

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: SS104/2005

DATE: 2 MARCH 2006

5 In the matter between:

THE STATE

versus

MADODA JAMES CEKESHE

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SENTENCE

ALLIE, J

My judgment in relation to sentence is as follows:

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The accused is the complainant's mother's brother, the complainant's mother afforded the accused an opportunity of residing with her. He was provided for financially by her. He misused his position of trust and showed a gross disregard for
20 the wellbeing of the complainant who was his ten year old niece at the time.

The offences were planned in as much as he ensured that the other children left him alone with the complainant. He did this
25 by giving them money. The offences were crimes of

opportunity. The complainant was so traumatised that she did not initially tell her mother because she felt that she would be blamed. The complainant suffered from flashbacks, a lack of concentration at school and forgetfulness.

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The complainant and her mother experienced the crimes as emotionally painful and were not willing to testify for the purpose of sentence. The complainant has however progressed relatively well at school and is coping well. The social worker ascribes this in his report to the fact that the mother, who is an Aids Counsellor, supported and counselled the complainant.

This Court accepts that by its nature the rape of a ten year old six times by her uncle would leave emotional scars on the complainant. The partial recovery of the complainant is not as a result of the conduct of the accused and he is not entitled to derive any benefit from it.

The rape of young children, and particularly those within the family occur too often. Society is entitled to expect that the courts should impose sentences that deter such offences. In this particular case the accused raped the complainant six times within a short period of time. His defence was not only that did he not rape her, but that he was not at her home or

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with her on the days in question. He could provide no evidence in corroboration of this defence.

The Court is however obliged to temper its decision with an
5 element of mercy. In doing so it has to take account of the personal circumstances of the accused. At the time he was 21 years old, he is now 25 years old. He has no previous convictions and is therefore a first offender. He completed grade 8 at school. He was in the fortunate position of being
10 able to continue school at the age of 21 years, immediately before his arrest. He has no dependants.

In the regional court the accused clearly understood the proceedings and was able to dismiss one attorney, conduct his
15 own defence in part and employ another attorney later. In this court the accused gave his advocate clear and specific instructions concerning allegations that the record of the regional court was incorrect. Therefore the accused demonstrated that he was sufficiently intelligent to appreciate
20 that his conduct was wrong, and even more so, that it was wrong to perpetrate such offences upon his own family member.

Given the fact that the accused is convicted of multiple
25 charges of rape of a ten year old I cannot find substantial and

compelling circumstances to justify a deviation from the prescribed minimum sentence. The six convictions are taken together for the purpose of sentence and a SENTENCE OF LIFE IMPRISONMENT is imposed.

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ALLIE, J