

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

CASE NO:

SS38/2011

DATE:

24 MAY 2012

5 In the matter between:

THE STATE

and

STEPHEN ISAACS

10

S E N T E N C E

BOZALEK, J:

Mr Isaacs, you must now be sentenced on your conviction for kidnapping, rape and attempted murder.

15

In arriving at an appropriate sentence the Court must consider the nature and seriousness of the offence or offences, the accused's personal circumstances and the interest of society.

It must also have regard to the purposes of punishment which
20 are retribution, deterrence, prevention and rehabilitation.
However, the Court must also sentence within the particular statutory sentencing framework applicable.

In the present case the minimum sentencing legislation,
25 namely, the provisions of the Criminal Law Amendment Act

/RV

/....

105/1997 are applicable to the kidnapping and rape convictions.

In the case of the kidnapping conviction, a minimum sentence
5 of five years is applicable in terms of Part IV of Schedule 2 of the Amendment Act, unless the Court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence.

10 In the case of the rape conviction, Part I of Schedule 2 prescribes a minimum sentence of life imprisonment by reason of the facts that the victim was under the age of 16 years and the rape involved the infliction of grievous bodily harm. Again this minimum sentence must be imposed unless the Court is
15 satisfied that substantial and compelling circumstances exist.

I deal firstly with the accused as a person. You are a 41 year old man in all probability divorced and have no children or dependants. Your counsel advises that you were born out of
20 wedlock and brought up by in Cape Town where you obtained grade 12 education, matriculating from a school in Retreat in 1988. Your parents separated two years after your birth but your mother married and had further children. Your mother and stepfather and all but one of your siblings have since
25 passed on. You married in 2003 but your wife instituted

/RV

/....

divorce proceedings against you whilst you were awaiting trial in the present matter which proceedings you did not oppose. I have no information on how you spent your adult life in between the periods of imprisonment that you served. At the
5 time of the commission of the offences in this matter you were employed as a machinist at a brick factory in Darling, earning R1 200,00 every two weeks. Since your arrest in November 2010 you have been in custody, initially serving the unexpired portion of a previous sentence but for the past five months as
10 an awaiting trial prisoner.

Your record reveals three previous convictions for sexual offences and in 1995 a conviction for assault with intent to do grievous bodily harm. In 1990 when you were 19 years of age
15 you were convicted of rape or attempted rape and sentence to 10 years imprisonment. On appeal three years of that sentence were conditionally suspended. In 1997 you were again convicted of assault with the intent to commit grievous bodily harm and sentenced to two years imprisonment and also
20 of sodomy for which you were sentenced to six years imprisonment, two years of which were suspended. In 2006 you were convicted of performing indecent acts on a girl under the age of 16 years and sentenced to five years imprisonment. This offence appears to have been committed in Pacaltsdorp
25 and it was in respect of this sentence that you were released

from prison on 6 April 2010 on parole supervision extending until 26 November 2011.

As the Court has already heard, you were still serving that
5 parole when you committed the offences of which you have now been convicted. In total thus, in the 21 years since your first conviction you have been sentenced to 16 years effective imprisonment for sexual assaults of one type or another.

10 I turn now to the nature and seriousness of the offences for which you must be sentenced.

The kidnapping was initially affected by your guile in luring the child away from her intended destination with the promise of
15 sweets. When she resisted however you dragged her into the bush and, as can be seen from photographs, this resulted in her sustaining serious abrasions all over her body but mainly on her face and chin.

20 As far as the rape is concerned any rape of a minor child is a shocking and extremely serious offence. The circumstances of the rape in the present case are however especially shocking. The child was only nine years of age when you attempted firstly to force her to perform a sexual act upon you. When
25 she refused, you beat her with your fists and at some stage

sadistically and repeated burnt her with a lit cigarette. Either before or after you had eventually satisfied your lust by raping the child, you decided to kill her, no doubt to eliminate her as the only witness to your crimes. You then strangled this
5 defenceless nine year old child with your bare hands and left her for dead. Miraculously, the child recovered consciousness more than 12 hours later and stumbled out of the bush.

Tragically, however, the viciousness of your assault upon the
10 child resulted in her sustaining what appears to be permanent brain injuries, so much so that she spent months in hospital recovering from her injuries and recuperating at home. To date, more than 18 months after the incident, Percy still cannot walk and is confined to a wheel chair, has other movement
15 disabilities and has speech difficulties. She needs extensive assistance in her day to day activities and must attend a special school. Some or all of these disabilities will remain with her for life.

20 Percy, her mother and the Geneva's were well known to you. In committing these offences you betrayed not only their trust but that of the entire community in Darling in which you lived and which you were given another opportunity to rehabilitate yourself on parole. You did not scruple to betray the trust of
25 Mr and Ms Geneve who took you into their home and supported

you in various ways so that you could be released on parole.

