

IN THE SUPREME COURT OF UGANDA AT
KAMPALA

(CORAM: ODOKI C.J; TSEKOOKO, KATUREEBE, TUMWESIGYE AND
KISAAKYE JJ.SC)

CRIMINAL APPEAL NO. 08 OF 2009

BETWEEN

TIGO STEPHEN:.....APPELLANT

AND

UGANDA:.....RESPONDENT

*[Appeal from Decision of the Court of Appeal sitting at Kampala (Twinomujuni,
Kitumba, and Byamugisha J.J.A.) dated 23 March 2009 in Criminal Appeal No.170
of 2003]*

JUDGMENT OF THE COURT

Introduction

This is an appeal against the decision of the Court of Appeal confirming the sentence of life imprisonment imposed by the High Court against the appellant who had been convicted of the offence of defilement contrary to Section 127(1) (now Section 129(11) of the Penal Code Act.

The appeal raises a substantial point of law concerning the meaning of life imprisonment in our Penal system having regard to the provisions of Section 47(6) of the Prisons Act which states that for the purpose of calculating remission, a sentence of imprisonment for life shall be deemed to be twenty years imprisonment. This point of law assumes greater significance following

the decision in the case of Attorney General Vs. Susan Kigula & 417 Others Constitutional Appeal NO.3 of 2006 where this Court decided that the death penalty though Constitutional was not mandatory but discretionary. This would make a sentence of life imprisonment the next most severe sentence and probably the most effective alternative to the death sentence.

Background

The background to the case is that during the month of July 2001, the appellant was living with Nakyebega (PW3) the grandmother of the victim,. The victim Hadijja Sharon (PW2) then aged 6 years was living with PW3 and the appellant, her husband. She was a grandchild of PW3, fathered by her own son begotten with her former husband, who had died sometime back.

On the night of 21 July 2001, PW3 left her home at night to attend to her daughter who lived nearby and was in labour pains. She left the appellant and the victim Sharon (PW2) sleeping in her house. After she had left, the appellant removed the victim, took her to his bed and defiled her. She felt a lot of pain and made a loud cry. Her grandmother returned and knocked on the door but the appellant refused to open the door. PW3 made a lot of loud noise and the appellant opened the door. She found the appellant in the house and noticed that the victim did not have her knickers on. She asked the victim why she did not have knickers. The victim told her, in the presence of the appellant, that it was the appellant who removed her knickers and had sexual intercourse with her. At that point, the appellant was seated in the house. PW3 could clearly see him with the help of a candle which had been left in the house and a lantern with which she had returned to the house. When asked why he had removed PW2's knickers, the appellant replied that he had done nothing wrong. PW3 then examined the victim's private parts

and the victim informed her that the appellant had used her knickers to clean her private parts. As she was still investigating the matter, she was called to go and attend to her daughter who apparently had not yet delivered her child. When PW3 returned, she found that the appellant had left the home. He disappeared. The appellant was subsequently arrested and charged with defilement. He was convicted by the High Court and sentenced to life imprisonment and his appeal to the Court of Appeal was dismissed; hence this appeal which is only against the sentence.

The ground of appeal

The appellant has one ground of appeal framed as follows:

“The learned Justices of Appeal erred in law when they upheld the sentence which sentence is illegal by virtue of its ambiguity.”

At the hearing of the appeal, Mr. Muhammed Kajubi held a brief for Mr. Stephen Mubiru who represented the appellant on a state brief. Mr. Charles Richard Kamuli, Principal State Attorney represented the respondent.

Counsel for the appellant filed written submissions, while Mr. Kamuli made oral submissions.

Arguments of counsel

Learned counsel for the appellant submitted that it is not clear from the way the sentence was pronounced whether the sentence imposed is imprisonment for the rest of the appellant's life or for only twenty years. This ambiguity renders the sentence illegal since the appellant is entitled to know the specific duration of his incarceration. He argued that the fact that life imprisonment

under the Prisons Act 2006 is deemed to be twenty years is a construction which is limited in purpose to the computation of remission. It was his contention that the Court of Appeal ought to have cleared the ambiguity. He prayed that this Court makes the clarification and substitutes the sentence of life imprisonment with a definite sentence.

Learned Principal State Attorney submitted that the sentence confirmed by Court of Appeal of life imprisonment was lawful and definite within the meaning of Section 47(6) of the Prisons Act Cap. 304 which provides:

“For the purposes of calculating remission a sentence of imprisonment for life shall be deemed to be twenty years.”

It was counsel's contention that the interpretation of the above provision leads to the conclusion that the appellant is to serve a sentence of twenty years' imprisonment. He prayed that the appeal be dismissed.

