

**ERRON EOUS
INTERPETATION
OF MITIGATNG
CIRCUMSTANCE IN
SENTENCING**

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CHAPTER ONE

ERRONEOUS INTERTATION OF MITIGATING

CIRCUMSTANCES IN SENTENCING

INTRODUCTION

A highly effective criminal justice system is the primary necessity of any country to meet the needs of the public for a safe just society. The right approach to sentencing and corrections emphasizes fairness effective protection of public safety ,flexible and individualized approaches to sentencing and policy decision making based on evidence of what works to reduce crime .

The sentencing decision is one of the most complex decisions that a court is required to make There fore the criminal justice system of a country should recognize that offences are committed by a wide variety of persons in widely varying circumstances, and therefore judges are give the discretion to determine individualized sentences .the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just peaceful and safe society by imposing sanctions that have one or more of the specific objectives of the criminal laws of the country .

1.1 CRIMINAL SANCTIONS

Criminal law is distinctive for the uniquely serious potential consequences or sanctions for failure to abide by its rules every crime is composed of criminal elements .

Capital punishment may be imposed in some jurisdictions for most serious crimes physical or corporal punishment may be imposed such as whipping or caning although these punishments are prohibited in much of the world individuals may be incarcerated in prison or jail in a variety of conditions depending on the jurisdiction . ¹confinement may be solitary length of incarceration may vary for day to life Government supervision may be imposed. Including house arrest, and conducts may be required to conform to particularized guide line as imposed seizing money or property form a **person convicted of a crime .** ²

1.1.1. PURPOSE OF CRIMINAL PUNISHMENT

Five objectives are widely accepted for enforcement of the criminal punishment. T

They are, retribution, deterrence, incapacitation, rehabilitation and restitution jurisdictions may differ on the value to be placed on each.

Retribution: punishment is imposed as repayment or revenge for the offense committed.³ Criminals ought to suffer in some way. This is the most widely seen goal. Criminals have improper advantage, or inflicted unfair detriment upon others and consequently the criminal law will put criminals at some unpleasant disadvantage to “balance the scale” people submit to the law to receive the right not to be murdered and if people contravene these laws, they surrender the right granted to them by the law. Thus, one who murders may be murdering himself. Related theory includes the idea of “righting the balance”.⁴

Deterrence : the process of discouraging certain behavior, particularly by fear; especially, as a goal of criminal law, the prevention of criminal behavior by fear of punishment.⁵ Thus it is the discouragement of criminal behavior on the part of known offenders and of the public by the threat of punishment. There are two aspects to deterrence. When an offender is punished by imprisonment the intention is to deter the offender from committing further offences, not only during the period of incapacitation, but also following his release from confinement. This is specific deterrence.⁶ This indicates the belief that punishment brings about beneficial changes in the behavior of the person of the person who had undergone the punishment. On the other hand, it is believed that punishing a criminal will have a desirable effect by deterring would-be offenders from committing crimes. This is general deterrence.⁷

Incapacitation: Designed simply to keep a criminal away from society so that the public is protected from their misconduct.⁸ This is often achieved through prison sentences to life and the death penalty or punishment have served the same purpose. Through this way, the society can be secured from the disturbance by the criminal so that, if convicted, an offender is sent to prison, society can feel safe and confident that the criminal will not be committing further crimes.

Rehabilitation : The process of seeking to improve a criminal's character and outlooks so that he or she can function in society without committing other crimes. Rehabilitation is a traditional theory of punishment, along with deterrence and retribution.⁹ The fourth and last major objective on which judges may base their sentencing decision is rehabilitation.

Rehabilitation has a wide support, because in comparison to other sentencing philosophies, it takes a positive approach in eliminating criminal behavior. The supporters of rehabilitation argue that unlike the false hope of deterrence and the temporary measures of retribution, rehabilitation is the only humanitarian mechanism in modifying the criminal behavior of an offender.¹⁰

Restitution : This is a victim-oriented theory of punishment. The goal is to repair, through state authority, the hurt inflicted on the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired.

