

CASE NO.: CC 10/2000 IN

THE HIGH COURT OF NAMIBIA

In the matter between: THE

STATE

versus

NICOLAAS RUKERO

CORAM: SILUNGWE, J.

Heard on :2000.03.14

Delivered on:

2000.05.02

SENTENCE

SILUNGWE, J.: Nicolaas Rukero, I have found you guilty of the crimes of rape and indecent assault on the 3 year old Priscilla and the 13 year old Rebina, respectively, and I am about to pass what I consider to be appropriate sentences.

In sentencing you, I am mindful of the seriousness of the crimes in respect of which you now stand convicted, especially the offence of rape. I am equally mindful of the interests of society

and of your own interests (i.e. your personal circumstances. As you are probably already aware, the seriousness of sexual abuse cases, such as rape perpetrated against women and /or children who represent the weaker members of our society and who need society's protection through the Courts of Law, cannot be over emphasized. This is a scourge which society and the Courts of law are determined to fight tooth and nail.

I take into account your personal circumstances (including your mitigation). You are a young man aged 25 years, and though unmarried, you have three children aged 9, 7 and 2 years, respectively, from different mothers. The older children live with your mother whose health is not too good and the youngest child lives with her mother. Your girlfriend Selma, whose cousins you sexually molested, is expecting your child.

Ms Hamutenya, your legal representative submits that you were drunk at the material time. But the Court's finding on the matter, which is in line with your own testimony, is that although you had been drinking, you were not so drunk as not to know what you were doing. Nevertheless, the Court will take into account the fact that you had been drinking. There is no evidence to show that your drinking may have aroused your sexual urges, but this is a possibility. Although you have a previous conviction for theft in 1998, I will ignore it, as it is irrelevant for the purpose of this case.

As against your personal circumstances, there are certain aggravating factors, for instance, Pricilla whom you raped is a young 3 year old girl, and being the boyfriend of Selma, who is the cousin of the complainants and the niece of their mother, the latter allowed you to take her children home because of the trust that she had in you which trust you grossly abused with the impunity. Had the complainants' mother realized that you were a wolf in a sheep's clothing, it's highly improbable that she would have entrusted their safety into your care.

As I indicated in the judgment, had Rebina not fled to safety, it's highly likely that would have been talking of two rapes, not one. Having indecently assaulted Rebina and, following her escape to safety, you took advantage of Priscilla whom you raped and traumatized and to whose

cries in agony you turned a deaf ear. Your conduct was outrageous and devilish in the extreme. You have shown no remorse for the crimes you have committed. It is, however, noteworthy that Imelda, the mother of the complainants, was careless, if not reckless, in allowing you to take her children home. But I believe that she has now learnt a bitter lesson.

I find that the aggravating factors outweigh your personal circumstances and that you richly deserve a severe direct custodial sentence for the rape count. As regards the second count of indecent assault, there are no aggravating factors as such.

I sentence you as follows:

- 1 Rape: 16 (sixteen) years imprisonment; and
- 2 Indecent assault: 2 (two) years imprisonment.

These sentences will run consecutively, which means that you will serve an effective sentence of 18 years imprisonment.

ON BEHALF OF THE STATE

Instructed by:

ADV. S SCHULTZ

Office of the Prosecutor-General

ON BEHALF OF THE DEFENCE

Instructed by:

MS L HAMUTENYA Legal Aid