Consideration of the Law

This appeal is against sentence only. It is a second appeal. The appellant has a right of appeal only against the legality of sentence, not its severity. In this case, the appellant argues that the sentence is illegal because it is vague. In her sentencing order, the trial Judge stated:

“The convict is a first offender, but I take very serious view of this offence especially when it is committed on small children like the victim in this case. The victim was only 7 years and he eroded the confidence she had in him. She was respecting him as a grandfather but instead just introduced her to this kind of immorality. I take into account the fact that he has been on remand for 2 years, so taking that into account, he is sentenced to life imprisonment (20

Years), so that the rest who intend to do the same can stand warned."

In confirming the above sentence, the court of Appeal said;

"On the fourth ground of appeal, that the sentence was too harsh, we were not given any single reason to justify us to have mercy on a 45 years old man who decided to defile an 8 years old girl whom he calls his granddaughter. The learned trial Judge took into account all the mitigating factors available to the appellant and passed a sentence of life imprisonment. We see no reason to disturb that sentence. "

It should be noted at the outset that the appellant did not challenge the vagueness of the sentence on appeal and therefore the Court of Appeal did not have an opportunity to clarify the alleged vagueness.

However, it can be argued that the Court of Appeal confirmed the sentence as imposed by the trial Judge which indicated that the sentence imposed by the trial Judge was twenty years, apparently basing it on the provisions of Section 47(6) of the Prisons Act.

The question still remains as what is the meaning of life imprisonment. Is it for the rest of the life of the convict or for twenty years only? Section 47 of the Prisons Act provides in full as follows:

"(1) Convicted criminal prisoners sentenced to imprisonment whether by one sentence or consecutive sentences for a period exceeding one month may by industry and good conduct earn a remission of one third of the remaining period of their sentences

(2) For the purpose of giving effect to subsection (1), each prisoner on admission shall be credited with the full amount of remission to which he or she be entitled at

the end of his or her sentence or sentences if he or she lost or forfeited no such remission.

- (3) *A prisoner may lose remission as a result of its forfeiture as a punishment for any offence against prison discipline and shall not earn any remission in respect of any period -***
- (a) *spent in a hospital through his or her own fault or while malingering; or***
- (b) *While undergoing confinement in a separate cell.***
- (4) *The Commissioner may recommend to the Advisory Committee on the Prerogative of Mercy established under Article 121(1) of the Constitution that it should advise the President to grant further remission on special grounds.***
- (5) *The Commissioner shall have power to restore forfeited remission in whole or in part.***
- (6) *For the purpose of calculating remission of a sentence, imprisonment for life shall be deemed to be twenty years imprisonment. 11***

The Prisons Rules (SI 304-4) provide rules for calculating the amount of remission.

The provisions of Section 47(6) of the Prisons Act have sometimes been cited as authority for holding that imprisonment for life in Uganda means a sentence of imprisonment for twenty years. However, there is no basis for so holding. The Prisons Act and Rules made there under are meant to assist the Prison authorities in administering prisons and in particular sentences imposed by the Courts.

The Prisons Act does not prescribe sentences to be imposed for defined offences. The sentences are contained in the Penal Code and other Penal Statutes and the sentencing powers of Courts are contained in the Magistrates Courts Act and the Trial on Indictment Act, and other Acts prescribing jurisdiction of Courts.

The most severe sentences known to the penal system include the death penalty, imprisonment for life and imprisonment for a term of years. Imprisonment for life which is the second gravest punishment next only to the death sentence is not defined in the Statutes prescribing it. It seems to us that it is for that reason that the Prisons Act provided that for purposes of calculating remission, imprisonment for life shall be deemed to be twenty years. It is noteworthy that the Act is clear that twenty years is only for the purpose of calculating remission. The question remains whether there are purposes for which life imprisonment means something more than 20 years, e.g. imprisonment for life.

The meaning of imprisonment for life seems to vary from country to country. In some countries, it is limited to a term of years of between 20 to 30 years. In others it means imprisonment for the natural life of the convict. In other countries, the term of imprisonment imposed may be longer than the natural life of the convict when the duration is longer than the possible life span of the convict. In yet other countries, there is a minimum period of imprisonment imposed to be served before remission or parole is granted.

In India, the Supreme Court has held in a series of cases that a sentence of imprisonment for life is not for any definite period and imprisonment for life must prima facie be treated as imprisonment for the whole of the convict's natural life. The Supreme Court propounded this view in the case of ***Gopal***

Vinayak Godse Vs The State of Maharashtra and Others (1962) ISCJ 423, (1961) 39 AIR 1961 SC 600, (1962) MLJ crl 269.

