

REPUBLIC OF NAMIBIA

REPORTABLE



IN THE HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

SENTENCE

Case no: CC 25/2010

In the matter between:

**THE STATE**

and

**ELDO RICARDO KATZAO**

**ACCUSED**

**Neutral citation:** *State v KATZAO* (CC 25/2010) [2013] NAHCMD 87 (4 APRIL 2013)

**Coram:** NDAUENDAPO, J

**Heard:** 28 NOVEMBER 2012

**Delivered:** 4 APRIL 2013

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**Flynote:** The sentence-Accused convicted of 2 counts of kidnapping and 3 counts of rape. Sentenced to 35 years imprisonment.

**Summary:** Sentence-Accused convicted of 2 counts of kidnapping and 3 counts of rape. Seriousness of the crimes reiterated. In the case of rape-No substantial and compelling circumstances shown. Accused sentenced to 1 year on the kidnapping charges and sentenced to 15, 10 and 10 years on each of the rape counts-Effective 35 years imprisonment

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### ORDER

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It is ordered that the sentence on count 1 and count 3 will run concurrently with the sentences on count 2, 4 and count 5.

The accused is sentenced to 35 years effective imprisonment.

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### JUDGMENT

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#### **NDAUENDAPO J**

[1] This court convicted the accused of two counts of kidnapping and 3 counts of rape in contravention of sections 2(1) (a) read with sections 1, 2 (2), (3), 5,6 and 7 of the Combating of rape Act 8 of 2000.

[2] The facts of this case are contained in the summary of substantial facts and they are as follows:

#### **Facts in relation to count 1 and 2 of the indictment.**

‘On the 9<sup>th</sup> November 2007, Librtina Hatzkin, to whom I shall refer as the complainant, left home in the company of Wilhemina Jobs and Ronel Jobs to go and visit a friend. After obtaining hair gel from this friend they went back home where the complainant did her hair.

Later the complainant again left home in the company of Ronel, Esme and Loret. They went to look for a nephew of Esme who was supposed to give Esme money. When they failed to find his nephew they walked back home. While walking back home they passed by a group of man. Among these men was the accused person who was known to the complainant as Cado. The accused person shouted uttering words to the effect that they should go and sleep as they were school children. The complainant replied by asking the accused why he did not go to bed himself.

The accused came running and grabbed the complainant. The accused pulled the complainant to a squatter camp where he raped her.'

**Facts in relation to count 3, 4 and 5 of the indictment.**

On the 26 April 2008 in the evening, Petronella Erna Prinz, to whom I shall refer as the complainant, went to visit her friend at the squatter camp. While she was at her friend's house another lady also arrived there and together they drank Wambo liquor. The complainant saw the accused and another man fighting in the next yard. The accused later came to the residence where the complainant was and asked them to go and buy tobacco for the father of the complainant's friend. They refused to go.

Later the complainant left for home in the company of Namas. Namas was walking in front of the complainant. The accused came from behind and put his hand on the complainant's mouth. He told the complainant to go with him but she managed to pull away from the accused and ran away. The accused pursued her and caught her. He held the complainant by hand and took her to a field where he raped her. When the accused finished raping the complainant she dressed herself and they started walking back in the direction of Westernkim. While on the way the accused again raped the complainant.'

[3] It is now my duty to sentence the accused for the crimes he committed. In terms of our law there are three factors to be taken into account, namely:

- (a) The personal circumstances;
- (b) The nature of the crimes; and
- (c) The interest of society

(See: S v Zinn 1969 (2) SA 537 (A) AT 540G)

[3] At the same time the sentence to be imposed must satisfy the objectives of punishment which are:

- (i) The prevention of crime;
- (ii) Deterrence or discouragement of the offender from re offending and would be offenders;
- (iii) Rehabilitation of the offender;
- (iv) Retribution-thus, if the crime is viewed by society with abhorrence, the sentence should also reflect this abhorrence.

In S v Rabie 1975(4) SA 855 at 862 G-H the Court held that:

*“Punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstance”*

[4] Personal circumstances of the accused

He testified that, he is 27 years old. At the time when he committed the crimes he was 21 years old. He is single and has a 3 Years old daughter. He left school in grade 8 and could not continue due to financial constraints. He was raised by his mother alone. He has five sisters and he is the only son from his mother side. He was been in custody for over two years. He told the court that he respects the fact that the court found him guilty and that he is sorry for what had happened to the victims. The mother of the accused Rosina Katzao testified. She testified that she raised the accused alone. The

father of the accused is in South Africa and did not assist in his upbringings. The accused has a previous conviction of escaping from lawful custody and theft.

[5] As far as the crime of kidnapping is concerned, the accused deprived the complainants of their liberty of movement by detaining them against their will. Article 7 of the Namibian constitution provides: 'No persons shall be deprived of personal liberty except according to procedures established by law.' By detaining them against their will the accused violated their constitutional right. The accused showed no respect for the freedom of movement of those young complainants.

Turning to rape, the crime of rape is a very serious offence and very prevalent.

