

SOUTH AFRICA / JUDGMENT

S v Van Wyk (SS34/2003) [2003] ZAWCHC 92 (24 March 2003) [2003] ZAWCHC 92

COURT

Western Cape High Court, Cape Town

BEFORE

Hlophe JP

CASE / FILE NUMBER

SS34/2003

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IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: SS34/2003

DATE: 24-03-2003

In the matter of:

THE -STATE

versus

HENDRIK VAN WYK

SENTENCE

HLOPHE, JP: Mr van Wyk you were convicted of rape, assault and kidnapping by the Court a quo and I have now confirmed those convictions. We have reached the stage where I have to sentence you now because I have confirmed the convictions that were arrived at by the Court a quo.

Now, in sentencing any accused person a Court will always take account of the following principles of punishment. The first one the Court looks at the crime. When dealing with the crime one looks at how serious the crime is and the circumstances in which the crime was committed. Rape, Mr van Wyk, is a very serious crime. It involves conduct which dehumanise women. It involves conduct which humiliates women, particularly in this particular case one was dealing with a woman who was 15 years at the time.

The circumstances in which rape was committed here leave very much to be desired. Her evidence was that she was assaulted, you assaulted her with your bare hand. So she was assaulted, undoubtedly to make her comply with your demand. Not only that, you were armed. The evidence reveals that you had a knife, although somewhere in the record it is said that you had a pen-knife, but undoubtedly you were armed and you did, this Court has found, have sexual intercourse with her.

The second principle that a court would look at is the criminal, the interests of the criminal. You are a fairly young man you are aged 26 now and the Court heard submissions which were made from the Bar by your Advocate, Mr Colenso regarding the fact that you have had a job but if one looks at your persona! circumstances you have had brushes with the law on several times, in other words you are not a first offender. A first offender is someone who has never been found guilty in a court of law, who was appearing before a magistrate or a judge for the first time. This is not the case we are dealing with here. You have a long record of relevant previous convictions which you admitted and which you signed and they were handed up to Court this morning.

In sentencing the criminal the Court will also look at the interests of the society. Mr van Wyk, rape - particularly in the Western Cape - is on the rise. This Court is inundated with criminal cases where rape is the order of the day. There is no doubt to my mind that Parliament in its wisdom saw it fit to impose minimum sentence provision in order to protect women out there who are crying out for protection. Women get raped and sexually abused and this is on the rise, particularly in the Western Cape and I have no doubt the Court will be failing in its duty if it did not punish you for rape appropriately, regard being had to the interests of the community out there. Of course the Court will also take account of the fact that the sentence must be such that at the end of the day you should be rehabilitated. In other words you should come out there in prison one day and integrate into the society and be a useful citizen. These are basic principles that the Court, when it sentences anyone, will take into account.

This morning, the complainant in this matter also led evidence as to how she felt at the time when she was raped. She did say in no uncertain terms that she was scared of men - this was after the rape - I got the impression she was saying she was in fact traumatised. I do take account of Mr Colenso's submission that if one has regard to the fact that she subsequently became pregnant and that was one of the reasons why she left school, it would appear that trauma did not last for a very long time but there is nothing to gainsay her evidence that she traumatised. She said she could not concentrate at school after she was raped.

Before minimum sentences were introduced by Parliament some seven or eight years ago, the Court had a discretion; it could sentence someone to any form of sentencing option in the exercise of its discretion, but Parliament has introduced an Act which has in a sense taken away that discretion. Life sentence is compulsory once you have been found guilty of rape of a woman under the age of 16, which is my finding. The hands of the Court are tied behind its back. The Court can only depart from a compulsory life sentence if the Court finds that there were substantial and compelling circumstances warranting such a departure. Mr Colenso, who appeared for you, argued that there were such substantial circumstances. He referred, inter alia,

to the fact that no violence was used, which is obviously not correct because the undisputed evidence of the complainant was that she was assaulted. Of course, assault in law is wider in that you may assault a person without using the weapon physically but as long as you induce a thought in the person that harm is about to be inflicted/ but other than that he was not able to point at any factors which he regarded as being substantial and compelling, which basically does not leave this Court with much sentencing options. The only sentencing option which the Court, if the Court finds that there were no substantial and: compelling circumstances;; which indeed is my finding there were not substantial and compelling circumstances.

In which event an appropriate sentence which would take account of all the factors that I have enumerated before, including crime, criminal, society and the need for you to rehabilitate one day, and bearing in mind : ^ the crime of which you have been found guilty, the sentence which I now mete out to you is as follows; for purposes of sentence needless to say the other crimes will be taken together, they will run concurrently.

The sentence Mr van Wyk is life imprisonment.

HLOPHE, JP

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