1.1.2. PURPOSE OF PUNISHMENT UNDER THE CRIMINAL LAW OF 2004 FDRE-GOVERNMENT

The principles of criminal law regarding the purpose of punishment discussed above are clearly incorporated in art.1 of the Criminal code of 2004. It sets out the specific objectives of the code in the following way:

Art 1. Objective and purpose:

The purpose of the criminal code of the federal democratic republic of Ethiopia is to ensure order, peace and the security of the state, its peoples, and inhabitants for the public good.

*It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be effective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes*¹¹

From reading of Art 1, One can view the major known and distinctively applied purposes of criminal law-deter, prevention, reform, and lesson for others To, strengthen the provision(i.e. Art 1), Article 87 provides that, the penalties and measures should be applied for those who do not abide by rule of article 1 of same law. Article 87 widely provided as:

The penalties and measures provided by this code must be applied in accordance with the spirit of this code and so as to achieve the purpose it has in view (Art.).

The penalties and measures shall always be in keeping with the respect due to human dignity.

Besides these art 106 (i.e. simple imprisonment) and article 108 i.e. Rigorous imprisonment also designed simply to keep criminals away from the society so the public is protected from their misconduct behavior and act of committing further crime . This is achieved through both type of penalties that entailing loss of liberty (i.e. simple imprisonment and rigorous imprisonment.)¹²

1.1.3. DETERMINATION OF SENTENCES

A sentence is the judgment that accounts formally pronouncement after finding a criminal wrong doer. The terms minimum and maximum may serve to mark the two extremes of question, which require equal attention¹³ As common knowledge of practice of courts, sentence is given after trial proceeding finalized and criminal liability is determined.

Irrespective of the sentencing philosophy of judges, the sentence imposed is influenced, to some extent, by the statutory alternatives that are provided in the penal law, the facilities and the available programs in the correctional system, of each country.¹⁴ Thus, the competing objectives of retribution, deterrence, isolation, and rehabilitation may be diluted to some degree since judicial sentencing must be carried out within the lines provided by legislative sentencing authority.¹⁵

The sentencing court determines the amount of time the offender serves before being sentenced .¹⁶ The court must make an actual determination of the number of days credit to which the offender is entitled by law and, if the offender is committed to state correctional institutions, forward a statement by law to have credited. This information is required to be included within the journal entry imposing the sentence or stated prison term.¹⁷

For a convicted person who is sentenced to imprisonment ,there are numerous types of sentences, applied and established by statutes we shall be concerned with the three of them.

1.1.3.1. Indeterminate Sentence:

The indeterminate sentence is “an indefinite sentence of ‘not less than and ‘not more than’ a certain number of years. the exact term to served is determined by parole authorities within the minimum and maximum limits set by the court or statute” The maximum and minimum terms can be reduced by “good time”(time credit, earned by inmates for good conducted or special achievement). Parole authorities. It is not in common use in all countries. it is not in use, so far for instance, in Ethiopia but it is common in countries. It is not in use, so far, for instants-cetin Ethiopia, but it is quite common in countries like USA and other countries of the west, through its use seems to be declining.¹⁸

The philosophy behind the indeterminate sentence is based on the correctional model of punishment. However, the assumption is that the sentence should meet the needs of the offender. once the

rehabilitation process has been initiated, and the nature and extent of rehabilitation is assured. and if the evidence warrants that he has been reformed he should be released. the indeterminate sentence is preferred "because of the complexity of human behavior, the difficulty of diagnosis and uncertainty in the predication of treatment results, the open ended from would delay decision on release because of the complexity of human behavior the difficult until the offender has been studied and treated over a long period of time than that available to the sentencing court. it means that decision transferred from the judge to the correction institution.¹⁹

