

/LVS

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

DATE: 11 December 2008

CASE NO: A129/07

In the matter between:

WILLIAM MOHALE SKHOSANA

APPELLANT

vs.

THE STATE

RESPONDENT

JUDGMENT

BOTHA J:

The appellant appeals against his sentence with the leave of
the court a quo.

He was originally charged in the Regional Court at Sebokeng on a charge of indecent assault (count one) and a charge of rape (count two). Both charges relate to the period September 2003 to October 2003. In respect of count one the allegation was that he inserted his finger in the complainant's vagina. In respect of count two the allegation was that he had sexual intercourse with the complainant.

It is enough to say that the two charges were proved. The appellant was the stepfather of the complainant. She was 13 years old. During the period concerned the appellant had sexual intercourse with the complainant on four occasions. It led to a pregnancy. After the birth of the child DNA tests confirmed the paternity of the appellant. In the end he changed his defence from a denial to one of consensual intercourse.

After the conviction the regional magistrate referred the matter to the High Court for sentence.

The High Court confirmed the convictions. With great respect the court should not have confirmed the conviction on both

counts because the indecent assault on count 1 was part and parcel of the rape on count 2. See p 25.

No previous convictions were proved against the appellant.

The appellant was 36 years old. He spent about two years in custody. The court referred to the evidence of the complainant and the probation officer's report, from which it appeared that the complainant was of the view that the appellant had destroyed her life. The court referred to the fact that the complainant's mother's life was also ruined.

The court found that there were no substantial and compelling circumstances justifying a lesser sentence than life imprisonment. Yet it imposed 40 years imprisonment saying the following:

“I will spare your life. There is nothing better than life in South Africa. However I sentence you to 40 years imprisonment.”

The sentence imposed by the court *a quo* presents a number of problems. If the court was not able to find substantial and

compelling circumstances, it was not at liberty to impose a sentence other than life imprisonment. If there were substantial and compelling circumstances the court should have listed them.

If it attempted to impose life imprisonment by means of an extraordinary long period of imprisonment, it committed an irregularity. As it is the period of 40 years imprisonment exceeds what normally is considered to be the limit of long term imprisonment.

In my view this court has no option but to accept that the court *a quo* did in fact find that substantial and compelling circumstances were present.

That being so this court has to consider the appropriateness of a term of 40 years imprisonment. In my view the term of imprisonment is unacceptably long.

No doubt the crime warrants long term imprisonment. The abuse by the appellant of his position of stepfather is an aggravating feature. It is the more so because he insidiously made use of information that he must have obtained from the

complainant's mother about an earlier sexual experience of the complainant, to overpower the complainant psychologically.

The conduct of the appellant not only ruined the lives of the complainant and her mother, but also resulted in the both of a child in very inauspicious circumstances.

The revulsion that the appellants conduct must cause in society can only be expressed by a sentence of long term imprisonment.

In the circumstances the following order is made:

- 1. The conviction on count 1 is set aside.**
- 2. The appeal against the sentence on count 2 succeeds.**
- 3. The sentence imposed by the court *a quo* is set aside and the following sentence is substituted for it: "25 years imprisonment".**
- 4. The sentence imposed by this court is antedated to 10 May 2006.**

C. BOTHA

JUDGE OF THE HIGH COURT

I agree

K MAHAFOLA

ACTING JUDGE OF THE HIGH COURT

I agree

S.P MOTHLE

ACTING JUDGE OF THE HIGH COURT