

IN THE HIGH COURT OF LESOTHO

CRI/S/5/2007

CR.1758/2006

In the matter between:-

REX

CROWN

V

MATJOLA TEKANE

ACCUSED

DELIVERED BY THE HONOURABLE MRS JUSTICE KJ, GUNI 27th APRIL 2007

The record of the proceedings in this matter was forwarded to this court from the Magistrate Court - Sitting at MASERU. The accused person was charged and convicted of the crime of PERSISTENT SEXUAL ABUSE OF THE MINOR CHILD. The trial of this accused person was before the Magistrate MATHAHA. The Magistrate sent the accused to the High Court for sentence IN TERMS OF SECTION 31 (2) SEXUAL OFFENCES ACT 2003, on the ground that the sentence provided for in the statute is beyond his or her personal powers.

The penalty stipulated by section 32 (a) (v) SEXUAL OFFENCE ACT 2003, is the minimum of [15] fifteen years imprisonment. The accused person was charged and convicted in terms of SECTION 9 (1) SEXUAL OFFENCES ACT 2003. Therefore his sentence has been set out in the above mentioned section.

PROVED FACTS

At the trial it was proved that the accused person and the victim of the persistent sexual abuse knew each other very well. They are an uncle and a niece. The accused convinced the minor girl child that she should in accordance with tradition and custom be taught to practice sex by her father. Assuming and I suppose correctly so, that the victim's natural father who was the brother of the accused person is not practicing sex with his daughter, the accused pointed out to his niece - the victim that he as an uncle - standing in her father's place should take up the responsibility to teach the little girl how to practice sex. The victim expressed the view that her father does not teach her to practice sex. In fact her father does not even talk about sex with her.

On the first occasion of her sexual lessons by her uncle, the victim was seated on the chair when the uncle removed her under pants and engaged her in sexual relations there on the chair where she was seated. This alleged sex lesson took place in the minor child's own home.

The second time, the accused person had sex with this minor was again in her very own home. The victim was sent to the uncle's place of residence to collect a suitcase from the accused person's wife. The accused person's wife was ill. As a result, she was in bed when the victim arrived at her house. The victim asked for the suitcase which was pointed out to her. She collected it and left the bedroom where the accused person's wife was sleeping.

On her way out she met the accused person who ordered the victim to wait for him while he proceeded into his bedroom to deposit his bag which he had carried in his hand when he arrived from work. The victim waited for him. After depositing his bag he came to join the victim and they both walked to her residence.

At the victim's home there was one person at home. Her name was Ntekeleng who was still cooking the family's evening meal. She, Ntekeleng, asked the victim to keep an eye on the pots on the cooker, while she, Ntekeleng, went out to breastfeed her baby who was crying at the time. The accused person was left in the kitchen with the victim. He and the victim went into the next room - which was the boy's bedroom.

The accused person told the victim that as the father to her, he is the one who must open her up. As he said these words, he started undressing her by removing her pair of trousers and her panties. He engaged her in a sexual act on the bed in that room. Ntekeleng returned to the kitchen. She saw the accused person on top of the victim in the boys bedroom. The accused person also noticed Ntekeleng who now was coming towards them.

The accused person got off the victim. He rushed to the door which he slam closed in the face of Ntekeleng - hitting her with the said door. The victim also got up. She dressed and came into the kitchen. The accused indicated that he wants to go to the shop to buy some batteries. He asked Ntekeleng to allow the victim to come along with him after pointing out the shop where they will go and that they will be very quick (i.e. is to say they will return in no time). After considering the closeness of the shop indicated by the accused Ntekeleng allowed the victim to go with the accused person. On the way the accused elected to go with the victim to the shop furthest away from her home - not the one he had indicated to Ntekeleng.

The victim went along with the accused's latest choice of shop. On the way there or from there they had to pass the reeds growing near the dam. The accused threw the victim in the bush of reeds and once again undressed and had sex with her.

The minimum sentence prescribed by the law for this type of the crime under SEXUAL OFFENCES ACT 2003, is fifteen (15) years imprisonment.

MITIGATION

The accused has asked the court to temper the course of justice with mercy. He has pointed out to this court that he left behind a wife with a baby. According to the accused the health of his wife is not good. In addition to her poor health the accused's wife will be alone if her husband is sent to prison. The accused pointed out that the relations between himself and the members of his family are not what he feels comfortable to live his wife alone with them.

Although the accused claims that his abuse of his brother's daughter is not the cause of the deterioration of the relations between members of his family, evidence on record at the trial, shows this court that the members of the family dealt cordially with great trust with each other. That trust is what this accused abused when he took the opportunity to sexually abuse the child every time he was in the same room or space with that child. The minor child's mother sent that chilled on errands at the accused's house. The accused came to the brother's house and stayed inside the house in the absence of the parents.

Such was the parents' trust of the accused. I do not believe that the relations between the accused and some members of his family were anything but cordial, prior to his atrocious behaviour. It should be expected that the said minor child's parents and other relatives are very unhappy with the accused, as a direct result of his own very bad behaviour.

The accused is sentenced to fifteen years imprisonment.

K J. GUNI

JUDGE