



CASE NO.: CC 17/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

AND

CONRADT KHARIGUB

CORAM: SHIVUTE, J

Heard on: 2012 February 07 - 08

Delivered on: 2012 March 08

SENTENCE

SHIVUTE, J:[1] The accused person was found guilty of one count of rape in contravention of section 2(1) (a) of the Combating of Rape Act, 2000 (Act 8 of 2000 as amended) (the Act) and of one count of assault with intent to do grievous bodily harm.

[2] The accused was represented by Mr Isaacks on the instructions of the Directorate of Legal Aid while Mr Lisulo appeared on behalf of the State. The fact of the case may be summarized as follows:

[3] The accused person who was under the age of 18 years at the time of the commission of this offence committed a sexual act under coercive circumstances with a 21 years old victim by inserting his penis into her vagina after he had applied physical force to her person. Thereafter he took a broken bottle and assaulted her between her buttocks, face, cut her tongue with intent to cause grievous bodily harm. Complainant sustained serious injuries.

[4] The accused opted to exercise his right to remain silent in mitigation. Mr Isaacks addressed the Court from the Bar and drew the Court's attention to well established principles regarding sentencing, namely:

- (a) The nature of the crime;
- (b) The interests of society; and
- (c) The personal circumstances of the offender.

He referred this Court to several well-known authorities on sentencing which I do not deem necessary to repeat.

[5] I have further listened to the mitigatory circumstances advanced on the accused person's behalf, to wit that he was 18 years old at the time he committed these offences. It was at this stage that the accused informed his

legal representative that he was born on 26 October 1988 and the offence was committed on 15 October 2006, which meant that the accused had not yet attained the age of 18 years at the time the offence was committed. Because the age of the accused plays a crucial role when determining an appropriate sentence to be imposed, the Court called the accused person's mother as a witness and she confirmed that the accused was indeed born on 26 October 1988.

[6] The accused person is a first offender, who spent 5 years and some months' incarceration awaiting trial. He was born in Gobabis where he grew up in the care of his mother. He has a sibling who is 40 years old. He grew up without a father figure since his father left him when he was 3 years old. The accused has a daughter who is 9 years old. He was arrested on 18 October 2006 when he was doing Grade 10. Mr Isaacks further argued that a lengthy term of imprisonment would not be appropriate. He therefore urged the Court to apply Section 3(3) of the Act and to impose any other appropriate sentence. It was again counsel's argument that the sentences to be imposed on the two counts should run concurrently.

[7] On the other hand, counsel for the State submitted that the provisions of section 3(3) do apply and that the court should therefore impose an appropriate sentence. Counsel for the State emphasized the point of the injuries suffered by the victim, saying that these were very serious to the extent that she was unable to speak properly because of the injuries inflicted on her tongue. Society has a legitimate expectation that courts would

impose appropriate sentences in cases coming before them. Counsel continued to say that the period the accused spent in custody should be taken into account. He further explained that the matter was delayed due to the fact that the accused at some stage had terminated the services of his legal representative. Additionally the matter had to start *de novo* because of the unfortunate and untimely passing of the learned Judge who had initially presided over the case. It was further counsel's submission that the accused did not show any remorse to the Court because he did not apologize for the wrongs he has done. I agree with counsel for the State that there are no indications that the accused has shown any remorse for what he has done.

[8] Having heard arguments from both parties, it is now time for me to carry out the onerous task of sentencing the accused. I have taken into account the factors relevant to sentencing, being the crime; the personal circumstances of the accused; the interests of society and objectives of punishment namely; prevention of crime; deterrence, rehabilitation of the offender and the imposition of appropriate punishment for the offence committed.

[9] Although the accused was under the age of 18 years his actions were not consistent with the actions of a young offender. He showed unimagined savagely and callousness towards the victim. He first assaulted her, raped her and as if that was not bad enough he proceeded to assault her with a bottle neck on her private parts and cut her on the tongue. The victim

sustained many severe injuries on the body. I had the opportunity to view the photographs depicting the victim and the injuries she suffered. Those photographs show the extent of the horrific injuries suffered by the victim at the hands of the accused. They leave a lasting impression that the accused had reduced himself to the intolerable level of a savage with no regard whatsoever for the human rights of others.

[10] In sentencing the accused, I have considered the period the accused spent in custody awaiting the trial to be concluded and that he is a first offender. However, I do not lose sight of the fact that rape is a serious offence which leaves serious and often long-lasting psychological trauma on the victim. The victims' rights to privacy and dignity have been seriously violated by the accused and this factor should be taken into account in sentencing.

[11] I am also alive to the provision of section 3(3) of the Act, which reads as follows:

"The minimum sentence prescribed in subsection (1) shall not be applicable in respect of a convicted person who was under the age of eighteen years at the time of the commission of the rape and the court may in such circumstances impose any appropriate sentence."

[12] My understanding of the above provision is that the minimum sentence prescribed in subsection (1) of the Act cannot be imposed on a person who was under the age of 18 years at the time of the commission of the rape. In those circumstances, the trial Court may impose any appropriate sentence. By "any appropriate sentence" I understand it to mean any appropriate

sentence which is less than the prescribed sentence so that a convicted person who was under the age of 18 years at the time of the commission of the rape is not subjected to the regime of the minimum sentences prescribed in subsection (1) of section 3 of the Act.

[13] In the result, I impose the following sentence on the accused person:

Count 1: Ten (10) years' imprisonment.

Count 2: Two (2) years' imprisonment.

It is ordered that the two sentences are to run consecutively.

SHIVUTE, J

ON BEHALF OF THE STATE

Adv. Lisulo

Instructed by:

Office of the Prosecutor-General

ON BEHALF OF DEFENCE

Mr Isaacks

Instructed by:

Directorate: Legal Aid