

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL CASE NO. 237/2005

In the matter

between :

REX

VS

NOMSA TINGAKUPHI SIMELANE

CORAM:

MAMBA AJ

FOR CROWN:

S. FAKUDZE

FOR ACCUSED:

IN PERSON

JUDGEMENT ON

SENTENCE 22nd

MARCH, 2006

[1] Ms Simelane you have been found guilty of a very serious or aggravated form of attempted murder. You, with intent to murder the complainant poured boiling or hot oil all over her body as she lay in bed.

[2] According to exhibit B. the Medical Doctor's report, the complainant sustained P' degree, burns on the face, abdomen and lower back. She further sustained 2nd degree burns on both her arms and upper back. These constitute permanent scarring or disfigurement on the complainant.

[3] You assaulted the complainant in this very cruel and heartless manner motivated by jealousy; because the complainant was in love with your boyfriend and was at the time expecting a child, probably by the same man you shared as lovers.

[4] You must have realised though that if you were provoked at all, your lover, or boyfriend was the author or source of that provocation. It was he, who permitted your presence and the presence of the complainant at his house at the relevant time. The complainant took occupation of the sleeping bed, you also used in her absence, with the knowledge and tacit approval of your lover. If this annoyed or provoked you, you should have complained to him. After all it was in his house, his bed and you and the complainant were his guests.

[5] Your actions were calous, calculated and premeditated. You set about boiling or heating up the cooking oil. transferred it from the pot to a jug and eventually poured it onto the complainant. But before carrying out your plan of pouring the boiling oil over the complainant you caused your boyfriend to leave the room where the complainant was by telling him that his father who was in another house wanted to see him. This was of course a lie and a stratagem to leave you alone and free in the room to carry out your cruel assault on the complainant who was at the time in bed and totally unaware what was afoot. That she did not die from the assault is thanks to nothing that you did to

prevent her death. Indeed after pouring the hot oil over her you ran away and disappeared from that homestead, leaving your victim writhing in pain.

[6] Having said the above, I shall take into account in your favour that;

- (a) You pleaded guilty to the charge,
- (b) You are a first offender, aged 23 years and you have been in custody since the 26th day of February 2005.
- (c) You are orphaned and you have three minor children born out of wedlock two of whom were at the time of your arrest dependant on you for their livelihood and or maintenance.
- (d) When the crime was committed you were staying at your lover's house and the complainant had paid your lover a visit just on that day. Because of this you felt or thought that perhaps a certain measure of respect should have been shown towards you by the complainant.
- (e) When the complainant took occupation of the bed and bedroom it was in the evening and you felt that she had displaced or evicted you from your lover's bed and bedroom.
- (f) Lastly, you have also indicated to me that you are contrite for what you did to the complainant.

[7] All the factors stated in (a) to (f) above are, in my judgement, far outweighed by the severity, heartlessness and cruelty of your action in pouring boiling or hot oil on the complainant. Your action was totally disproportionate to the perceived provocation or injustice you experienced or met.

[8] You are sentenced to a term of 6 years of imprisonment. This sentence is backdated and ordered to run with effect from the date of your arrest and incarceration which is the 26th day of February, 2005.

MAMBA AJ