

/LVS

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSCAAL PROVINCIAL DIVISION)

DATE: 11 December 2008

CASE NO: A127/07

In the matter between:

ANDRIES EDDY BUYS

APPELLANT

vs.

THE STATE

RESPONDENT

JUDGMENT

BOTHA J:

The appellant was sentenced to life imprisonment on a charge of rape.

He appeals against his sentence with the leave of the court *a quo*.

The appellant was first found guilty in the Regional Court. The regional magistrate then referred the matter for sentence to the High Court. In the High Court the conviction was confirmed.

No previous convictions were proved against the appellant. The appellant was 55 years old. He was married. He had three children from a previous marriage. His wife had two children. He was unemployed.

The appellant was the landlord of the complainant's parents. They lived in a shack outside his house.

The night of the rape the complainant, who was between 12 and 13 years old, slept in the room of another tenant, who happened to be away. The room of the tenant was next to the room of the appellant.

When the complainant was in bed, the appellant entered the room, moved into her bed, took off her panty and had intercourse

with her. The plaintiff was afraid to tell her mother what had happened, but when her school friends saw that she was walking abnormally, the truth about what had happened to her eventually emerged. She was examined by a district surgeon.

The appellant persisted in denying all knowledge of the incident.

When sentencing the appellant the court *a quo* said the following:

“The terrible statistics of child rape have compelled the legislature to decree that in such cases, life imprisonment is the appropriate sentence. If the court had had a discretion, not based upon extraordinary circumstances, I might have given you a slightly lesser sentence.

But as my hands are tied and there are no substantial and compelling circumstances, your sentence is life imprisonment”.

With great respect, a court's hands are not tied if there are substantial and compelling circumstances justifying a lesser sentence. In this case the appellant was a first offender. The

complainant was not of too tender age and the injuries do not appear to have been particularly serious.

All this, so far, may not constitute substantial and compelling circumstances, but what is decisive, in my view, is the age of the appellant. The imposition of life imprisonment on a man of 55 years old may mean that he might still be in prison in his seventies. That is a situation that I find unacceptable.

In terms of the provisions of section 9 of Act 87 of 1997 the appellant may, after having served 15 years of a life sentence, at best qualify for parole when he is 70.

Given the function of rehabilitation that is implicit in every sentence of imprisonment, it is desirable that a prisoner eventually returns to society so that he can play a meaningful role in it as a rehabilitated person. With a life sentence such a purpose will never be achieved in view of the appellant's age.

For all these reasons I am of the view that the court should have found that there were substantial and compelling circumstances justifying a lesser sentence.

It is obvious that a lesser sentence will still have a long term direct imprisonment. The appellant, being in denial, has not even begun the journey of rehabilitation. The public, especially, young girls, needs to be protected from him.

In the circumstances I am of the view that a sentence of 20 years imprisonment should be imposed.

The following order is made:

- 1. The appeal succeeds.**
- 2. The sentence imposed by the court a quo is set aside and the following sentence is substituted for it: "Twenty years imprisonment". The sentence is antedated to 25 May 2005.**

C. BOTHA

JUDGE OF THE HIGH COURT

I agree

K MAKHAFOLA

ACTING JUDGE OF THE HIGH COURT

I agree

S.P MOTHLE

ACTING JUDGE OF THE HIGH COURT