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**MATRIC; 17/LAW01/284**

**LEVEL; 300 LEVEL**

**COURSE; CRIMINOLOGY**

QUESTION

Evans, a notorious kidnap kingpin and armed robber, who has also been involved in a series of assault, rape and defilement of young girls has finally been apprehended by the police. He was arrested at the Seme border, dressed like woman and attempting to cross the border to Benin Republic. Investigation into his activities was concluded by the police and he was brought to the high court where you are the presiding judge. After a long trial, you have found Evans guilty of all the charges brought against him including kidnapping, armed robbery, rape, defilement ,ritual killing, extortion and obtaining property by false pretence. Having found him guilty of these charges, your next assignment is to sentence him accordingly. What are the things that will guide you in sentencing Evans having regard to the guidelines laid down by the Supreme Court?

Before we go about the question asked, it is important to throw a little light to what sentencing entails.

According to the CANADIAN SENTENCING COMMISSION in 1987, sentencing is the judicial determination of legal sanctions to be imposed on the person found guilty of an offence. It is the legal consequence of the guilt to which he has confessed or been convicted of. A definite order pronounced by courts of competent jurisdiction, at the end of a criminal trial after the accused has been found guilty.

Now, there are several means where the court can arrive at a reasonable sentence, some of which include

1. The nature of the offence
2. The nature of the offender
3. Position of the offender amongst the confederates
4. The rampancy of the offence
5. Statutory limitation
6. Concurrency of the state.

**The nature of the offence.**

As a principle of law, the nature of the offence plays a huge role in determining the extent of punishment. A person cannot be convicted of an offence if at the time he committed the offence, it was not a crime in any written law and its punishment not clearly stipulated. The nature of an offence plays a huge role in the type of sentencing to be given. While felonies have the highest term, misdemeanors and simple offences have lower terms. The nature of an offence can determine whether person deserves a lenient or tough punishment

In ADEYEYE and ORS v. State, the court imposed an 18 year imprisonment sentence on the accused. On appeal, the western state appeal court reduced the sentence to 10 years. The accused unsatisfied with this decision appealed to the Supreme Court and the 18 years sentence was reinstated alongside three stroke of cane. The case was that of robbery by violence. The Supreme Court stated that the 10 years was too lenient as the offence was too serious. Also, in ADESANYA V THE QUEEN, a case of forgery and the principle was established that only in exceptional cases can a fine be sufficient punishment for forgery of court proceedings. The seriousness of the offence, its nature, gravity, makes forgery of court processes grievous. In this case, the person who committed forgery was sentenced to pay fine on appeal, the court held that payment of fine was too small a punishment, hence imprisonment.

In cases of manslaughter e.g. automobile homicide, there is a tendency of the court to impose slight penalties as opposed to murder.

In IDOYE V THE STATE, the accused drove his car at night without headlamps in a hilltop area in the process killed a pedestrian. He was sentenced to 5 years imprisonment by the high court in addition to 10 years suspension from driving. The Supreme Court reduced the term to two and a half years imprisonment and five years suspension from driving. Similarly, in MOHAMMED V C.O.P, he accused that had never driven in his life jumped into a car and killed some pedestrians. He was sentenced to three years imprisonment and driving suspension of ten years by the high court. The Supreme Court reduced the term to 18 months imprisonment and five years suspension from driving.

In contrast, in provocation manslaughter, there is a tendency to impose an average term of ten years. In ADEKANMI V. THE STATE, the accused killed his wife in a sudden overflow of emotions when she told him that their children belonged to her lover and that he is impotent. The Supreme Court upheld his defense of provocation and imposed a term of 15 years imprisonment.

In CHUKWU OBOYI V. THE STATE, the sentence of 15 years was also imposed for provocation. Perhaps the disparity between auto crash cases and manslaughter provocation cases can be traced to class differentiation.

**NATURE OF THE OFFENDER/RECORD OF THE OFFENDER**

As a principle of law, character evidence is inadmissible in law. However, when the character of the accused is in question, the evidence of his character becomes admissible in law.

A person’s character has a huge role to play in his sentencing. Where an accused is a first time offender, his sentencing will be different from that of a constant offender or someone who has a history with committing crime.

In ADEYEYE V THE STATE, part of the reasons advanced for the reinstatement of the earlier penalty (18 years), was that the accused person had been convicted earlier of an offence. It would appear that the court worked on the assumption that anyone with a previous conviction has lost out on mitigating his sentence.

In ADELEYE V. AJIBADE, the accused person’s character was significant in the restoration of a heavier punishment on them.

