

CC250/08-ds



SENTENCE

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(CIRCUIT LOCAL DIVISION FOR THE WESTERN CIRCUIT DISTRICT)**  
**KLERKSDORP**

CASE NO: CC250/08

DATE: 2008-11-12

In the matter between  
THE STATE  
and  
ROMEO MABEO

Accused

**S E N T E N C E**

POTTERILL, AJ: Now I have to sentence the accused before court who was found guilty of rape of S. B. on the 2<sup>nd</sup> of November 2005 in the district of Klerksdorp. The circumstances of the rape was that he knew S.B. and that while [.....] then trusted him [.....] did the trouble to help him in his search for a certain home. While she was then helping him he dragged [....] to the veld and at knife point he raped [....].

Rape of such a [.....] is a repulsive crime, [....] was [....] at the time of the

rape, in *S v Chapman*, 1997 3 SA 341 (SCA) 345A to B the court called rape and I quote:

“Humiliating, degrading and a brutal invasion of the privacy, dignity and the person of the victim.”

He clearly knew that he would have an opportunity to commit this crime. That is as far as the circumstances of the crime itself is concerned.

As far as the complainant is concerned, there is very little upon which to measure the emotional impact of the offence upon the complainant. I have postponed the matter to obtain a Victim Impact Report, but three months later the state had not provided same and I am in view of the long time span forced to proceed without it. It is sufficient to say that it is evident from literature that emotional distress and damage accompanying rape might be extensive even if it is not manifestly overtly and even more so when in the case of young girls.

In terms of the Amendment Act to the Minimum Sentences Act and specifically section 51(3)(a)(A) the complainant's previous sexual history is not a factor to consider. As far as the society is concerned, rape is such a prevalent crime that as set out in *S v Vilakazi*, Case No 576/01 (2008) ZA SCA 877 during 2007 as many as 36 139 reports of rape were made to the police. Although this accused cannot be punished excessively for the relatively few who are convicted, the prevalence and the protection of the community, women and children cannot be ignored.

As far as the personal circumstances of the accused is concerned, he is a second offender who is serving a four year sentence for statutory rape. As a [...] year old he clearly has a problem with understanding the consensual nature of

sexual intimacy and that it is not something to be obtained by force.

In the probation officers report it is clear that he grew up with his foster aunt and as a teenager he did not display too many problems. However, during 2001 the accused became demanding and he responded negatively towards the foster mother's discipline, it would seem that as he is now becoming mature he has a problem with discipline and the rules of society.

He has completed Grade 8 only, but has been working for his sister's boyfriend earning R450.00 per week before he was incarcerated. He is of average intelligence and is able to distinguish between acceptable and unacceptable behaviour. The accused, unfortunately, does not accept responsibility for committing the offence and he shows no remorse.

In terms of the Minimum Sentencing Act life imprisonment must be imposed for the fact that the complainant is under [.....] years of age, unless the court can find compelling and substantial circumstances. As stated in *S v Dodo, 2001 (3) SA 382 (CC)* and *S v Malgas, 2001 2 SA 222 (SCA)* proportionality must however play a role when sentencing, proportionality being between the crime and the sentence.

In terms of the Amendment Act to the Minimum Sentencing Act, as set out *supra*:

1. The previous history of the complainant as well as the fact that no apparent lack of physical injury to the complainant is not to be seen as substantial and compelling circumstances.

At the age of [.....] he has already brushed with the law three times as he also has a previous conviction for assault. The only factor in his favour is his age. So the only two

factors that I can find to not give him a life imprisonment is compelling and substantial factors, are:

1. That he has been in custody .since 2005; and
2. The fact that when he committed this crime he was [.....].

After considering all these circumstances, a substantial sentence of 18 YEARS' IMPRISONMENT is imposed. These 18 years are to run concurrent with the four year sentence he is serving at the moment.

I have also been requested by the state to make sure that he is then placed on the Register and i also so order.

**ON BEHALF OF THE STATE: MR MOKOENA**

**ON BEHALF OF THE DEFENCE: R MKALIPE**

**DATE OF JUDGMENT: 2008-11-12**