The consequences of your actions are profound and far reaching. The victim impact report attests to the tremendous psychological and physical effects of this incident upon Percy
5 and her family and how this will affect them in the future. Percy must live with her disabilities and struggle against them for the rest of her life. Her childhood, if not her life, have been blighted by you.

10 Ms Solomons, a single mother, has had to cope with the physical and emotional burden of what has happened to her daughter over the past 18 months and she may well have Percy as a dependent child for years and years to come.

15 Turning to the interest of society, I must in the first place have regard to those of the Darling community. A petition has, by agreement, been placed in front of me signed by more than 1 000 members of the Darling community in which the signatories speak of the shock experienced by the community
20 as result of these events in what was previously a peaceful village. They ask for the maximum sentence to be imposed upon you, inter alia as a deterrent measure to others. I must emphasise that a court will not sentence solely on the basis of what the public demands or what a large sector of the
25 community considers is an appropriate sentence. However a

court will certainly give weight in appropriate circumstances to the expression of the community's feelings regarding matters which affect it. In this particular case I regard the petition as an entirely legitimate and understandable expression of the
5 views of a sizable portion of the community of Darling.

One of the most precious assets any community has, is its children and they must be protected as far as possible against sexual violence and predation. When one has regard to your
10 record of previous convictions, to the offences of which you have now been convicted and the circumstances in which they took place, it is clear that you are a hardened, dangerous and violent sexual predator who preys upon children without any apparent trace of conscience.

15

In the present matter you pleaded not guilty to the charges as is your right. You have expressed, however, no remorse for the terrible deeds which you committed or their consequences. In my view your prospects for rehabilitation are minimal and,
20 given the nature and seriousness of your offences, the preventative and retributive purposes of punishment must come to the fore in the sentence which is imposed upon you.

The minimum sentence for kidnapping is one of five years
25 imprisonment and I can see no reason to deviate from this

sentence.

As far as the rape is concerned, the principal question is whether there are any substantial and compelling circumstances which would justify a lesser sentence than life imprisonment. Your own counsel conceded that he could make no such argument and I can find nothing but aggravating circumstances present in relation to this conviction. Even if the minimum sentence legislation did not prescribe such a sentence, I consider that the only appropriate sentence is one of life imprisonment.

A regards the conviction for attempted murder, I have already mentioned the profound consequences of your cruel and cold blooded decision to strangle Percy Solomons. You have left her physically disabled and psychologically scarred for life. In my view, the only appropriate sentence is a lengthy term of imprisonment reflecting the seriousness of the offence and its far reaching consequences for Percy and her family.

There remains the question of the determination of a non-parole period, the Court having raised with counsel the questions of its exercising its powers in terms of Section 276(B) of the Criminal Procedure Act. The State responded by seeking an order that Court determine a non-parole period of 25 years. However, in terms of Section 73(6)(a)(iv) of the

Correctional Services Act 111/1998, an offender serving a sentence of life incarceration may not be placed on parole until he or she has served at least 25 years of the sentence although a sentenced offender who reaches the age of 65
5 years may be placed on parole if he or she has served at least 15 years of such sentence.

Therefore, given your age, you will at the earliest qualify for parole when you turn 65 years of age by which stage you will
10 have served 23 years and two months of your sentence of life imprisonment.

In these circumstances, even if the Court could make a competent order in terms of Section 276(B) of Act 51/1977,
15 which is doubtful, it would make no meaningful difference to the date when you may be considered for parole.

I do wish to make it clear, however, given the possibility of future amendments to the Correctional Services Act and in
20 particular to the parole provisions, that in my view, based on the evidence which I have heard, you should not even be considered for parole before you have served 25 years of your sentence of life imprisonment.

25 I am directing furthermore that a copy of this Court's

/RV

/....

judgments on conviction and sentence be placed in your Correctional Services file for the benefit of any board or authority which in the years to come may consider an application by you for parole.

5

In the result you are sentenced as follows:

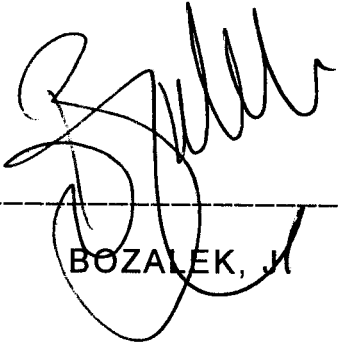
COUNT 1: Kidnapping, **FIVE (5) YEARS IMPRISONMENT.**

COUNT 2: Rape in terms of Section 3 of Act 32/2007

10 **IMPRISONMENT FOR LIFE.**

COUNT 4: Attempted murder **20 (TWENTY) YEARS IMPRISONMENT.**

15



BOZALEK, J.