In R V. STATE, the fact that the appellant had been previously convicted for defilement, the court had to increase his term from 18 months to five years with hard labor.

**POSITION OF THE OFFENDER AMONG HIS CONFEDERATES**

1. Where he plays a minor role; his punishment will be less than the person that instigates it or plays a major role. In ENAHORO V. THE QUEEN, the supreme court reduced the 15 years term to 5 years and held that ‘’a sentence imposed on a lieutenant should never be more than the leader’’ those who instigate should get higher punishment than those instigated. Where an accused plays a major role, he is visited with more severe punishment.
2. Where he plays a major role; In STATE V KERENKU, although the appellant was found not to be the leader, the court reviewed that she played a leading part in the incident. Also, in IHOM AND ORS V. TIV NATIVE AUTHORITY, where the appellants were all involved in a riot in which many animals were killed, they all got 6 years jail term except the leader who had 8 years for being the moving force. In QUEEN V MOHAMMED AND ORS, while the first appellant who was the leader was given a maximum sentence of 8 years of imprisonment, the other parties were given five years term each.

**RAMPANCY OF THE OFFENCE.**  Where the offence is rampant, courts have always thought that severity of sentences imposed will aid in stamping out the crime. In R V HASSAN AND ONALABI, the accused was sentenced to five years by the high court for forgery and another five years for stealing. He appealed and the Supreme Court expressed its views thus ‘’fraud on the customs are shockingly prevalent and forgery of the commercial documents strikes at the root of all credits, we are not disposed to reduce the sentence by one day’’. In STATE V MICHAEL AYEGBEMI, it was also because of the courts view in the state v. ors that robbery on roads and water in recent times had been on increase and disturbing that the two parties to the robbery were sentenced to 20 years imprisonment.

**STATUTORY LIMITATION this** is a law which forbids prosecution from charging someone into crime that was committed more than a specified number of years ago. The general purpose of this is to make sure conviction occurs upon evidence that has not detoriated with time. After the statute of limitation has run, the criminal is essentially free. Where the state has stipulated the term of conviction, the court shall not exceed statutory limit. However, not all crimes are governed by the statute of limitation e.g. murder, sexual offences with minors, arson, forgery, kidnapping. There are two types of statutory limitation in Nigeria

1. Statutory maximum
2. Magisterial jurisdiction limitation

In QUEEN V EYO AND ORS, a case of unlawful assembly, the high court sentenced them to 5 years imprisonment; on appeal the Supreme Court decreased the sentence to three years as it was the stipulated sentence. In AREMU V IGD, the magistrate court sentenced the accused to two years imprisonment, dissatisfied, the state appealed to the Supreme Court and the Supreme Court stated that a higher punishment could not be imposed. In MORPI V COP, the magistrate court sentenced the accused to two years imprisonment and the high court increased it to 10 years. On appeal, the Supreme Court reinstated the earlier position of two years because of the limitation.

**CONCURRENT AND CONSECUTIVE SENTENCES when** a person is found guilty of two offences in Nigeria, the general rule is that the sentences should be run concurrently. In NWAFOR V. STATE, the accused was found guilty and sentenced for store breaking and possession of breaking instruments. The Supreme Court held that the sentence should run concurrently because they are offences of the same transaction.

The above listed means of arriving at a judgment and sentencing will help guide me through my sentencing of Evans.

**APPLICATION OF THE RULE**

Now I am going to briefly relate the case of Evans with these guidelines.

1. The nature of Evans offence; haven found him guilty of these offences, it is only right to issue him the right amount of punishment. Armed robbery, rape and defilement, ritual killing, kidnapping, are all felonious offences whose jail terms usually range from 10 years and above. This is due to nature of these offences, being serious offences and lenient punishment cannot serve here.
2. The nature of the offender; Evans, according to the given case, is very notorious and not a first time offender, therefore he has lost the power of mitigating his sentence. Due to Evans character, his sentence cannot be reduced even when he goes on appeal
3. The rampancy of the offence. The offences Evans has been convicted for are quite rampant offences and usually the courts give a higher sentencing to offences of such sort so as to deter people from committing them
4. Statutory limitation. Kidnapping, sexual offences, killing are all not governed by statutory limitation. Therefore there’s no time limit for his punishment and sentencing

**CONCLUSION**

According to the facts of the case and the guidelines I’ve worked through, I have come to the conclusion that Evans should be punished consecutively as the offences are not of the same transaction. His character, the nature of the offence have led to the severity of his punishment and in my position as the judge sentence him to not less than 15 years imprisonment with hard labor.