

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO:

SS09/10

DATE:

8 SEPTEMBER 2010

5 In the matter between:

THE STATE

and

MANFRED RAYMOND SWARTZ

10

SENTENCE

SAMELA, AJ

15 Firstly, I would like to thank Mr De Villiers, Ms Engelbrecht,
the interpreters, police and other people that have been here
that the Court never had any problems, and to you Mr de
Villiers and Ms Engelbrecht, I would say thank you for tireless
and useful contributions in this case throughout. I will try to
be as brief as possible.

20

Mr Swartz, you have been convicted of, firstly, abduction;
secondly, rape twice as well as murder. There are previous
convictions proved against you, sir. The counsel for the State
and defence have addressed the Court on sentence.

25

The Constitution, which is our supreme law, especially in these two sections that I am going to read, Section 11 provides that: "everyone has the right to life". In other words, no one is allowed to take anybody's life, without a good reason, or
5 without a sound reason, or a just cause. Section 12, which is relevant provides that:

"Everyone has the right to freedom and security of the person which includes –

10 (a) not to be deprived of freedom arbitrary or without a just cause.

....

(c) To be free from all forms of violence from either public or private sources.

15 (d) Not to be tortured in any way.

(e) Not to be treated or punished in a cruel, inhuman or degrading way."

The main purpose for enacting the Minimum Sentences Act
20 was clearly stated by Marais, JA in *S v Malgas* 2001(1) SACR 469 (SCA), especially in paragraph [7] where the learned judge said the following:

25 "That situation was and remains notorious. An alarming burgeoning in the commission of crimes of

the kind specified resulting in the Government, the Police, Prosecutors and the Courts constantly being exhorted to use their best efforts to stem the tide of criminality which threatened and continues to threaten to engulf society. The very fact that this amending legislation has been enacted indicates that Parliament was not content with that, and that it was no longer to be 'business as usual' when sentencing for the commission of the specified crimes."

It is trite that prescribed sentence should be imposed in the absence of genuine convincing reasons, what Marais, JA called "weighty justifications". The learned judge goes on to say at 483e:

"If the sentencing Court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal, and the needs of society so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence."

This means that if the prescribed sentence would result in an

SS09/10

injustice being perpetrated against the accused, the disproportion between the prescribed sentence and just sentence would automatically qualify as substantial and compelling circumstances.

5

The seriousness of rape was clearly stated by Mohamed, CJ in S v Chapman 1997(2) SACR 3 (SCA) at 5 where he said the following:

10

“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 defensibly 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 tranquillity of their homes without the fear, the apprehension, and the insecurity which constantly diminishes the quality and enjoyment of their lives.”

15

20

25 Also in this division, in S v Jansen 1999(2) SACR at 368 (C),

where the learned Davis, J, said at 378-379 the following:

5 “Rape of a child is an appalling and perverse abuse
of male power. It strikes a blow at the very core of
the claim to be a civilised society. The community
is entitled to demand that those who perform such
perverse acts of terror be adequately punished and
that the punishment reflect a societal censure.”

10 The victim in this matter was a young child of seven years old,
at the time of her abduction she was an unsuspecting,
defenceless and a vulnerable person. She was unaware that
she was being led by you to a place or a destiny of death,
where you planned to quench your sexual desires. You did not
15 stop there. You consciously in a merciless and brutal fashion
strangled a young child. Mr Swartz, indeed, you have no
respect and feelings for your fellow human being.

Your personal circumstances are as follows: You are now 34
20 years old, at the time of the incident you were 33 years. You
are married with no children, and of your parents, only your
mother is still alive. You left school in Grade 7, and you are
unemployed, used to do odd jobs. You are also not a first
offender. You have been in custody for 14 months. You also
25 unsuccessfully attempted to commit suicide in prison.

In deciding on an appropriate sentence the Court takes into account your personal circumstances, while not forgetting the victim, the crimes of which you have been convicted of, and
5 the interest of society at large, while at the same time the sentence must be blended with a measure of mercy. See S v Roux 1975(3) SA 190 (A) at 190g where the Court had this to say:

10 “The word mercy in the sentence means 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 circumstances.”

15 I believe mercy and not a sledgehammer is the concomitant of justice. The Court must also have regard to the main purposes of punishment which are prevention, retribution, rehabilitation and deterrence. Davis, J again, in S v Swartz and Another 1999(2) SACR 380 (C) at 387 had this to say:

20

 “The censure must have weight. The sentence of this Court should shout to the community at large that rape is unacceptable and that there is no basis upon which a first offender gets a ‘free rape’ (by virtue of a light
25 sentence) and that only recidivists can expect an

appropriately heavy sentence. In summary, the sentence must take full account of the nature of the offence. It must look carefully at the moral blameworthiness, while confirming the community values of dignity, equality and freedom in our society; in this way the Courts can contribute to ensuring that women should benefit equally from a society based on those values. This latter promise is particularly important in a society in which male power and the abuse thereof has so perverted our communal life and threatens to make a mockery of our promise of gender equality.”

