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17/LAW01/055

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CRIMINOLOGY II (LPI 304)

300 LEVEL

ANSWER

Criminal justice system commences with the commission of an offence then subsequent intervention by the law enforcement agency that has the power to arrest, arraign and sentence the offender accordingly. After an accused person has been found guilty during trial or prosecution the presiding judge or magistrate goes ahead to set a date aside for sentencing.

A sentence is defined as an indefinite position or order pronounced by a court of competent jurisdiction at the end of trial when the accused is found guilty.

***Section 248 of the Criminal Procedural Act*** states that if the court finds an accused person guilty, the court shall pass sentence on the person or make an order to reserve judgement and adjourn the case to some other date.

In the case of ***Ichi v The State*** it was held that a sentence is a judgement formally pronounced by the court or judge upon appeal after its conviction in a criminal prosecution imposing punishment to be inflicted.

The purposes of sentencing an offender are as follows;

* To denounce lawful conducts.
* To deter the offender and other person from committing offences.
* To separate offenders from the society where necessary.
* To assist in rehabilitating offenders.
* To promote the sense of responsibility in offenders and acknowledgement of the harm done to the community and the victims.

As a presiding judge, the things that will guide me in sentencing Evans are the 6 basic principles/guidelines laid down by the Supreme Court to aid other courts in reaching reasonable and fair sentence.

The guidelines are as follows;

* The nature of the offence
* The character or nature of the offender
* The position of the offender among his confederates
* The rampancy of the offence
* Statutory limitation
* Concurrency of the sentence

1. **THE NATURE OF THE OFFENCE**

As a principle of law and practice, the nature of the offence committed by a defendant of which he has been found guilty goes a long way in determining the extent of his punishment.

The law is clear that a person cannot be found guilty of an offence which does not constitute a crime in any written law at the time the offence was committed.

* + ***Adeye & ors v The State***

This was a case of robbery by violence tried by the high court of a western state, the court imposed a sentence of 18 years on the defendant.

The western court of appeal reduced the sentence to 10 years, the unsatisfied defendant still appealed to the Supreme Court and the Supreme Court reinstated the 18 years sentence stating that the sentence given by the appeal court was too lenient because of the seriousness of the case.

* ***Adesanya v The Queen***

In this case of forgery, the principle was established that only in exceptional cases can a fine be sufficient or appropriate punishment for forgery of court processes. The seriousness of the offence, its nature, the gravity makes forgery of court processes grievous.

The defendant was sentenced to pay fine on appeal at the instance of the accused person the court held that payment of fine was too small a punishment for the grievous offence of forgery. The defendant was sentenced to imprisonment.

In cases of manslaughter, there is a tendency of the court to impose lesser penalties to punishment as opposed to provocation murder. Some cases of manslaughter include:

* ***Idoye v The State***

The accused drove his car at night without head lamps in a hilltop area and in the process he killed a pedestrian. The high court sentenced him to 5 years imprisonment and 10 years disqualification from driving.

The Supreme Court reduced the sentence to 2 and half years imprisonment and 5 years disqualification from driving.

* ***Mohammed v The Commissioner of Police***

The accused had never driven into his life, he jumped into a car and killed some pedestrians, and he was sentenced to 3 years imprisonment and 10 years disqualification from driving.

The Supreme Court reduced the sentence to 18 months imprisonment and 5 years disqualification from driving.

Provocation is statutory regarded as a mitigating factor in Nigerian Law in the sense that when a plea of provocation succeeds; It reduces in cases of murder or culpable homicide punishable by death. The mandatory death sentence which follows conviction to terms of imprisonment the maximum of which is life imprisonment. It is of interest to note that in (Cyril) NMLR 125 life imprisonment has been interpreted as equivalent of twenty years imprisonment

* ***Adekanmi v The State***

The accused killed his wife in a sudden flow of emotions when she told him that their children belonged to her lover and that he is impotent.

The Supreme Court upheld his defence of provocation and imposed the term of 15 years imprisonment.

* ***Chukwu Obaji v The State***

Sentence of 15 years was imposed for provocation.

APPLYING THIS GUIDELINE TO THE PRESENT CASE SCENARIO

**As a presiding judge on Evans’ case I will first of all ensure that the offences of kidnapping, armed robbery, rape, defilement, ritual killing, extortion and obtaining property by false pretence are all offences which constitute a crime in a written law at that particular time and also has its prescribed punishment then I will go ahead to sentence Evans accordingly**.

1. **CHARACTER OR NATURE OF THE OFFENDER**

As a principle of law and a rule of evidence, the evidence of character is inadmissible in law. However, when the character of an accused person is in question, the evidence of his character becomes admissible in law. The character of the offender could also include if the accused is a first time offender.

