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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

CASE NO.: CC 37/2023

In the matter between:

THE STATE

and

[P...] [J...] M[...]

JUDGMENT ON SENTENCE

GQAMANA J

[1] The accused has been convicted of more than 700 counts of rape, sexual assault, sexual grooming, human trafficking, possession, production, and procuring of child pornography and exposing children and a person with mental disability to pornography. These are all serious offences, individually and collectively. It is now the time for the court to sentence the accused for his actions. In consideration of an

appropriate sentence, the court has to take into account the well-known triad factors, namely, the accused personal circumstances, the nature of the offences and the interests of society. In doing so, the court should strike a balance and avoid over-emphasising one and under-emphasising the other.

[2] Section 51(1) of Act 105 of 1997¹ provides for the imposition of life imprisonment for rape because in this case the victim was under the age of 16 years at the time. The sentencing court is required to impose the prescribed sentence unless if it finds that there are substantial and compelling circumstances which justify a lesser sentence.

[3] In *S v Malgas*,² the SCA emphasised that the prescribed sentences must not be departed from lightly and for flimsy reasons, there must be truly convincing reasons for imposing a lesser sentence. If the prescribed sentence is disproportionate to the particular offence, the court may deviate and impose a lesser sentence.

[4] Starting with the rape offences, in *Bailey v S*,³ the SCA expressed concern about the fact that the rape of young girls by their fathers have '*emerged insidiously in recent times as a malignant concern seriously threatening the well-being and proper growth and development of young girls. It is an understatement to say that it qualifies to be described as a most serious threat to our social and moral fabric.*'

[5] The effect of rape was described by the SCA in *Modau v S*,⁴ as follows:

" ... rape is undeniably a degrading, humiliating and brutal invasion of a person's most intimate, private space. The very act itself, even absent any accompanying violent assault inflicted by the perpetrator is a violent and traumatic infringement of a person's fundamental right to be free from all forms of violence and not to be treated in a cruel, inhumane or degrading way."

¹ Criminal Law Amendment Act.

² 2001 (1) SACR 496 (SCA).

³ 2013 (2) SACR 533 (SCA) at par 13.

⁴ 2013 (2) SACR 292 (SCA) at para 17.

[6] Further, in *Director of Public Prosecutions, North Gauteng v Thabethe*,⁵ the SCA held that:

"rape of young women has become cancerous in our society. It is a crime which threatens the very foundation of our democracy, which is founded on protection and promotion of the values of human dignity, equality and the advancement of human rights and freedom. It is such a serious crime that it evokes strong feelings of revulsion and outrage amongst all right-thinking and self-respecting members of society. Our courts have an obligation to impose sentences for such a crime, particularly where it involves young, innocent, defenceless and vulnerable girls of the kind of which reflect the natural outrage and revulsion felt by the law-abiding members of society. A failure to do so would regrettably have the effect of eroding the public confidence in the criminal justice."

[7] Similarly human trafficking is a dehumanising crime that reduces people to commodities. It is also one of the most serious offences in our South African law. In recognition of the prevalence and seriousness of human trafficking, the legislature has also prescribed heavy penalties in terms of section 13 of Act 7 of 2013 that the court may impose. Such penalties range from 10 years' imprisonment up to the maximum of life imprisonment, as well as the fine not exceeding R100 m.

[8] The child pornography offences are also serious and prevalent in our country, to the extent that legislation with the purpose of curbing child pornography was passed by the legislature. Pornography strikes at the dignity of children; it is harmful to children who are used in its production. The degradation of children through child pornography is a serious harm which impairs their dignity and contributes to a culture which devalues their worth.⁶

[9] I now turn to the accused's personal circumstances. He is 56 years of age. He was unmarried but was in a cohabitation relationship with the mother of his children.

⁵ 2011 (2) SACR 567 (SCA) at 577 G-I.

⁶ *De Reuck v DPP (WLD) and others* 2003 (12) BCLR 1333 (CC) at para (63).

He sired three children from that relationship. Prior to his arrest, he was gainfully employed. He was the sole breadwinner and had provided relatively well financially for his family. His children were attending private school. His own mother is an elderly person of 86 years of age and he was also financially responsible for her. He is a first offender. He suffers from at least 6 known chronic illness and his health has deteriorated even more while incarceration. He has been in custody since 01 September 2022 awaiting trial. His family has been scattered since his arrest and his children are in foster care. His partner has moved on with her life. He has shown no remorse.