Legislatures" could be the cause for sentencing disparities by specifying penalties such as fines and/or length of incarcerations for the violation of varies laws they enacted. At times a comparison of penalties indicates significant disparities .though corrective measures such as appeal and parole exist, penalties have often been prescribed without considering penalties enacted for other offenses and. Thus legislative enactment may create disparities in some instance and in determinate sentence is based on the following assumptions:²⁰

- 1- Criminals are personally or socially disturbed or disadvantaged and their commission of crime can not be considered a free choice. If this is the case, then setting terms commensurate with severity of the crime is not logical.
- 2- Indeterminate sentences allow effective treatment to rectify socio-psychological problems which are the root cause of crime.
- 3- Readiness for release varies with the individual and can only be determined when the inmate is in the institutions Nat before

1.1.3.2. Determinant Sentence:

With determinant sentence. the offender is given a specified length of time to serve rather than a range of years of months. The prisoner is out to materially release et the end of the specified period of time Released is not dependent on the participation in treatment.²¹ Thus, determinate sentence can simply a sentence permitting limited discretion that includes a fixed range of prison time.

1.1.2.3. Sentencing disparities:

Sentencing disparities have been serious problem in the criminal justice system. Sentencing disparity means the divergence in the length and types of comparable seriousness when no reasonable justification can be discerned .²²

1.1.2.4. Individualization of Punishment

It is becoming evident to scholars and parties in the administration of criminal justice that the most pervasive and complex issue is not so much the definition of crimes and the manner of their proof but rather how to obtain a more efficient and just system of sentencing the familiar cliché about the need to "individualize justice "had worn thin before it was quite clear exactly what individualization in values.²³

Truly. To individualize, the sentence in the case of any specific offender means. First to differentiate him from other offender in personality, character ,socio cultural background, the motivations of crime, and his particular among a range of punitive, corrective psychiatric and social measures, is best adapted to solve the special set of problems presented by that offender in such a way as materially to reduce the probability of his committing crimes in the future.²⁴

On the other hand, the judge is confronted not by an abstract and nameless individual, but by an actual criminal concision of his crime and its significance shall the judge than undertake the adjustment of the punishment to the measure of surviving morality still available for reform and moral reinstatement? This would be a system of judicial individualization.²⁵

1.1.2.5. Calculation of sentence under the criminal law of Ethiopia of 2004

Principles of punishment and measures designed by criminal law have to be kept in view by the court at the time of fixing the quantum of punishment and the nature of the measure to be applied. According to the following principles should be in consideration:

- In accordance with the spirit of the criminal code.
- In order to achieve the purpose of the criminal code in terms of art 1.
- Giving due respect to human dignity. (Arts 18(1) and (art 21A) of the constitution.

The calculation of sentencing is expected to be by a meticulous correlation of the general and the special part of the criminal code (Art 88). One regard should be given to the general principles of general part. Such as Degrees in the commission of crime (Art 26-31), participation in commission of a crime (art 32-41) criminal responsibility (Art 48-56), and criminal guilt (Art 57-59) are some and the definitions of specific crimes as put forward by the special part of the same code.²⁶

The principle of individualization of punishment should be give effect to by giving due consideration to the personal circumstances of the criminal such as degree of guilt, dangerous disposition of the criminal, his antecedents, motive and purpose. The standards of education also are a matter to be considered in the application of different provisions of the code the gravity of the crime and the circumstances of its commission are their major considerations in the

Determination of penalty. Careful examination of complete range of punishments from the lightest to the severe most should be made in choosing the right punishment.

The federal supreme court shall (Art 84 of the criminal code) issue “manual relating to sentence” in order to ensure the correctness and uniformity of sentencing. The courts are expected to maintain standards as well as uniformity by conforming carefully to the said manual, though it is not effected in practice still.

