



# When the law turns against a victim

Juvenile courts must not only order an SE Report to be provided to court, but must also order that a copy of the report be provided to the parents and allow them to challenge its contents as the report could also recommend sanctions on them as well.

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A family felt gravely aggrieved when a 17-year juvenile, who shot dead their daughter and was duly convicted of manslaughter and sentenced to a three-year custodial term for reform and rehabilitation, was set free after barely serving five months of the sentence. The release of the juvenile was as a result of technicalities of law rather than the merits of the case.

An appellate court determined that the trial court had exceeded the legally mandated period of six months when cases of juveniles must be concluded and that the mandatory social evaluation form was not available to the juvenile and his parents before sentencing.

The family of the victim was incensed at the High Court ruling and called it a travesty of justice and demanded that the State appeal the decision of the High Court. It was apparent that the High Court's decision was focused on the rights of the accused juvenile rather than the merits of the case.

The case raised pertinent issues one of which was why victims or their families should bear the consequences when prosecutors or the court make an error in its processing of a case leading to the dismissal of that case.

But even if the delay is neither the prosecutor's nor the defense's fault,

why should only the victim's suffer for it? And in a case, such as the one in question, where the guilt of the accused was not in doubt, and yet unreasonable delay had been established, should the case have been thrown out to the disadvantage of the victim, or the victim's family? It is apparent that the strict application of the letter of the law sometimes does not really serve the ends of justice.

## Breaching procedural law

One of grounds the High Court quashed the judgment of the trial court was that the juvenile court breached the procedural law in not ordering a Social Enquiry Report (SE Report) before sentencing the accused juvenile.

The SE Report applies globally in juvenile justice systems and it is a key means of providing juvenile courts with vital information about an accused juvenile's family, school, peers and other community relationships.

Juvenile courts must not only order an SE Report to be provided to court, but must also order that a copy of the report be provided to the parents and allow them to challenge its contents as the report could also recommend sanctions on them as well. In the instant case, the trial court sentenced the juvenile to serve a custodial sentence and ordered his father to pay upkeep for the convict.

It has been argued that letting an accused person go free on technicalities could lead to, among others, impunity and public distrust in the criminal justice system especially in cases where there was no reasonable doubt that the accused committed the crime. When guilt is not in doubt, or when a convicted person is freed on appeal on a technicality, the decision does some disservice to the justice system. Its immediate effect is the breeding of impunity when people known to be guilty, nonetheless,

escape justice and are either not tried or not found guilty or released on technicality.

The verdict of the appellate court in this particular case could suggest the lack of repercussions for criminal activity, including the commission of murder or manslaughter. It has been observed that when high profile defendants go unpunished despite significant evidence of guilt, there is often public outrage. Nevertheless it has been observed that rarely do children's issues, however gross, lead to public outrage.

Just as the law protects the due process rights of the accused juvenile, it should equally and, perhaps more importantly, focus on justice that it owes to the victim and her family. The decision of the juvenile court was quashed not because of the facts of the case but because of two procedural errors committed, not by the prosecution, but by the juvenile court. It was therefore unfortunate that the victim's family was denied justice as a result of the court's error.

## Balance between victims-perpetrators

If justice is to be done, the law must consider drawing a balance between victims and perpetrators to ensure that justice must not only be done but must also be seen to have been done. It is certainly not right that procedural errors on which the original judgment was quashed resulted in an unfair decision for the victim and her family. Such decisions will lead to judges being viewed as handing down decisions that satisfy their bureaucratic requirements, but not meeting society's needs for a just system for of dispute resolution.

However, the doors to justice were not entirely closed to the victim's family. A superior court could have ordered for the retrial of the case for reason of a mistrial. In such a scenario the case is

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What they say...

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sent back to the lower court for retrial. Failure of the juvenile court to order for an SE Report before sentencing the accused could have been a ground for a mistrial.

The High Court, in this case, may not have ordered for a mistrial because the state prosecutors did not urge it to treat the mistakes by the trial court as grounds for ordering a retrial.

It was also unfortunate that the state prosecutors did not appeal the verdict of the High Court even when the family of the victim had asked the state to do so. Usually there are two factors that determine whether or not to appeal a criminal case; whether the trial court erred in law, which in this case it did, and whether there is a great likelihood of success considering the evidence on record.

There was also a widow for a civil remedy as the law allows the family of the deceased to institute proceedings for compensation under the Civil Liability Act. The law provides an action for damages to be brought for the benefit of a deceased person's dependents where the person's death is caused by the wrongful act of another person. The civil action would seek to have the boy held liable for the death of the girl through negligence.

The family of the deceased could also, under the principle of vicarious liability, join the owner of the gun, in this case the father of the boy, in the civil suit. Vicarious liability can occur when a child behaves negligently and a parent can sometimes be held vicariously liable for the child's actions.

The law empowers a juvenile court to hold parents responsible for the behavior of children for having contributed to the commission of the crime by neglecting to exercise due care for the juvenile. This is sometimes described as visiting the sins of the children upon their parents.