incidence of sexual crimes and serial rapes in South Africa, the prevalence of which is on the increase and has reached alarming proportions. Shocking as the statistics may be, it remains necessary to assess the individual accused in the circumstances of this case. Rape is a cancer in our society: it destroys the rape victim's self respect, dignity and physical and mental integrity. Serial rapists, as are serial murderers, are labelled as inherently evil and are regarded as the most loathed criminals in our community.

[5] Society with justification demands that crimes such a rape be severely punished by way of heavy and deterrent sentences. Retribution and deterrence come to the fore in the circumstances of this case. The minimum sentences provided for in the Criminal Law Amendment Act 105 of 1997, are applicable in regard to the rape and the housebreaking and robbery charges. In my view there are no substantial and compelling circumstances present

which would justify deviation from the minimum sentences (See *S v Matyityi* 2011 (1) SACR 40 (SCA) para 11). The accused's personal circumstances reveal nothing out of the ordinary and recede into insignificance against the gravity of the offences. They have showed no remorse for their conduct. In their evidence they persisted in their false denials and false accusations were made as to a conspiracy. There are at this stage no prospects of rehabilitation except over an extended period of time within the confines and disciplinary structures of the prison environment. In this regard Brig Labuschagne recommended as part of treatment, that the accused participate in such sex offender programmes as Correctional Services may offer and that they are engaged in psychotherapy while in prison. The possibility in general of sexual offenders, and therefore the accused, offending again even after incarceration, Brig Labuschagne opined, is real. The sentences I intend to impose, in my view, are proportionate to the crimes the accused have been convicted of. Finally, I am satisfied that the accused present a danger to society and that their permanent removal from society is justified and that the sentences I intend to impose.

[6] In the result the accused are sentenced as follows:

6.1 Accused 1:

On:

Count 1 (Housebreaking/Rape): 15 years' imprisonment.

Count 7 (Housebreaking/Robbery): 15 years' imprisonment

Count 14 (Housebreaking/Robbery): 15 years' imprisonment

Count 20 (Housebreaking/Robbery): 15 years' imprisonment

Count 26 (Housebreaking/Robbery): 15 years imprisonment

Count 33 (Housebreaking/Robbery): 15 years' imprisonment

It is ordered that the sentences imposed on counts 1, 7, 14, 20, 26 and 33 be served concurrently.

Counts 10 (Rape), 11 (Compelling witnessing of sexual act), 15 (Rape), 17 (Compelling witnessing of sexual act), 21 (Rape), 23 (Compelling

witnessing of sexual act), 28 (Rape), and 34 (Rape): taken together for purpose of sentence: Life imprisonment.

6.2 Accused 2

On:

Count 1 (Housebreaking/Rape): 15 years' imprisonment

Count 7 (Housebreaking/Robbery) 15 years' imprisonment

Count 14 (Housebreaking/Robbery): 15 years' imprisonment

Count 20 (Housebreaking/Robbery): 15 years' imprisonment

Count 26 (Housebreaking/Robbery): 15 years' imprisonment

Count 33 (Housebreaking/Robbery): 15 years' imprisonment

It is ordered that the sentences imposed on counts 1, 7, 14, 20, 26 and 33 be served concurrently.

Counts 2 (Rape), 4 (Rape), 8 (Rape), 9 (Compelling witnessing of sexual act), 17 (Compelling witnessing of sexual act), 21 (Rape), 23 (Compelling witnessing of sexual act), and 28 (Rape): taken together for the purpose of sentence: Life imprisonment.

Counts 12 (Unlawful possession of firearm) and 13 (Unlawful possession of ammunition): taken together for purpose of sentence: 3 years' imprisonment.

Count 37: 12 months imprisonment.

FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR THE STATE

ADV LR SURENDRA
ADV BF MNISI

COUNSEL FOR THE ACCUSED

ADV M BOSIKI

DATE OF JUDGMENT

7 NOVEMBER 2011