1.1.3 DETERMINATION OF PENALTY IN CASE OF MITIGATION

A mitigating circumstance : is a factor or situation that does not justify or excuse a wrongful act or offenses but that reduces the degree of culpability and thus may reduce the damages in civil cases or the punishment in criminal case. A factor or situation that does not bear on the question of a defendant’s guilt but that is considered by the court in imposing punishment and especially in lessening the severity of a sentence. ²⁷

Extenuating or mitigating circumstances are elements of a material and/or personal nature which do not affect the offender’s liability to punishment but may or must be taken into consideration at the time when sentence is passed. They pertain to the position of the actor as well as to the conditions surrounding the commission of the offence. Depending on their character and effects, they are either general (Art 82) or special (Art 83) and are laid down by law so as to enable the court to give effect to the fundamental principles of individualization set out in (Art 87 and 88). ²⁸

1.1.3.1 factors that lead to mitigation under criminal law of 2004 FDRE government

1.1.3.1.1. General extenuating circumstances

The penalty may be reduced firstly first the offender acted of light mindedness. Lack of intelligence, stupidity or ignorance. The principle behind Art 82(1(a)) is not angerous.²⁹ Whence this

additional requirement: the accused should previously have been of good character. The punishment may be also being mitigated when the accused was promoted by high motives.

In case of sexual offences, may warrant mitigation. So too the consent of the victim may be taken into account if it does not constitute a justification. It is necessary that temptation

Should be grave, i.e. of such a nature and degree as to partially subdue the offender's will and make it understandable why he failed in his duty to resist provocation.³⁰

Generally, general extenuating circumstances pertain to the personal position of the actor as well as to the conditions surrounding the commission of the offence and which includes but not limited to intelligence, simplicity of mind, motive, ignorance, moral distress, grave temptation, violent emotion or unjust insult and every circumstance before, during and after commission of crimes may provide ground of mitigation.

When any of the above circumstances is present, the court may mitigate the penalty in the manner provided for by (art 179) on the condition that the circumstance under consideration is not, according to the social part of the code, an ingredient or extenuating factor of the offence with respect to which the question.

of mitigation arises Art 82(2) prohibits the from taking the same factor into account firstly as a special circumstance and secondly as a general circumstance in other words the punishment may not be reduced twice on the same ground (reasonable honest, motive in art 28 second a crime, and Art 82(1) (b) motives³¹

1.1.3.1.2 Special extenuating circumstances

In addition to general extenuating circumstances, the law provides for a special extenuating circumstance which appeared in 1930 penal code. The circumstance described in Art 83 is special as regards its nature since it may not be invoked by anyone in any case, as well as its effects, since it warrants more than ordinary mitigation³² \

According to Art. 83, the circumstances include an with a view to saving himself a relative by blood or marrying a close friend from prosecution, punishment, dishonor or grave injury and if the above all ingredients full, the law provides free mitigation as per art 180³³

**1.1.3.2 Interpretation of mitigation **

1.1.3.2.1 Application of ordinary mitigation

From the very beginning of its definition mitigation is a factor that does not justify or excuse wrongful actor or used as evidence rather used as reduction of punishment's usual Practice of courts, it comes to appear at the last stage of trial proceeding. Criminal liability already determined and the offender just convicted of the specified crime under specified provision yet penalty did not impose criminal liability was proved beyond reasonable doubt.

According to criminal law, where the law provides the court to mitigate the penalty, the court shall apply and limited to (Art 179 (a-f) presently Art 179 (c) the minimum penalty for rigorous imprisonment shall not less than the general minimum period of a new year which is provided under (Article 108 (1) para3. Consequently, concerning rigorous imprisonment no punishment imposed less than one year or exemption of penalty. In case of simple imprisonment period laid down in special part of the code, simple

imprisonment for not less than the general minimum period of ten than the general minimum period of ten days as prescribed under (Art 106) and instead of simple imprisonment of less than the general minimum period of ten days, compulsory labor or a fine. 34

