

IN THE HIGH COURT OF SWAZILAND

Cri. Case No. 74/96

In the matter between

Rex

Vs

Maria Tholakele Ngwenya

Coram S.W. SAPIRE, A C J

FOR CROWN MR. S. NDERI

FOR DEFENCE MR. L. MATHSE

JUDGMENT

(04/02/97)

You have pleaded guilty to and you have been found guilty of culpable homicide. The unfortunate victim of your drunken anger was a small child of 3 years old who was in your care.

I accept that you were in the place of that child's parents and that it was your right and duty to correct the child when it went astray and if he was naughty or did things that he was not supposed to do. But a child of 3 years is still an infant and if chastisement has to be inflicted on a child of 3 it must be done in a sober manner and not as an expression of your anger. An infant may not be struck in anger and what you did went far beyond the limits of any chastisement which would have been reasonable in the circumstances.

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Physical abuse can never be reasonable. Yours was an assault which was persisted far beyond what was necessary. The crown has accepted that your judgment was impaired by liquor you had imbibed and for the purposes of sentence I must likewise accept that this is the case, but abuse of children whether in anger or otherwise cannot go unpunished. The punishment which must be inflicted must reflect the abhorrence of right thinking people and society in general for this sort of offence. Taking into account also that you had taken this child under your wing; taking into account that you are remorseful for what you have done; taking into account further that you were arrested in November 1995 you have been in prison ever since awaiting trial, and balancing all these factors together I have come to the conclusion that the sentence I must pass upon you is as follows:

You will be "imprisoned" for a period of 5 years of which 2 years will be suspended having regard to the mitigating factors which have been outlined by your council and which I have taken into consideration. The two years will be suspended for a period of 3 years on condition that you are not hereafter found guilty of culpable homicide or a serious assault committed during the period of the suspension. The date of your imprisonment shall be deemed to have commenced on the date when you were taken into custody which was the 21st November, 1995.

S. W SAPIRE

ACTING CHIEF JUSTICE