

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: SS280/2003

DATE: 2 DECEMBER 2003

5 In the matter between:

THE STATE

and

M YAWA

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SENTENCE

SELIKOWITZ, J:

Mr Yawa you were found guilty of raping a young girl, of eight
15 years old. The law passed by our parliament in 1997 provides
that in a case like this, the Court must impose a life sentence,
which means that you would spend the rest of your life in jail.
The Court is empowered to impose a lesser sentence if there
are substantial and compelling circumstances which make the
20 life sentence unjust.

Your advocate has placed a report about you before the Court
and has argued that the Court should find that there are
circumstances which allow the Court not to impose a life
25 sentence. You have chosen not to give evidence. The State

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called an experienced social worker who reported on the effects of the rape on the young victim. In the light of all the circumstances this Court must decide on your punishment.

5 Although you have chosen not to give any evidence, it seems to me that there are four factors that weigh heavily against the justice of imposing a life sentence and they must be weighed up against the other factors that aggravate the crime. The four factors are firstly your youth, you were only 21 when you
10 committed the crime. Secondly, your clean record. Thirdly, that it is clear that the crime was not premeditated and fourthly, there was not excessive violence and indeed the effects of the rape, although serious, do not seem to be devastating.

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Mr Appels has argued that the factors in your favour are outweighed by the circumstances which can be held against you. The fact that the victim was an eight year old young girl, who you knew and who lived as a neighbour. You entered the
20 toilet to attack her. You kicked her feet out from under her to get her on to the ground. You show no regret whatsoever. In weighing up all these circumstances, the Court has also to have regard to the interests of the community. There are far too many rapes in our society and it is shocking how often the
25 victims are young girls.

Weighing up all the circumstances, I am satisfied that the life sentence is inappropriate in this case. The fact that you are at the beginning of your adult life and indeed young, carries great weight in my view. It would be unjust for me in all the
5 circumstances to order that you be incarcerated for the rest of your life. Justice requires that you be given a chance after serving a sentence to return to society. The circumstances of this case have persuaded me, with a very small margin, that a life sentence would be disproportionate to the crime, to you
10 and to the needs of society.

The crime you committed is, however, extremely serious and while I have found substantial and compelling circumstances not to impose a life sentence, it is nonetheless a matter which
15 the Court regards in a very serious light. I have considered your personal circumstances and your background. I particularly have regard to the fact that your mother expresses confidence in you as a decent young man. You will have to bear the weight of the disappointment that you have caused to
20 her. She did not bring you up to behave in this way and part of your punishment is the knowledge that you have broken her heart.

I am impressed also by the fact that Archbishop Vunjawa
25 speaks well of you. I also have to balance the punishment

with what you have done to this young girl who was totally innocent from beginning to end. I also have regard to the interests of society. You are not going to be sent to jail for the rest of your life, but you are going to be sent to jail for a long, 5 long time, so that you and the community will realise that this sort of behaviour cannot be tolerated.

The sentence of the Court is FIFTEEN (15) YEARS IMPRISONMENT.

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SELIKOWITZ, J

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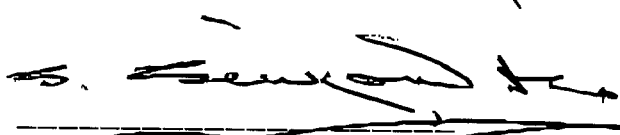
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