1.1.2.3.2.2. Application of free mitigation

In case where the law provides the, mitigation without restriction of the penalty under (Art 180)the shall not be bound by the kind of penalty provided in the special part of this code for the crime to be tried, nor by the minimum which the provision provides..... however, the court shall be bound solely by the general minimum provided in the general minimum provided in the general part, (Art 90, 106 and 108). 35

N.B; Exception To The above citation of (art 180),

Art(83(2) provides that, if the act with which the accused person is charged was not very grave and if the ties in question were close and the circumstance is a particularly harrowing nature the court may exempt the offender from punishment irrespective of demarcation line placed by (Art 910, 106, and 108). 36

Generally speaking before determining the sentence the court takes into consideration the seriousness of the offence and mitigating factors associated with the offence or personal to the assess the seriousness of the offence all information available about the offences associated with it should be taken into account. Any aggravated factors (E.g. Racial, religious) or mitigating factors (E.g. provocation, personal circumstances) must also be taken into consideration and may lead to a more lenient penalty.

A range of other factors which might routinely impacts upon the seriousness of crime are ;

- **Nature of the offence** -amount of violence involved, use of weaponry ,value property lost ,whether offence is committed by a group or individually and whether it fits into the pattern of offending making previous convictions relevant .
- **Impact upon the victim** –whether targeted level of vulnerability, whether a public servant, abuse of extent and nature of loss and whether any property has been recovered , physically or psychological injury .
- **Intention and motivation** –whether the offence was premeditated or spontaneous, whether the offence was provoked or committed under provocation ,the young person’s awareness of the impact of his or behavior upon the victim.
- **Role in the offence** –whether the offender was as ringleader or played a minor role.
- **Attitude to offence** –whether the offender exhibits remorse or concern for the victim, preparedness to make amends.

Sentencing In case of Young Offenders:

The sentencing process for children and young people involves a complex interplay between 3principles: the proportionality; the prevention of offending; and the welfare of the child .while there is potential for these elements to clash, sensitive balance can be principle of proportionality establishes the appropriate program to be imposed on a young offender. Providing that the prevention of youth crime is treated as longer –term aim, welfare, proportionality and the reduction of offending will be the likely outcome (Art 157-168 of the Criminal Code of 2004).

Collectively, these principles provide general frame work to guide the sentencing court and to encourage flexibility in the exercise of judicial discretion. Over time, the Federal Supreme Court

is supposed to be providing more detailed guidance as to how the various principles should be applied to categories of offence and offenders.

CHAPTER TWO

CASE ANALYSIS

2.1. SUMMARY OF THE CASE

- Judge Moissa Debaló
- Sefu Alemayo
- Respondent Public Prosecutor
- Appellant Temiru Gebesaa
- Origin/language Afan oromo
- Date 10/10/20/
- Court west shewa zone high court- Ambo town

This is an appeal against the conviction and sentence of the woreda (lower) court dated on 6/10/2000 in criminal case file no. 02044. The appellant was charged violation of Art 627 (1) and the woreda court found guilty of the charged crime, rape and sentenced fifteen (15) years.

The fact of the case is the appellant aged between 15-16 was on the date 03/06/2000 approximately around 7:00 PM local time (or 1:00Am) at Tokke kutaye Woreda, Lencha kebele and specific place Lega chonfe, committed rape against the girl aged between 8-13 years and hynmentally defected.

The evidence of the prosecution showed that, as stated by eyewitness, firstly the victim Fayise Debere Produced that the appellant forcibly pushing her towards left side and when she fell down raped her and as she shouted the appellant ran away and her parents came. And according to the second witness, Aregu Debere,

Sisters of the victims, testified about the whole incident giving all the details of the place, time of commission etc.

In case of medical evidence, concerning the age of appellant it was proved that he was between 15-16 years by the clinic in the certificate dated on 16/18/2000. And incase of rape and sexual transmitted deceases (STD) it is approved that, there is hynmentally defected and free of STD in the certificate produced from Ambo Hospital dated on 12/9/2000 which was written in English and Afan Oromo version and attached at annexed part .

