

CRIM. CASE. NO 21/98**IN THE MATTER BETWEEN****REX****VS****SIPHO COMPUTER DLAMINI****CORAM
FOR CROWN
FOR DEFENCE****S.B. MAPHALALA – AJ
MR L. NGARUA
MR MDLULI****RULING ON EXTENUATING CIRCUMSTANCES**

The accused person has been convicted of murder. The next step is for the court to determine whether there are extenuating circumstances in favor of the accused for him to escape the ultimate sentence of death. It is trite law that the *onus* to prove extenuating circumstances lies with the accused person. Here the accused submitted facts purporting to be extenuating circumstance through his attorney from the bar. I have considered the submissions made by Mr. Mdluli on behalf of the accused and also the submissions, which I must say, were very helpful by Mr. Ngarua for the crown. It is common ground that in this case there are extenuating circumstances on the ground of the accused immaturity. I also agree with both counsels in this regard that the *modus operandi* used in committing the offence show that the accused acted in some degree of immaturity. He himself when he committed this offence he was twenty-one years of age. There are numerous decided cases both in this division and in South Africa that the youthfulness of an accused person can be taken as extenuating circumstance.

Further, although the accused did not take the witness stand in mitigation there is evidence which was not challenged by the crown in the course of the trial that the accused person partook in drinking of traditional beer in a nearby shebeen. As much as we do not have tangible evidence to show to what extent the accused drank that can be taken as an extenuating factor. Even in this instance there is a plethora of decided cases by this court that intoxication is an extenuating circumstance.

In the result, I find that there are extenuating circumstances in this case and the accused has escaped the sentence of death as prescribed by the *Criminal Procedure and Evidence Act (as amended)*.

S.B. MAPHALALA
ACTING JUDGE