

SOUTH AFRICA / JUDGMENT

S v S (CC42/2018) [2018] ZAECGHC 68 (16 August 2018) [2018] ZAECGHC 68

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Plasket

CASE / FILE NUMBER

CC42/2018

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE DIVISION, GRAHAMSTOWN

Case

no. CC42/2018

Dates

heard: 15/8/18

Date

delivered: 16/8/18

Not

reportable

In

the matter between:

THE
STATE
and
R
S

JUDGMENT

Plasket J

- [1] I convicted the accused of having, on three occasions, raped his daughter, who was eight years old at the time. I am now required to sentence him.
- [2] The prescribed sentence in this case is, in terms of s 51(1) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997, life imprisonment. That is so because the accused's victim was younger than 16 years of age. Life imprisonment is the sentence that is ordinarily to be imposed in these circumstances unless substantial and compelling circumstances are present that justify a less severe sentence. See *S v Malgas* 2001 (1) SACR 469 (SCA) para 8. When deciding whether substantial and compelling circumstances are present to justify a departure from the prescribed sentence, a court will consider and weigh all factors usually taken into account in sentencing, and particularly the proportionality of the sentence in relation to the crime, the criminal and the interests of society. *S v Malgas* supra paras 9, 22 and 25.
- [3] The crime that the accused committed was a particularly serious one. Not only did he rape a child of eight years old more than once but that child was his daughter. At the heart of his criminal conduct is an egregious abuse of power, as well as an abuse of the trust and authority reposed in him as a parent. When committing the rapes, over a period of time, he engineered his partner's absence from the home, together with the remaining three children, so that he was left alone with the complainant. This suggests premeditation and planning.
- [4] A psychological assessment report on the impact of the rapes on the complainant was compiled by Ms Karen Andrews, a clinical

psychologist. Ms Andrews reported that the complainant has a chronic problem with bed-wetting, and that this problem appeared to be related to the abuse that she had been subjected to. Secondly, she said that the complainant had, according to her mother, become a very anxious child. She also cries easily and complains of nightmares. Her self-esteem is low, with the result that she is bullied by other children. She is performing below par at school. She is receiving counselling from a social worker.

- [5] Ms Andrews concluded her report as follows:

'The sexual abuse by her father significantly limits TL's future potential to rise above her dysfunctional family environment. Psychological treatment cannot erase the psychological trauma she has suffered. Treatment can assist her to cope better with symptomatic behaviours as they evolve into new symptomatic behaviours over time as she grows and develops. Trauma and its consequences in children damages neuropsychological development. As such, TL is at very high risk, into adulthood, for suffering anxiety-related disorders, relationship difficulties, substance abuse, emotional difficulties and suicidal ideation and behaviour.'

[6] It is clear from Ms Andrews' report that, even if the physical injuries suffered by the complainant may have been relatively minor and have healed, the psychological trauma and its consequences will endure for the long-term – and are extremely serious indeed.

[7] The accused is 38 years of age. He has a standard 9 education, having left school during his matric year. He worked in the building

industry earning a wage of R850 per week. Prior to his arrest he lived with and supported his partner and their four children including the complainant. He has four previous convictions. The first two, which date back to 2000 and 2003 are for housebreaking

with intent to steal and theft. He was sentenced to a term of imprisonment wholly suspended in respect of the first of these and to two years imprisonment, one of which was suspended, in respect of the second. He was also convicted of stocktheft in 2003 and given a suspended sentence. In 2014, he was convicted of assault with intent to do grievous bodily harm. He was sentenced to two years imprisonment, of which half was suspended.

[8] This court, like every other court of criminal jurisdiction in the country, is weighed down by a never-ending succession of rape cases, many involving the abuse of young children. It is a scourge in our society. I think it is fair to say that most South African are appalled at the levels of sexual violence in our society, and want to see an end of it. They also want to see appropriate, deterrent sentences being imposed by the courts in order to put a stop to this form of destructive, anti-social conduct.

[9] I have given consideration to the personal circumstances of the accused. Leaving aside, for a moment, his previous convictions, his personal circumstances are favourable. He was, as his counsel argued, a useful and productive member of society who provided for his family. But his previous convictions cannot be ignored. While it is true that the first three are dated and not directly relevant, they give an indication of the character of the accused as a person with scant regard for the rights of others. I take them into account for that limited purpose. The previous conviction of assault with intent to do grievous bodily harm is different. It is directly relevant, being an offence involving violence against the person, and strengthens the inference I have drawn that the accused has little regard for the rights of others.

[10] I also take into account the seriousness of the offence of which the accused has been convicted, which I have discussed above, and the severe psychological impact that the accused's conduct has had and will continue to have on the life of his daughter. These factors negate any mitigatory effect that the accused's personal circumstances may otherwise have had, and do so to the point where I am unable to find that they constitute substantial and compelling circumstances to justify a deviation from the prescribed sentence.

[11] In the result, as no substantial and compelling circumstances have been found to apply, the prescribed sentence must be imposed.

[12] I sentence the accused to life imprisonment.

C Plasket

Judge of the High Court

APPEARANCES

For the State: Ms H Obermeyer

Director of Public Prosecutions, Grahamstown

For the accused: Mr D Geldenhuys

Grahamstown Justice Centre

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