2.2. REASONING AND RULING OF THE COURT

The court in its decision made release the appellant because of the following; After examining and realizing the litigation and prosecution evidence, it came up with the following reasoning and decision at last.

Accordingly, first the court took in to consideration of the age of the appellant released which was presented by medical certificate from the clinic dated on 16/8/2000. Thus, the age of appellant was estimated between 15-16 year. However, the court reasoned out that, this certificate is not from hospital and the age of the appellant is under suspicion to say above fifteen (15) years.

The second reason of the court was, about the medical certificate produced from Ambo Hospital, concerning rape and sexual transmitted deceases (STD) examination on the date 12/9/2000 Accordingly, the held the reason that the hospital examination specified that the victim is free of HIV/AIDS, any sexually transmitted deceases (STD) and the crime claimed to be i.e rape. As a result, only Basing on prosecutor's eye-witness and rendering decision which are not backed by medical evidence is suspicious.

Generally, no matter the evidence, even if it was beyond reasonable doubt, since there is no satisfactory evidence concerning the of the appellant as it is above fifteen (15) years taking this factor alone in to account, jailing the appellant with adult and confining fifteen (15) years which was rendered by lower court is in appropriate. So, the High court reversed the appellant.

2.3. CRITIQUE :

The writer intends to mainly emphasize to address all problems that were raised in the reasoning and decision of the court. Accordingly, the significant errors committed by the court that to be pointed out are: Omission of evidence, effect of Erroneous interpretation of mitigating circumstance on decision i.e. age, possibility of sexual transmitted deceases (STD) and against the very purpose of criminal punishment in general and applicable to the criminal here in specific.

2.3.1. Omission of Evidence:

The most significant instrument in the adjudication of a charge is evidence. Evidence signifies the existence or non- existence of fact in issue. For the functioning of law and courts evidence is the most essential thing. In the case analysis at hand, there were evidences which were produced by public prosecutor, i.e. eye-witnesses and medical evidence. To begin with medical evidence, there were two medical evidences produced by public prosecutor which was produced from different two institutions aiming at proving the existence of the fact in issue.

Firstly, the medical certificate that was issued on 16/8/2000 from clinic which envisaged the estimation of the age range of appellant has to be considered Accordingly the criminal's age was calculated between 15-16 years. In contrast to this evidence the court held that, this is not satisfactory evidence. However medical clinic is public institution which is established for the ultimate interest of the people and gives service for society. Thus ignoring the basic objective and function of a medical clinic is improper and unfair. According to the Ethiopian draft rules, Art 63/1 provides, the courts, shall presume to be genuine every document purporting to be a certificate, certified copy or other document , which is by law declared to be admissible as evidence of particular fact in issue and which purports to be duly certified by any officer of the government who is duly authorized there to by the government. For this reason, there by art 63/1/ once the authorized government. For this reason, there by, art 63/1/ once the authorized by government to render that service, there is no bar to admissibility of the issued certificate or certified copy. So, the court is unreasonable and has

to be blamed in discarding this medical evidence. In addition to this, criminal law Art 54 set forth as, for the purpose of assessing sentence the court may require information...from concerned institutions. The second paragraph provides that “ the court may require... production of any file...”thus, the court has legal duty to require any information from concerned.

2.3.2. Erroneously interpretation of mitigating circumstance during sentence

Form the very beginning objective and function of mitigation circumstances, are not to justify or excuse of criminals or used as an evidence to prove the existence or non-existence of crime rather they are used for reduction of sentence or punishment. Accordingly, the court took in to account the age of the criminal which it considered not above 15 years and free of any STD as mitigating circumstance and were used as bedrock of court’s decision, i.e. to let the young criminal released. Obviously, the court said in its reasoning, “..... however, no matter the evidence of prosecution, even if proved beyond reasonable doubt, since there is no satisfactory evidence to estimate the age of the appellant as surely above 15 years. Consequently, jailing the appellant with adult and confining 15 years with them, i.e. the decision which was give by lower court, is in appropriate...” and the court released the appellant.

