IN THE HIGH COURT OF SOUTH AFRICA

TRANSVAAL PROVINCIAL DIVISION

DELMAS CIRCUIT COURT

Case No. SH 430/07

Registrar Ref. No. CC 65/08

THE STATE

versus

GORDON TSHEHLA RAMAISA Accused

SENTENCE

[1] On 27 August 2007, the accused, Gordon Tshehla Ramaisa, was convicted in the regional court, Benoni of the offence of assault of a female person (*count 1*), and of the offences of assault with the intent to do grievous bodily harm (*count 2*) and of the rape (*count 3*) of another female person. The convictions on all three counts were confirmed by this court on the 29th May 2008 in accordance with the provisions of s. 52(3)(b) of the Criminal Law Amendment Act No. 105 of 1997 ("the Act"). What remains is to consider and determine an appropriate sentence for the accused.

[2] The State, represented by Adv Ngobeni, led no *viva voce* evidence in aggravation of sentence. The accused, represented by Adv van der Westhuizen,

also led no *viva voce* evidence in mitigation of sentence and the accused elected not to testify, but Adv van der Westhuizen placed facts before me in mitigation of sentence from the bar. Counsel for the State and for the accused addressed me on the matter of sentence. They also handed in a victim impact report (*exhibit "A"*) and a pre-sentence report (*exhibit "B"*) prepared by probation officers and they agreed on the correctness of the information therein contained.

[3] *'*[P]*unishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances.'* [see: S v Rabie 1975 (4) SA 855 (A) at p 862G]. In the assessment of an appropriate sentence regard must be had *inter alia* to the traditional aims of sentencing such as personal deterrence, rehabilitation and reformation [see: S v Blignaut 2008 (1) SACR 78 (SCA) at p 82 e - f].

[4] Rape is always a very serious crime. In this matter, the accused first assaulted his victim with a brick and he thereafter raped her when she was unconscious. She was hospitalized for three weeks as a result of the injuries sustained by her during the attack, and she now also requires intensive counselling as a result of its negative psychological impact on her. The accused committed a heinous crime that was carried out callously.

[5] The type of rape committed in this instance is an offence referred to in Part I of Schedule 2 to the Act for which it is necessary, in terms of ss. 51(1) and

51(3)(a), to impose a sentence of imprisonment for life unless *'substantial and compelling circumstances'* justify a lesser sentence. The Legislature has *'… singled out for severe punishment…'* and ordained life imprisonment *'… as the sentence that should ordinarily and in the absence of weighty justification be imposed …'* for the type of crime committed by the accused in this instance [see: S v Malgas 2001 (1) SACR 469 (SCA), at pp 481 h – 482 f].

[6] The needs of society require courts to deal severely with sexual offenders such as the accused. *'*[R]*ape must be considered to be amongst the most grave social phenomena which our society encounters. The community values of our society must place at a primacy of importance the rights of women to be safe in their communities (a point made recently by President Mbeki in his inaugural speech as President).'* [see: S v Swartz and Another 1999 (2) SACR 380 (CPD), at p 387 c].

[7] The accused is a first offender and he is presently 31 years old. The accused was born on 24 April 1977 and he has two sibblings. He only achieved Grade 10 at Harry-Gwala High School due to the socio-economic limitations of his family. Apart from being employed by a building contractor for six months during 1998, he only performed casual labour from time to time until some time during 2006 when he secured employment as a security officer at Magnum Shield. He is unmarried and he has no children. He always resided with his parents until his father died during 2004 and his mother during 2007. The

accused has a younger school going brother of 19 years old, he resided with him prior to his incarceration and he assumed the financial responsibility to support him. Prior to his arrest, the accused was a devoted member of the Saint James Church.

[8] The accused has been in custody since his arrest on 24 September 2006, which is now more than 1 year and 8 months [see: S v Vilakhazi 2000 (1) SACR 140; S v Brophy 2007 (2) SACR 56 (WLD)]. He still denies his guilt and has not shown any remorse. The probation officer reported that the accused is not willing to assume full responsibility of his actions and fails to realize the severity of the offence. The accused is, however, relatively young and he may be a suitable candidate for rehabilitation.

[9] It appears from the evidence led in the regional court that the accused and the victim were under the influence of alcohol at the time of the incident. The accused also admitted to the probation officer that he was intoxicated. I accept in the accused's favour that his intoxication probably influenced his state of mind in the commission of the crimes, and that such influence is of a nature that reduces the accused's moral blameworthiness.

[10] The personal circumstances of the accused, the fact that he is a first offender, his prospects of reform, his time spent in custody, and his reduced moral blameworthiness, cumulatively amount to substantial and compelling

circumstances within the meaning of the Act when balanced against the enormity of the crime, the public interest in an appropriately severe punishment being imposed for it, the general deterrence aspect, and the personal deterrence aspect. Such circumstances cumulatively regarded satisfy me that a sentence of imprisonment for life would be unjust. I am satisfied that a departure from the prescribed minimum is justified on the basis that such a sentence would be disproportionate to the crime, the criminal and the legitimate interests of society.

[11] I am of the view that concurrent sentences should be imposed since the assault, the assault with the intent to do grievous bodily harm, and the rape for which the accused have been convicted are closely related in time and place and all form part of the same incident.

[12] In the result:

A. The accused is sentenced to:

1. Imprisonment for a period of 3 months pursuant to his conviction of assault (*count 1*);
2. Imprisonment for a period of 5 years pursuant to his conviction of assault with the intent to do grievous bodily harm (*count 2*); and
2. imprisonment for a term of 20 years pursuant to his conviction of rape (*count 3*).

B. The sentences of 5 years' and 3 months' imprisonment imposed in respect of counts 1 and 2 shall run concurrently with the sentence of twenty years' imprisonment imposed in respect of count 3.

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P.A. MEYER
JUDGE OF THE HIGH COURT

9 June 2008