* ***Adeye v The State***

The court reinstated a heavier punishment of 18 years on the accused because the accused had been previously convicted of an offence and this served as an aggravating factor.

* ***Adeleye and Ajibade***

The appellants’ bad character was significant to the restoration of a heavier punishment on them.

* ***R v State***

The appellant had been previously convicted for defilement, this led the court to increase his sentence from 18 months to 5 years imprisonment with hard labour.

* ***R v Bangaza***

With a heavy stick, the accused committed a heavy assault on the deceased with the intention to do him grievous harm by way of retaliation for an assault committed by the deceased’s children on the appellants younger brother. It resulted to death and the appellant’s were charged, convicted and they also appealed.

After the murder in 1950, the appellants ran away to a place in Borno. In early 1959 they surrendered themselves and they were tried in December in 1959. At the time of their offence they were under 17 years old but old enough to be criminally responsible by the time they were convicted, they were more than 17.

The appeal of wrongful conviction because of the age of the offenders during the time the offence was committed was dismissed and it was held that they were rightly sentenced to death.

**Adenoma CJN** said

‘under section 368(3) CPA, it is the age of the offender at the time of conviction that is material and it seems clear that the appellant cannot invoke the provisions of the section, but the responsible authorities with no doubt give such weight as he thinks fit, the possibility that if the appellant had not run away and had been brought to trial at once the section would have applied thus, the appeal was dismissed.’

APPLYING THIS GUIDELINE TO THE PRESENT CASE SCENARIO

**As a presiding judge on Evans’ case I will examine his character after the commission of the offence to determine whether he is remorseful and I will also check if he is a first time offender because these could be mitigating factors to his sentencing.**

1. **POSITION OF THE OFFENDER AMONG HIS CONFEDERATES**

The position of the offender among his accomplices is essential in sentencing that offender, an offender can either play a major role or a minor role. Playing a major role is more aggravating to the court than playing a minor role, playing a minor role could be a mitigating factor in sentencing.

1. PLAYING A MINOR ROLE

* ***Enahoro v The Queen***

a treasonable felony case involving late Chief Obafemi Awolowo, the supreme court was quick to point out that it could not imagine a situation where a mere ‘’lieutenant’’ could receive a sentence of imprisonment far in excess of that received by the leader. It therefore reduced the sentence passed on Enaharo from twelve years to seven years imprisonment.

This is to affirm that those who instigate should get a higher punishment than those who instigated because the leader is usually the centre of the activity, the moving force and the progenitor of the crime.

1. PLAYING A MAJOR ROLE

The offender who has played a major role in the commission of a crime is usually visited with a more severe punishment than those inflicted on a minor. This statement was given judicial recognition in;

* ***Queen v Mohammed & ors.***

While the first appellant who was the leader was given a maximum sentence of eight years imprisonment, the other person or parties to the offence were given a maximum of five years imprisonment.

* ***State v Kerenku***

Although the appellant was found not to be the leader, the court was however of the view that: ‘’she played a leading part in this particular incident and we must take that into consideration.’’

* ***Ihom & another v Tiv Native Authority***

where the appellants were all involved in a riot in which many animals were either maimed or destroyed, they all got sentences totalling six years imprisonment except the sixth appellant who got eight years imprisonment simply because unlike the others in the group he was carrying a knife which was regarded as a deadly weapon.

APPLYING THIS GUIDELINE TO THE PRESENT CASE SCENARIO

**As a presiding judge on Evans’ case I will note his position amongst his accomplices. It is clearly stated that he is a kingpin which connotes that he plays a major role in these offences so I will put this aggravating factor into consideration in the process of sentencing him.**

1. **RAMPANCY OF THE OFFENCE**

Where an offence is rampant, courts have always thought that severity of sentence imposed will aid in stamping out the crime. Rampancy of the offence is one of the most necessary consideration as it can be a mitigating factor or an aggravating one

* ***R v Hassan & Owolabi***

The court expressed its view thus: ‘Frauds on the customs are shockingly prevalent and the forgery of commercial documents strikes at the root of all credit; we are not disposed to reduce the sentence by one day as in ***State v Micheal Aiyegbeni.***

* ***State v Another***

It was established that robbery on the roads and water in recent times had been on the increase and also disturbing that two of the parties to the robbery were sentenced to twenty years imprisonment.

* ***Olyilokwu v Commissioner of Police***

The offender was initially detained of causing harm and later he tried to unsuccessfully escape and was traditionally charged for escaping from lawful custody although he was later discharged and acquitted.

