

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

DATE: 30 MAY 2007

CASE NUMBER: CC125/2006

5 In the matter between:

STATE

And

ZWELETHU DILI

10

SENTENCE

HLOPHE. JP:

A little while ago i confirmed that you are guilty of rape as
15 charged and that you had raped an 11 year old minor child. I
know have to decide on an appropriate sentence to be metered
out to you.

I need to explain the sentencing process, what goes through
20 the mind of any sentencing judicial officer be it a judge or a
magistrate.

The first thing that the court will take into account is the crime
which has been committed. With regard to crime we look at
25 the nature of the crime, its seriousness and the manner in
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which the crime was committed. Rape is a very serious crime which involves an invasion of the women's privacy and in this particular case you raped an 11 year old child.

- 5 I view rape of a minor child in a very serious light, particularly with being had a huge age disparity between the victim of rape and yourself. You were 28 years old at the time and the poor child was just 11 years old, a disparity of 17 years.
- 10 Furthermore in this regard it is not without significance that you raped a victim or a complainant who knew you, the victim of rape was known to you and her family had in fact accommodated you when you were kicked out of your own family. You are not a grateful person at all and you have no
- 15 soul quite frankly.

The second factor which any court would take into account would be the interest of the criminal, in this case yourself. Your personal factors were placed before court by your pro

20 deo of legal aid advocate, Mr de Villiers. He told the court that you are 30 years old now and that you passed grade 6 and started to work in order to support your family and your minor child. You are obviously, like so many of us, from a relatively poor background. You have 1 minor child who is age 4 at this

25 point in time.

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The third factor which is equally important is the need to protect the interest of the community. Rape is certainly on the rise, particularly in the Western Cape, it is escalating. Parliament is not unmindful about this. Hence the minimum
5 legislation in terms of which someone convicted of raping a child under the age of 16 years must be sentenced to life imprisonment.

The court can only deviate from the prescribed minimum
10 sentence of life imprisonment if it finds that there were substantial and compelling factors dictating otherwise. In this case your lawyer, Mr De Villiers, argued that the court should not impose life sentence, because there were a number of compelling and substantial factors. He argued quite rightly
15 that you have consumed intoxicating liquor which possibly impaired your judgment. Furthermore he argued that the offence were not premeditated, but most importantly that you have already been in prison for a period of 18 months waiting to be sentenced today. Furthermore although you have a
20 previous conviction for theft which was committed in 1998, it is not relevant to rape which is a totally different crime. Furthermore he argued that the court should take account of the fact that you are assaulted by the parent of the complainant.

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The state on the other hand which was represented by Advocate Vakele argued that there was quite a number of aggravating factors. The first factor is the huge age disparity, which I have already highlighted between yourself and the victim of rape. Secondly he submitted that rape is a serious offence. Complainant according to the J88 sustained injuries to her private parts. Thirdly Mr Vakele argued that you abused the relationship of trust which existed between yourself and the complainant, because the complainant knew you, you lived in the same neighbourhood. I think most importantly is the submission made by Mr Vakele which arises from EXHIBIT C which is the probation officers report according to which is abundantly clear that the victim was traumatised by this rape incident. The crime indeed has had a negative impact on her, so much so that she still experiences nightmares and she is afraid to sleep alone at home.

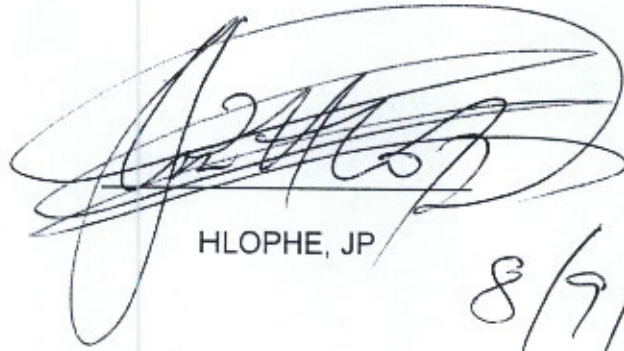
In my judgment there are quite a number of aggravating factors. Even though I am not satisfied that life imprisonment would be an appropriate sentence in this case. Quite clearly having considered all sentencing options it is very clear to me that a long term imprisonment sentence is called for.

Accordingly Mr Dili you are sentenced to 18 years direct imprisonment.

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A large, stylized handwritten signature in black ink, appearing to be 'Hlophe, JP', is written over the printed name.

HLOPHE, JP

8/9/2010

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