However, in general perspective of criminal law concerning any mitigation art 179(c) provides the governing rule. As per art 179 where the law provides the court mitigate the penalty, the court shall apply and limit to this provisions i.e. 179. This same provision, sets out many alternative for different punishment provided in special parts. Most especially, in limiting the scope of minimum punishment during mitigation of rigorous imprisonment art 179 (c) instead of rigorous imprisonment for a specified minimum period, rigorous imprisonment for not less than 1 year which is provided under art 108 (1) paragraph three too. In addition sub/c/ of same provision provide, in term of rigorous imprisonment of at least one year, simple imprisonment form six months to five years. So, this is the governing provision of ordinary mitigation under rigorous punishment and no body can sentence below six months or exonerated from punishment because of any kind or nature of mitigating circumstance.

In specific matters, in case of young criminal who committed a serious crime art 168 (1) is governing rule Accordingly, art 168/1/ provides, young criminal who committed a serious crime which is normally punishable with a rigorous imprisonment with death, court may order him to be sent to corrective institution to correct and rehabilitation of the criminal as per art 162 and following. Alternatively, depending on the characteristics and nature of criminal also send to a penitentiary detention institution, Art 168. In both application of measures principle segregation may be applicable as per art 110 (2). So.by.no means whether by age, provided that above 9 years, or any kind and nature of mitigating circumstances criminals can be set free.

2.3.3. From the Very Purpose of criminal Punishment :

Criminal law is distinctive in its nature in that potentially it result in the consequence of imposing punishment on the criminals. However the penalty imposed on the criminals should be educative for the society. The aim is to impose a sufficient penalty to discourage the offender from criminal behavior and to curtail the sharp rise in the rate of criminal activities. By imposing a penalty on

those who commit offenses, other individuals are discouraged from committing those offenses. This is the object of criminal law. Those who are discouraged from committing those offenses. This is the objective of criminal punishment.

Not only imposing educative punishment, but also transforming an offender into law abiding member of society is also the objective of criminal punishment.

Its primary goal is to prevent further offenses by convincing the offender that their conduct was wrong. Thus in doing so the society's order peace and security would be ensured. As per Art.1 of criminal law the objective and purpose of this law is to be effective by giving due notice of the crimes and penalties and this be effective by providing for the punishment of criminals in order to deter. Lesson to others providing reformatory measure to prevent further crimes. NB in contrast to the purpose and objective of criminal punishment in general and our criminal law this high court reversing the decision of lower court i.e 15 years and released the appellant this is against all elements of criminal punishment i.e Retributive Deterrence, incapacitation, prevention and rehabilitation.

This in turn encourages the degree of bad behavior of young criminals and discourages the society from fighting against bad conduct at large.

CHAPTER THREE

CONCLUSION AND RECOMMENDATION

This section has two parts. The conclusion part which is going to deeply the whole ideas and issue of the paper. It is meant that to generalize the ideas and concepts that were discussed in the paper. The second part is recommendation. This part is devoted to effective suggestion and solution to the problem raised in the paper. Let's deal with the two major parts one by one:

CONCLUSION

The main objective and purpose of criminal law is to protect society against the intervention in social, economic and other areas of public policy. The criminal law expected to accomplish this task by identifying the types of crime and reacting to this problem appropriately. To achieve this five objectives are widely accepted: retributive, deterrence, incapacitation and restitution. Jurisdiction may differ on the value to be placed on each.

This principle of criminal law is clearly incorporated in FDRE- criminal code Art 1. From reading of this provision, one can view the major known and distinctively applied elements of purpose of criminal law.

