



NOT REPORTABLE

CASE NO: CA 158/2006

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**SIEGFRIED GOAGOSEB**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

**CORAM:** HOFF, J *et* MANYARARA, AJ

Heard on: 30 May 2008

Delivered on: 30 May 2008 (*Ex tempore*)

Reasons on: 14 March 2012

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**APPEAL JUDGMENT**

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**HOFF, J:** [1] The appellant was convicted, in the Regional Court sitting at Swakopmund, on charges of rape and assault and sentenced to seventeen years imprisonment (counts having been taken together for purpose of sentencing).

[2] The charge of rape alleged that the appellant unlawfully and intentionally and under coercive circumstances namely being the stepfather of the complainant and in a position of trust from the time that the complainant was 6 years old until the age of 15 years did on diverse occasions commit sexual acts with the complainant namely by inserting his penis into the vagina of the complainant.

[3] The charge of assault alleged that the appellant unlawfully assaulted the complainant by grapping her neck and pushing her against a window.

[4] The State led the evidence of the complainant, the aunt of the complainant and handed up as evidence a confession made by the appellant to a magistrate. The appellant elected not to testify. The appellant was legally represented.

[5] The appellant in mitigation of sentence testified that he was 37 years old, unmarried, the father of three minor children aged 7 years, 8 years and twelve years respectively and that the children were attending school. When questioned by his legal representative the appellant stated that what he had done was wrong. However he also stated that the complainant had seduced him several times during the period in question.

[6] It appears from the document (not being a proper notice of appeal) filed by the appellant that the appeal lies against sentence only in which he requested a reduction of the number of years of imprisonment imposed by the magistrate.

[7] The minimum prescribed sentence under these circumstances is imprisonment of 15 years.

The magistrate took into account the circumstances under which the offences had been committed. In respect of the crime of rape the complainant was raped over a period of several years by the appellant who was her stepfather. These incidents started when the

complainant was at the tender age of 9 years. The magistrate further took into account that the appellant was disingenuous and attempted to apportion moral blameworthiness to the complainant by contending the complainant had seduced him on several occasions.

[8] In *S v Shapumba* 1999 NR 342 (SC) at 343 – 344 Strydom CJ remarked as follows when considering an appropriate sentence for the crime of rape.

“The crime of rape, being an unlawful and forceful invasion of the body, and privacy of a woman, mostly with the purpose to satisfy the sexual urge of the offender, can, except in the most exceptional circumstances, not contain mitigating factors which could explain the commission of the crime and diminish the moral blameworthiness of the offender. Whereas there is very little that can mitigate the commission of the crime of rape there are certain specific factors which would further aggravate and contribute towards the seriousness of the crime and the consequent punishment thereof. Examples of these are the rape of young children, the amount of force used before, during or after the commission of the crime, the use of weapons to overcome any resistance by means also of threats of violence, rape committed by more than one person on the victim, the fact that the rapist is a repeat offender, etc. These factors or a combination thereof, resulted in heavy punishments imposed by the Courts. See in this regard *S v P* 1991 (1) SA 517 (A); *S v G* 1989 (3) SA 695 (A); *S v R* 1996 (2) SACR 341 (T); *S v W* 1993 (1) SACR 319 (SE); *S v V and Another* 1991 (2) SACR 484 (A); *S v D* 1991 (2) SACR 543 (A) and *S v F* 1990 (1) SACR 238 (A).”

[9] In the present matter the fact that the complainant was a young child and the fact that the abuse continued over a number of years are certainly factors correctly considered by the magistrate as aggravating factors which justified a heavy sentence.

Another aggravating factor is the fact that the appellant was the stepfather of the complainant as such one would have expected appellant to have fulfilled a protective role and would have acted in the best interest of the complainant. Instead he exploited and abused her sexually.

[10] In *Shapumba* the Supreme Court of Namibia regarded a sentence of 15 years imprisonment, in circumstances where the complainant, an adult woman was raped once by the appellant, as an appropriate sentence in the circumstances of that case.

[11] It is trite law that sentencing is pre-eminently a matter for the trier of fact and that a Court of appeal will interfere only in certain circumstances namely where the trial court has misdirected itself on the facts or on the law; or where a material irregularity occurred during the sentencing proceedings; or where the trial court failed to take into account material facts or over-emphasised the importance of other factors; or where the sentence imposed is startlingly inappropriate, induces a sense of shock, and where there is a striking disparity between the sentence imposed by the trial court and that which would have been imposed by a court of appeal.

(See *S v Tjiho* 1991 NR 361 (HC) at 366 A – B; *S v Ndikwetepo and Others* 1993 NR 319 (SC) at 322 – 323 and *S v Shapumba* 1999 NR 342 (SC) at 344 I – J and 345 A – B).

[12] The appellant did not refer to any irregularity or misdirection by the magistrate and I am of the view that it is apparent from the record that the magistrate did not misdirect himself in any way neither were there irregularities during the sentencing procedure. There is no reason why this Court should interfere with the sentence imposed by the magistrate in the court *a quo*.

[13] These were the reasons why the appeal was dismissed.

**ON BEHALF OF THE APPELLANT:**

**IN PERSON**

**Instructed by:**

**ON BEHALF OF THE RESPONDENT:**

**ADV. NYONI**

**Instructed by:**

**OFFICE OF THE PROSECUTOR GENERAL**