[10] Regarding the nature of the offences, it has been indicated above that rape of children has become a pandemic in our country. What aggravates this case even more is that the accused was the father of the victim. Further the victim was under the age of 16 years at the time when the accused sexually abused her. The victim gave detailed evidence of the psychological sequelae suffered by her as a direct result of the accused's conduct. Despite the time period which has passed since these offences were committed, but she still has nightmares and has developed phobias. It is evident from her statement and the letter addressed to the accused that her life has been ruined permanently. At times she resorted to harm herself by cutting her body with a razor and only when she saw blood dripping that it daunted her that she still has feelings. There were times that she also used psychoactive drugs such as alcohol and illegal drugs to find solace. Although she had attended professional counselling sessions she appeared extremely emotional about her sexual abuse at the time she gave evidence in the main trial and even yesterday.

[11] In imposing a sentence, the court must also consider the interests of society. Through the provisions of section 51(1) of Act 105 of 1997 as amended, the legislature has prescribed the minimum sentence of life imprisonment for rape because the victim was under the age of 16 years at the time she was sexually abused. The deviation from the prescribed sentence may be justified if the court finds substantial and compelling circumstances.

[12] Mr Erasmus, counsel for the accused submitted that the accused's personal circumstances, his age, his health condition, the fact that he is a first offender, the

period in custody awaiting trial and the fact there was no actual intercourse considered cumulatively amounts to substantial and compelling circumstances and as such the court would be justified to impose a lesser sentence.

[13] In *S v Malgas*, (*supra*) Ponnann JA, held that the prescribed sentence must not be departed from lightly and for flimsy reasons which could not withstand scrutiny. There must be truly convincing reasons which justify a lesser sentence. The accused committed heinous offences. As it was submitted by Ms Cerfontein that, the accused was in a position of trust because he was the father of the victim. Instead of protecting her, he sexually abused her. He exposed his children to child pornography from an incredibly young age. Through the accused's action, his children are scattered and are in foster care.

[14] Rape is an appalling and outrageous crime which violates a woman's body which is sacrosanct. In this case the seriousness is compounded by the age of the victim and the relationship of the accused to the victim. The accused occupied a position of power in relation to his daughter. In *S v Abrahams*⁷, the SCA stated that:

'Of all the grievous violations of the family bond the case manifests, this is the most complex, since a parent, including the father, is indeed in a position of authority and command over a daughter. But it is a position to be exercised with reverence, in a daughter's best interests and for her flowering as a human being. For a father to abuse that position to obtain forced sexual access to his daughter's body constitutes a deflowering in the most grievous and brutal sense. That is what occurred here, and it constituted an egregious and aggravating feature of the accused's attack upon his daughter'

[15] These remarks apply equally here. Where a rapist's victim is within his family, she deserves like any member of the public protection against the rapist. On most occasions these incidents within the family nucleus remain concealed. Like in this case, the sexual assault of the victim was concealed for lengthy period of time. But at the end, the accused's evils and horrific crimes were exposed.

⁷ 2002 (1) SACR 116 (SCA)

[16] Ms [D] testified on the psychological effects caused by her sexual abuse. As mentioned earlier above that, even yesterday she had to contain herself and be calm as far as possible under the circumstances. The pain and anguish she had to endure as a result of the accused's conduct is evident from exhibits "X" and "Y". On the hand the accused showed no remorse at all. Even at this late hour of the proceedings, he maintains his innocence. Without remorse, rehabilitation is impossible. The sentence that I intend to impose would serve as a deterrence and retribution and hopefully it would also shout out to society that the courts do not tolerate sexual abuse of any kind. There would be no mercy to those who sexually abuse children and women. Those who perform such perverse acts of terror would be punished severely.

[17] Having considered the mitigating and aggravating factors, the evidence of the victim and all the circumstances of this case, it is my conclusion that there are no substantial and compelling circumstances which justify a deviation from the prescribed sentence.

