

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

CASE NUMBER:

SS09/2006

DATE:

19 OCTOBER 2006

In the matter between:

THE STATE

and

NTUTHUKO CAKATA

SENTENCE

TRAVERSO. DJP:

The accused has been found guilty of rape of an 11 year old girl S V. S lives in the Eastern Cape and she came to Cape Town to visit her mother, her mother was a neighbour of the accused. The accused landed up in the home where he lived with Poppy together with this little girl. How she got there or why she got there is not really relevant for purposes of this judgement. The fact is that the accused was in a room with her alone and locked the door.

It is common cause that after the rape S was visibly upset and was crying. It is also clear that she didn't report the incident to her mother because of a threat. She returned to the Eastern Cape without telling her mother and was later brought back by her mother from the Eastern Cape when her mother found out about the incident. This must have added extra stress to this little girl. She was an innocent child and the medical evidence indicates that she had no previous sexual experience. Although her evidence wasn't satisfactory in all respects it was clear from her evidence that she was traumatised by this event.

Rape is a terrible crime and the state is quite correct when it submits that the seriousness of this offence can never be minimised. The state is also correct that the society out there have had enough of the crime wave and the violence directed particularly at innocent children. It cannot be tolerated that the children who are our future be dealt with in this manner. The accused had a girlfriend, he has absolutely no reason to rape this little girl.

But when it comes to sentence one must not only look at the seriousness of the offence, one must also look at the accused and his personal circumstances. The accused didn't testify and his counsel Mr Calitz made submissions from the bar.

The accused 37 years old and passed Standard 10. It is clear that the accused has not had an easy life. He was born disabled and in 2004 he was in a car accident which left him even more disabled. At the time of the offence he was receiving a disability grant and he was involved in

various projects for disabled people. The accused has three children who all live in the Eastern Cape with his mother. It doesn't appear that he is responsible for their maintenance. The accused has two previous convictions. In 1990 he was found guilty of culpable homicide and in 2003 he was found guilty of assault with the intent to do grievous bodily harm. I will accept that the conviction of culpable homicide is more than ten years old. I will also take into account for a period of 13 years the accused was not found guilty of any crime involving violence. I will also accept that the assault of which he was convicted in 2003 was an assault on Poppy with whom he had a rather acrimonious relationship. However violence can never be condoned no matter what the nature of the relationship, there are other means to deal with problems in a relationship.

The accused has been incarcerated in respect of this offence for 19 months. A letter appears on the court file which was written by the accused from which the discomfort that he is experiencing in prison because of his disability becomes clear. I will take that into account. I will also take into account that due to the circumstances of the case and due to the fact that the complainant and her family have moved to the Eastern Cape and cannot be traced there is no evidence before the court about the lasting effect of this rape on this little girl. I have no evidence as to whether she is a resilient child who will learn to deal with this unfortunate incident and although I accept without any hesitation that it must have impacted on her I do not know the extent of the impact. And if I don't have evidence I cannot speculate and the absence of this evidence should count in the accused's favour.

What is common cause is that apart from the injuries sustained during the rape no further physical injuries were sustained by the complainant. So although the legislature prescribes a life sentence as the minimum sentence which I am obliged to impose unless I am satisfied that there are substantial and compelling circumstances, I am of the view that in this case there are substantial and compelling circumstances. I therefore intend to impose a lesser sentence than life. The circumstances that I take into account are the following: That the accused is a disabled man and has carried this burden with him all his life, that although he has previous convictions for violence, he has managed for long periods of time to have a clean record, the absence of evidence of any emotional, psychological or other damage suffered by the complainant and the fact that the complainant sustained no further physical injuries. I also take into account that the accused has been in custody for 19 months.

Having said all that the only appropriate sentence that I can impose is one of lengthy imprisonment. I sentence the accused to 18 (eighteen) years imprisonment.

TRAVERSO, DJP