In *S v Erich Rudath* case no CA 109/98 Maritz J (as he then was) said the following:

*'Rape is, by its nature, generally regarded as a vile and serious crime. The brutal sexual violation of a fellow being's physical integrity, human dignity, security of person and psychological well-being to satisfy the assailant's most primitive and bestial urges of lust, sexual domination and power should not be tolerated in any society-least in ours, which has constitutionally committed itself to the recognition and protection of the dignity, freedom and equality of all its members.'*

*Women, in general, have been the suffering prey of this crime for too long and too often. Those who have fallen victim to it have a legitimate expectation to seek just retribution against the offenders through our judicial system. Moreover, as a class of persons constituting a significant portion of society, women have the most immediate, compelling and direct interest that the courts of this country should impose deterrent sentences to discourage potential offenders. The Namibian society shares those sentiments and demands that, in appropriate cases, offenders be incarcerated and rehabilitated to prevent recurrence of their crimes.'*

*I find myself in respectful agreement with the strong views expressed in S v Chapman, 1997 (2) SACR 3 (SCA):*

*“Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim.*

*The rights to dignity, to privacy and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilisation.*

*Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquility of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment the their lives.” (at p 5A-C) and.*

*“The Courts are under a duty to send a clear message to the accused, to other potential rapists and to the community: We are determined to protect the equality, dignity and freedom of all women, and we shall show no mercy to those who seek to invade those rights.” (at p 5E)*

[6] What makes the conduct of the accused more reprehensible is the fact that he committed these crimes against young, vulnerable and defenceless complainants. They were 13 and 14 respectively. In the case of Libertina Hatzkin, the accused threatened her with two knives and in the case of Petronella Prins he threatened to beat her before raping them. After the accused raped Libertina Hatzkin he was arrested and detained before being released on bail. One would have thought that the accused would be deterred from committing further crimes and reflect on the serious charge that was hanging over his head. No, not the accused, after being released on bail the accused went ahead and raped Petronella Prinz twice.

The accused has not shown any genuine remorse for his actions.

Even after the court convicted the accused, he maintained his innocence. The evidence was overwhelming, convincing and undeniable.

Although there was no expert evidence about the psychological effect these crimes had on the complainants, it was clear when they testified that they are still traumatized and haunted by the events of those fateful dates and the scars on them will be with them for the rest of their lives. Violent crimes against women and children have reached an alarming rate. On a daily basis one reads in newspapers about crimes being committed against women and children. These crimes continue unabated. The courts are duty bound to play their role in trying to curb this evil. The courts must show that those who commit these crimes will be punished severely.

#### [7] Penalties

Section 3 (1) of the Combating of Rape Act 8 of 2000 provides as follows:

3 (1) Any person who is convicted of rape under this Act shall, subject to the provisions of subsections (2), (3) and (4), be liable (a) in the case of a first conviction

(ii) Where the rape is committed under any of the coercive circumstances referred to in paragraph (a), (b) or (e) of subsection (2) of section 2, to imprisonment for a period of not less than ten years;

(iii) where-

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(ff) the convicted person uses a firearm or any other weapon for the purpose of or in connection with the commission of the rape, to imprisonment for a period of not less than fifteen years.

In the case of Libertina Hatzkin the accused took out two knives and threatened to hurt the complainant before raping her. The knives were used in connection with the commission of the rape and in terms of S 3 (1) (ff) the mandatory sentence is fifteen years.

In respect of Petronella Prins she testified that she was raped twice. She tried to run and the accused grabbed her and took her against her will. He also threatened to harm her when she tried to resist his advances. The fact that she was being kept against her will also constitute coercive circumstances. In terms of sections referred to in paragraph (a), (b) or (e) of subsection (2) of section, the mandatory sentence is imprisonment for a period of not less than ten years.

[8] In terms of S 3 (2) of Act 8 of 2000 the mandatory penalties can only be departed from if the court is satisfied that compelling and substantial circumstances exist which warrant a departure from the mandatory sentences. The accused has not shown any compelling and substantial circumstances to warrant a departure from the mandatory penalties.

[9] As far as kidnapping is concerned, the evidence was that both complainants were kidnapped before they were raped. The reason for the kidnapping was to enable the accused to rape the complainants. The evidence was also that the complainants were kidnapped for a short period of time. The period of deprivation clearly plays a role when it comes to sentencing, the longer the deprivation the heavier the sentence.

In the result the accused is sentenced as follows:

1. Count 1 - Kidnapping - 1 year imprisonment
2. Count 2 - Rape - 15 years imprisonment
3. Count 3 - Kidnapping - 1 year imprisonment
4. Count 4 - Rape - 10 years imprisonment
5. Count 5 - Rape - 10 years imprisonment

It is ordered that the sentence on count 1 and count 3 will run concurrently with the sentences on count 2, 4 and count 5.

The accused is therefore sentenced to 35 years imprisonment.



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**G N NDAUENDAPO**  
**JUDGE**

APPEARANCES

THE STATE:

NYONI  
Of Office Of Prosecutor General

ACCUSED:

MR UAJA  
Instructed by Legal Aid