

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO.63/98

In the matter between:

REX

VS

ELIZABETH THULDE NDLOVU

CORAM: MATSEBULA J

FOR THE CROWN: MR. L. NGARUA

FOR THE DEFENCE: MR. G. MAHLALELA

JUDGEMENT

The accused was charged with the crime of culpable homicide. She was represented by Mr. Mahlalela who at the outset indicated that he had been instructed that the accused will plead guilty to culpable homicide. The Crown was represented by Mr. Ngarua who indicated that they would not resist the plea of guilty to culpable homicide. The charge was put to the accused and the accused confirmed the plea of guilty to culpable homicide and the court invited Mr. Ngarua to outline the facts leading to the death of the deceased in this matter. He stated very briefly that the deceased and the accused were well known to each other, that they were neighbours and related in the sense that the accused is married to a relative of the deceased. However, he stated that there had been problems between the accused and the deceased which culminated to the accused hitting the deceased with a knobstick and the deceased sustaining an injury. He was taken to hospital where he died thereafter. A post mortem was conducted on the body of the deceased the result of which was that the deceased had died because of what the doctor called 'cerebral injury.' The doctor indicated that the deceased was approximately 70 years old. Those were the facts given by Mr. Ngarua and Mr. Mahlalela confirmed them.

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I was happy and convinced that the plea of guilty to culpable homicide was an appropriate one. I then invited Mr. Mahlalela to address me in mitigation. He then for the first time introduced the belief in witchcraft which led the accused, according to him, to assault and injure the deceased. This had not been one of the facts which Mr. Ngarua had furnished the court with. I then invited Mr. Mahlalela to obtain further instructions especially when he started in mitigation giving facts which were not contained in the agreed facts. He has now called the accused to go into the witness stand to give evidence in mitigation. It now appears, very clearly that there was bad blood between the accused and the deceased to an extent that the accused had actually confronted and accosted the deceased about the sickness of her child and according to the accused this allegation had not been challenged. The deceased said that he was going to heal the child using a Swazi term "elula" which implies that he was the person responsible, initially for the sickness that had afflicted the child.

According to the accused when the deceased failed to do this she was infuriated because the child was very sick. The accused had also told the court that she and her husband had called a meeting at which they thought this could be sorted out but the deceased decided not to attend the meeting. According to the accused, it was because of this factor that she ultimately decided to use a knobstick which was owned by the deceased and hit him with it. The accused stated that the child died a week later after the deceased had died.

I have taken into account personal circumstances of the accused. She only went up to Standard 3. And

that subjectively speaking she believed that the deceased could carry out the threats the deceased had made and that she had reported this to her husband who in turn also tried to call the members of the family so that this is resolved. However, the deceased failed to attend.

Considering all these factors the court would want to say to the accused, although she subjectively believed that the deceased could carry out the threats and indeed ultimately the child died and according to her, it was because of the deceased's doing that the child died. The court cannot condone actions of people who take the law into their own hands and punishing the suspects because if that were to be allowed the country could be in a chaos. The court has considered all these factors and I thank the accused's counsel who brought more information on this matter.

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Considering all these factors, the court is of the view that the following sentence would be an appropriate one: The accused will be sentenced to an imprisonment for three years which will be wholly suspended on condition that the accused is not convicted of any crime involving violence and/or for which she is imprisoned without any option of a fine committed during the period of suspension.

J.M. MATSEBULA

JUDGE

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