To strengthen this provision article 87 of the same code provides that the penalties and measures be applied for those who do not abide by the rule of this code.

Determination of sentencing is one of the most complex areas in criminal law. It is the formal pronouncement of judgment and punishment following his or her conviction in criminal prosecution. A final step taken against a defendant who has been found guilty of the crime he or she is accused of. It is supposed to be carried out on the basis of a legal framework. However, committable use of discretion may be available to the sentencing judge, depending on the nature of the offence, age of the offender, standard of education, role of the offence, impact upon the victim, intention and motivation, are some of the guidance at the time of fixing the quantum of punishment. And may serve as ground of mitigating circumstances. Mitigating circumstances are factors or situations that do not justify or excuse wrong act or offences rather reduce the quantum of punishment. As a result, by no means mitigation circumstances serve as a ground of excuse of crime during criminal punishment.

Evitable problems that raised during sentencing are:-

- Exclusion of evidence analysis/omission
- Using mitigating circumstance as ground of excuse of crime
- Ignoring the basic purpose of criminal law

RECOMMENDATION

The writers of this paper recommend the a formational problem of court in the following manner :-

There are several things the court takes in to consideration when determining a sentence.

The first of which is the evidence. Evidence is what gives meaning to individual cases and serves as benchmark for the entire justice system. The function of conviction is intricately tied to evidence any

given cases. As a result to verify the crime committed and convict the accused the court must appreciate the relevance of evidence which is produced from legally established public institution i.e hospitals, clinic and soon Evidences produced by public prosecutor having tendency to make the existence of facts in issue must be appreciated and accepted by court.

In addition, while court uses mitigating circumstances, the court has to use the manner the law provided. From the very beginning mitigating circumstances is a factor that doesn't excuse a wrong doer or offender rather uses as bases of reduction of punishment. And when the law leads to ordinary mitigation it is interpreted as per article 179 of general part of the code. As a result of this provision is guided for the court and accordingly, no criminal offender released free on the bases of mitigating circumstances. Further more, crime is considered as public offenses and not a private affair of the injured party alone. This means every time a crime is committed against the individual and the whole community is assumed to have injured. The decision against the

Criminal is delegated the society at large. As result is obligable to adjudicate as to the basic objective and purpose of criminal law. In FDRE- criminal code as per article 1. There fore proportionate punishment to the offense should based.

When a sentence is to be imposed the decision to be made should be to the object to be achieved by it.

- It is to deter the wrongdoer and other from committing such offences in the future.
- It is aiming simply to mete out an appropriate punishment to a wrong doer.
- It is to reform of the offender or
- Combination of these objects

END NOTES:

1. [http://en Wikipedia,org/](http://en.wikipedia.org/)
2. *ibid*
3. black law dictionary seventh edition
4. *supra* not 1
5. *supra* not 3
6. the crime problem and its correction Vol. page 88
7. *Ibid*
8. *Supra* note 1
9. *Supra* note 3
10. *Supra* note 6 page 89
11. FDRE- criminal law art 1
12. *Ibid* Art 87,106 and 108
13. *Supra* note 3
14. *Supra* note 6, 90
15. *Ibid*
16. [http//](http://) I lost address and will find
17. *ibid*
18. *supra* note 6,page 92,93
19. *ibid*, page 93
20. *Ibid* page 93
21. *Ibid* page 94
22. *Ibid*
23. Materials for the study of Ethiopian penal law 326
24. *Ibid*
25. *Ibid* page 319
26. *Supra* not 11, Art 1 and 87
27. Philippe Graven, An Introduction to
28. *Ibid*
29. *Supra* note 11 Art 8241
30. *Ibid*
31. *Supra* note 11 , Art 28,82
32. *Supra* note 30 page
33. *Supra* note 11 Art 85 and 180
34. *Ibid* art 179 (a-f), 106,108
35. *Ibid* are 180,90,196, and 108
36. *Ibid* art 180,83(2), 90,106,108

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