[18] With regards to the human trafficking offences, section 13 of Act 7 of 2013, sets out the penalties for contravention of any of the offences under this chapter. It prescribes the following sentences which a court may impose:

- (a) a period of imprisonment including a life imprisonment or a fine not exceeding R100 m or both, if a person is convicted of an offence referred to in section 4(1), or
- (b) a period not exceeding 15 years 'imprisonment or a fine or both, if the accused is convicted of an offence referred to in section 7, or
- (c) a period not exceeding 10 years 'imprisonment or a fine or both, if the accused is convicted of an offence referred to in section 8(1).

[19] In terms of section 14 of Act 7 of 2013⁸ the factors to be considered by the court in sentencing a person convicted of the aforementioned offences, include *inter*

⁸ Prevention of Combating of Trafficking in Persons Act.

alia , his role in the trafficking process, any previous convictions related to human trafficking offences, the conditions in which the victim was kept, the physical and psychological effects the abuse had in the victim, whether the victim was a child and the nature of the relationship between the victim and the accused. In this case the accused was the victim's father. He has no previous convictions of any kind. He facilitated the sleepover of the victim at the place where she was kept captive and sexually violated her. The victim was a child. The psychological effects arising from her sexual violation on that specific night at Joshua's house by her half-brother is impossible to divorce it from the entire abuse at hands of the accused within the context of this case.

[20] Ms Cerfontein submitted that the court should impose the maximum sentence of life imprisonment in respect of the trafficking in persons offence. However, having considered all those factors referred to in section 14 as well as the peculiar circumstances of this case, life imprisonment for the contravention of section 4(1) of Act 7 of 2013 would be excessively inappropriate and disproportionate to the nature of the offence.

[21] In relation to the pornography offences, the prescribed penalties ranges from 5 years' imprisonment and more. Ms Cerfontein referred me to the judgment by the Gauteng High Court in DPP, Pretorius v Alberts,⁹ where it is said:

'In order to ensure appropriate sentencing of those convicted of involvement in child pornography acts the crime should be seen not simply as the possession or distribution of child abuse images but as the sexual abuse, exploitation, defamation, and impairment of the dignity of all children and the promotion of the use of child pornography for sexual gratification through the portrayal of children as acceptable sexual objects.'

[22] In the same judgment, it is said that, *'the online sexual abuse and exploitation of children is a global crime'* and courts must impose severe sentences for those convicted of child pornography. It is undeniable that the accused exposed his

⁹ 2016 (2) SACR419 (GP).

children to horrific, explicit and graphic pornographic images. They were exposed to pornography for a considerable long period of time.

[23] Lastly, had the sexual assault of the victim by her half-brother reported earlier, she would not have been victimised more. Evidence was that even after she had reported the rape incident to Louisa, she was again sexually abused.

[24] In conclusion and having considered all the facts and evidence herein, the accused is sentenced as follows:

1. **Counts 4 - 716 - 5 years' imprisonment on each count.**
2. **Count 718 - 2 years' imprisonment**
3. **Count 719 - 15 years' imprisonment**
4. **Counts 720 - 723 - 10 years' imprisonment**
5. **Count 726 - life imprisonment**
6. **Count 728- life imprisonment**
7. **Counts 730 and 731- 10 years' imprisonment on each count**
8. **Counts 736 -738 - 2 years' imprisonment on each count**
9. **Counts 739 and 741- 10 years' imprisonment on each count**
10. **Count 742 - 5 years' imprisonment**
11. **Count 743 - 5 years' imprisonment**
12. **Counts 744 and 745 - 5 years' imprisonment on each count**
13. **Counts 746 -748 - 5 years' imprisonment on each count.**

Further it is ordered that the sentence imposed in respect of all the other counts shall run concurrently with the sentences of life imprisonment.

Furthermore, in terms of section 103 (1) of the Firearms Controls Act 60 of 2000, the accused is deemed unfit to possess a firearm.

In addition, the accused's name must also be entered into the Register of Sexual Offenders.

N GQAMANA
JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the State: *Adv I Cerfontein*
Instructed by: Director of Public Prosecutions
Gqeberha

Counsel for Accused: *Mr D Erasmus*
Instructed by: Legal Aid South Africa
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Heard on: 23 April 2025
Judgment delivered on: 24 April 2025