The court expressed the view that 3 years imprisonment earlier imposed on him did not show adequate consideration not only for his first offender status but also for an offence which was not prevalent in that community.

Certain offences have been considered serious in nature for instance, sexual offences especially when it involves children as victims.

* ***State v Adegboye***

A 3 years imprisonment sentence was imposed on the offender for inserting his finger into the vagina of a 9 year old girl who was hawking groundnut.

* ***Iko v The State***

A taxi driver was sentenced to 5 years imprisonment with hard labour for raping the passenger so violently.

Robbery with violence is also considered a serious offence in

* ***Olanipekun v The State***

During a robbery, D the leader ordered one of his followers to shoot a victim. He complied but the gun did not go off. In sentencing him to five years imprisonment with hard labour, the court said: ‘’society demands that such a man should be kept out of circulation for some time-the offence is a serious one………’’.

* ***R v Ozuloke***

where the appellant met a little girl aged about eight years who was related to him on a village road, he covered her eyes with his hand and stuffed bread into her mouth to stop her crying out and took her into a bush, he laid her out on the ground, stood on her hand, poured acid over her body and cut off her left ear, he forced her eyes open and poured acid into them. He later ran away leaving the little girl unconscious. A twenty year jail sentence was considered adequate; the offence was regarded as being most revolting.

APPLYING THIS GUIDELINE TO THE PRESENT CASE SCENARIO

**If the offences committed by Evans are rampant in that particular society, as a presiding judge I will more likely impose a heavier punishment on Evans with the view to stamp out this type of crime in the society.**

1. **STATUTORY LIMITATION**

A statute of limitation is a law that prohibits prosecutors from charging someone for a crime that was committed more than a specified number of years ago.

The general purpose of statute of limitation is to make sure convictions occur only upon evidence that have not deteriorated with time. After the period of statute has run, the criminal is essentially free also, where the state itself has stipulated terms of imprisonment. However, not all crimes are governed by the statute of limitation for example: murder in some states, sexual offences with minors, crimes of violence, kidnapping, arson have no statute of limitation.

Many states have adopted systems that classify crimes according the gravity of the offence. The categories are: felony, misdemeanour, simple offences.

Furthermore, in Nigeria there are types of statutory limitation;

1. Statutory maximum
2. Magisterial jurisdiction limitation

In essence, whenever a statute itself stipulates time of imprisonment no court should exceed the statutory limit.

* ***Queen v Eyo & ors***

A case of unlawful assembly the high court sentenced them to 5 years imprisonment. On appeal to the Supreme Court it was reduced to 3 years because that was the maximum sentence stipulated by law.

* ***Aremu v IGP***

The magistrate court sentenced the accused person to 2 years imprisonment. Dissatisfied the state appealed to the Supreme Court. The Supreme Court stated that it cannot impose a punishment more than what the magistrate court has imposed.

* ***Mordi v COD***

The magistrate court sentenced the accused to 2 years imprisonment and the high court later increased it to 10 years. On appeal, the Supreme Court reinstated the earlier imposition of 2 years because that was the limitation of the magistrate court.

**Before sentencing, as a presiding judge I will check if there is any statutory limitation for the kind of punishment I decide to impose on Evans.**

1. **CONCURRENT & CONSECUTIVE SENTENCING**

There are laws governing concurrent and consecutive sentencing, when a person is charged and found guilty of more than two offences in Nigeria, the general rule is that whenever a court finds an accused person guilty of more than one offence the sentence should run concurrently.

The Supreme Court held this offences by saying; ‘Whenever the offences are of similar nature, they should run concurrently.’

* ***Nwafor v The State***

The accused person was found guilty and sentenced for store breaking and the possession of breaking implements, the Supreme Court held that they should be prosecuted concurrently because they emanate from the same transaction.

APPLYING THIS GUIDELINE TO THE PRESENT CASE SCENARIO

**As a presiding judge on Evans’ case, I will note that Evans was found guilty for more than one offence therefore I will impose concurrent sentences on Evans for all his convictions according to the prescribed law.**

**CONCLUSION**

While sentencing Evans, I will put into consideration the aforementioned guidelines laid down by the Supreme Court to reach a just and fair sentence for Evans as it is at my discretion to determine the kind of punishment to impose on Evans.

* ***Mohammed v Olawunmi***

The Supreme Court held as follows:

‘Once a court of competent jurisdiction makes a finding of guilt in a criminal case of quasi-criminal matter, the conviction has been made or regardless of the imprisonment or payment of fine emanates from the discretion of the judge after the finding of guilt and flows logically from the conviction.’