The Court must take into account your personal circumstances, the crimes which you have been convicted of, the interest of society, while at the same time exercising a measure of mercy, as I have explained. However, while the Court is taking that into account in S v Lister 1993(2) SACR 228 (A) at 232H-I, the Court remarked that:

“To focus on the wellbeing of the accused at the expense of the other aims of sentencing such as the interest of the community is to distort the process and to produce in all likelihood a warped sentence.”

The Court's duty is to impose sentences on you, sir, to ensure

that the community is satisfied, as I have said, and that it is unnecessary not to obey the law. Also to ensure that the crime victims and other members of the civil society have confidence in our courts. The sentences must have deterrent
5 factors as was mentioned above (Chapman's case) at 5 d-e:

"The Courts are under a duty to send a clear message to the accused and to other potential rapists, and to the community: We are determined to protect the equality,
10 dignity and freedom of all women and we shall show no mercy to those who seek to invade those rights."

I may mention that the Court associate itself with the sentiments expressed in all the cases mentioned above. The
15 Court also takes into account that the accused has been in custody for fourteen months and also that he comes from a poor socio-economic background.

However, the following aggravating factors exist in this matter:
20

1. That the deceased was only seven years old when she was abducted by you.
2. She knew the accused and trusted the accused, who abused that trust, as they
25 resided in the same yard.

3. The accused knew the deceased's mother and father.
4. The accused raped the deceased twice, in a brutal, barbaric fashion.
- 5 5. The accused smoked "tik" which gave him courage to do his evil deeds fast and in a cruel and merciless fashion.
6. According to the doctor's testimony and report
10 her untimely death due to rapes and strangulation.
7. The accused killed the deceased in a merciless manner.
8. He is not a first offender.

15

I am of the view, therefore, that aggravating circumstances outweigh his mitigating factors, and I am convinced that there are no genuine convincing reasons why the Court should deviate from imposing the prescribed minimum sentence in this
20 matter, especially on counts 2 and 3, that is the rapes, and therefore the Court finds that there are no substantial and compelling circumstances in respect of those two counts.

The sentences the Court will impose upon you, sir, may be
25 viewed by other members of the community as being very

SS09/10

lenient, whereas others may think that they are harsh. Unfortunately, I can never satisfy everyone. My duty is to do justice, so that the community can witness, and that indeed justice is seen to be done and indeed has been done. The
5 Court believes that whatever sentences will be imposed upon you, Mr Swartz, remember it will never bring back Nadine to life again, and it will never bring her back again to her beloved family. She is gone and gone forever.

10 You, and only you alone, Mr Swartz, knows the reasons for doing what you did, and you and you alone, Mr Swartz, have the answers.

The Court was also mindful of the fact that initially you did not
15 show any remorse at all, as the Court gave you an opportunity to apologise to the deceased's family, and it seemed to the court that your counsel was the one that was remorseful. It seemed to the Court that this is an afterthought that you now wanted to address the deceased's family. Even in your
20 evidence in chief you did not indicate at all that you were sorry for what you did to the family. The Court is of the view that you are indeed a very wicked individual, whose actions on the day of the incident may be summarised as callous, cruel, inhuman or degrading in the manner you brutally forced
25 penetration to the young child, who was extremely traumatised

SS09/10

as you told the Court that when you carried out all your evil deeds on her she was not even screaming, but silent. Nevertheless, you continued to strangle her in a barbaric way.

5 I doubt if you have a conscience. The Court believes that you are a danger to society, especially to the young children, as you described to the Court how you coldbloodedly strangled Nadine without a reason. Courts are expected to vigorously protect the weaker members of our community, such as
10 women, elderly people and the children. You yourself could not give this Court a guarantee that you would not repeat the same, as you informed the Court that previously you also promised the other courts that you will never commit the crimes of which you had been committed previously, but
15 nevertheless you continued. By your own version then, you told the Court that you cannot guarantee that you will not do it again.

The Court is of the view that you should be permanently taken
20 away from society as you are a real danger to society. In the result the following sentence will be imposed upon you, and are sentenced as follows:

On COUNT 1, abduction, you are sentenced to 6 (SIX) YEARS
25 IMPRISONMENT.

On COUNT 2 and 3, rape, for the purposes of sentence they will be taken together and in terms of the Minimum Sentence Act you are sentenced to LIFE IMPRISONMENT.

5

On COUNT 4, murder, you are sentenced to 20 (TWENTY) YEARS IMPRISONMENT.

10


A horizontal line is drawn across the page, and a handwritten signature is written over it.

SAMELA, AJ