In Gopal Vinayak Godse Vs the State (supra), the convict was one of the conspirators in the assassination of Mahatama Gandhi on January 30, 1948. His brother Nathuram Godse who shot Gandhi was sentenced to death and was executed.

Godse was convicted in 1949 for his part in the assassination of Gandhi and sentenced to transportation (imprisonment) for life. He earned remission of 2963 days and adding this to his term of imprisonment, actually served by the prisoner, the aggregate exceeded 20 years. He applied for *habeas corpus* that he had justly served his sentence and contending that his further detention in jail was illegal and therefore he should be set at liberty.

The Supreme Court held that the petitioner had not yet acquired any right to be released. It held further that a prisoner sentenced to life imprisonment was bound to serve the remainder of his life in prison unless the sentence was commuted or remitted by the appropriate authority. Such a sentence could not be equated with any fixed term. The rules framed under the Prisons Act entitled such a prisoner to earn remissions but such remissions were to be taken into account only towards the end of the term. The question of remission was exclusively within the province of the appropriate Government authority. In that case, though the Government had made certain remissions under S.401 of the Criminal Procedure, it had not remitted the entire sentence.

The court reasoned: "*The next question is whether there is any provision of law where under a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the Prisons Act. Though the Government of India stated before the Judicial Committee in the case of (Pandit Kishorital Vs King Emporor(1944) LR 721A.1) having regard to S.57 of the Indian Penal Code, 20 years' imprisonment was equivalent to a sentence of transportation for life; the Judicial Committee did not express its final opinion on that question. The Judicial Committee observed in that case thus, at p.10.*

'Assuming that the sentence is to be regarded as one of the twenty years and subject to remission for good conduct, he has not earned remission to entitle him to discharge at the time of his application and it was therefore rightly dismissed, but in saying this, their Lordships are not to be taken as meaning that a life sentence must and in all cases be treated as one of not more than twenty years, or that the convict is necessarily entitled to remission'."

The court went on to state:

"Section 57 of the Indian Penal Code has no real bearing on the question before us. For calculating fractions of terms of punishment, the Section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended Section which substitutes the words imprisonment for life for transportation for life enable the drawing of any such all embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. " The Court also pronounced itself on the effect of remission on the life sentence and held that, unless the sentence is remitted or commuted, a prisoner is bound to serve for a life term in prison. The Court observed,

"Unless the said sentence (life imprisonment) is commuted or remitted by appropriate authority, under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remission • ordinary special and state • and the said remissions will be given towards his term of imprisonment. For the purpose of working out remissions the sentence of transportation for life is ordinarily equated with a definite period, but only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predict the time of his death. That is why the rules provide for a procedure to enable the appropriate Government to remit the sentence under S.401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned."

Gopal Godse's case was relied on in the recent case of Hohd Munna Vs Union of India and Others (2006) I MLJ III (SC) to hold that life imprisonment means imprisonment for life. Other cases which followed Godse's case include Dalbir Singh and Others Vs State of Punjab (1979) 3SCC 745, State of Punjab and Others Vs Jogender

Sigh and Others (1990) 2SCC 661, Ashok Kumar Vs Union of India (1991) 3SCC 49, Subash Chander Vs Krishna tal and Others (1991) 4SCC 438 and in Swamv Vs Shrddnanda Vs State of Kamataka (2008) 13 SCC 767.

We find these authorities persuasive because they are based on Statutes similar to our own laws. We hold that life imprisonment means imprisonment for the natural life term of a convict, though the actual period of imprisonment may stand reduced on account of remissions earned.

We note that in many cases in Uganda, Courts have imposed specific terms of imprisonment beyond twenty years instead of imposing life imprisonment. It would be absurd if these terms of imprisonment were held to be more severe than life imprisonment.

In the present case, the trial Judge imposed a sentence of imprisonment for life yet she qualified the sentence by limiting it to twenty years. In our view, the sentence was vague. The Court of Appeal confirmed the sentence of life imprisonment without clearing the vagueness. However, we think that this error did not make the sentence illegal. We are satisfied that the trial Judge intended to impose a sentence of imprisonment for twenty years. We therefore, find that the error made by the Court of Appeal did not occasion any miscarriage of justice. We uphold the sentence of twenty years imprisonment.

Decision

In the result, we find no merit in the appeal which is accordingly dismissed.

Dated at Kampala this 10th day of May 2011

B J ODOKI
CHIEF
JUSTICE

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J W N TSEKOOKO
JUSTICE OF SUPREME COURT

Bart M Katureebe
JUSTICE OF SUPREME COURT

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