THE HIGH COURT OF SWAZILAND

REX

Vs

GUGU WINILE NHLEKO

Criminal Case No. 159/2004

Coram: S.B. MAPHALALA-J

For the Crown: MR. S. FAKUDZE

For the Defence: MR. S. MNGOMEZULU

REASONS FOR SENTENCE

(14th June 2006)

[1] This is a very tragic case where a 17-year old teenage girl at the time of the commission of the offence is brought to the court six years after the event aged 23 years old. The accused has been charged with the crime of murder of her own infant child on the 23rd September 2001, at Magevini area in the Manzini District. When the charge was put to the accused she pleaded not guilty to murder and guilty to the lesser offence of culpable homicide. The Crown accepted the plea and proceeded to read into the record a Statement of Agreed Facts, which was also confirmed by the accused legal representative, Mr. Mngomezulu. The court proceeded to find the accused guilty of culpable homicide and thereafter heard Counsel for the accused in mitigation of sentence. This judgment on sentence concerns this aspect of the matter.

[2] Before I address the issue of sentence in this case, I find it imperative to outline the brief history of this rather sad case as reflected in the "Statement of

Agreed Facts" submitted by the Crown as follows:

1. Upon or about 23rd September 2001 at Magevini, Matsapha area, the accused did unlawfully and negligently kill Nonhlanhla Nkambule, her infant child.

2. Accused accepts that her conduct was both wrongful and unlawful

3. On the fateful day, the accused negligently caused the said infant to fall into a pit latrine.

4. Prior to this incident, the accused and the father of the infant were engaged in a paternity dispute with the alleged father of the child denying paternity.

5. The accused before falling pregnant was attending school at Ngwane Park High School, doing form two, and stayed with her aunt at Gundvwini. She was an orphan with both parents having died.

6. The accused was involved in a sexual and/or love relationship with a 32-year old man of the same area (Gundvwini) which relationship resulted in the pregnancy of the accused who was 17 years of age, at the time.

7. Subsequent to the incident, PW1, accused's aunt inquired from the accused as to the whereabout of her infant child. The accused then related the whole story of how she negligently caused the infant to fall into the pit latrine.

8. Upon hearing the accused story PW1 led her to the police station where a statement was recorded from the accused. The accused then led the police in the company of PW1 to the pit latrine at Matsapha whereat the deceased body was subsequently retrieved.

9. Accused was subsequently detained and has been in custody ever since the 23rd September 2001.

[3] In mitigation of sentence in this rather sad tale *Mr. Mngomezulu* submitted that firstly, the accused person is a first offender and secondly, that at the time of the crime she was 17 years old and that she is now 23 years old having spent 6 years in custody. Thirdly, that she has another minor child one Sicelo Ndzinisa who is between 7 to 8 years old. Fourthly, that the accused is an orphan as both her biological parents are now deceased. At the time of her arrest she was doing Form II in Manzini and has been in custody since the 23rd September 2001.

[4] At this stage of the proceedings, three competing interest arise for the proper balance by the court. These are referred to in legal parlance as a *triad.* The nature of the crime, the interest of the society and the interest of the accused. These were stated in the judgment of Jones J in the case of *S vs Qamata 1997 (1) S.A. 479* at *480* where the learned Judge in that case made these trenchant remarks:

"It is now necessary for me to pass sentence. It is proper to bear in mind the chief objectives of criminal punishment namely, retribution, the prevention of crime, the deterrence of criminals, and the reformation of

offender. It is also necessary to impose a sentence, which has a dispassionate regard for the nature of the offence, the interests of the offender, and the interests of the society. In weighing these considerations should bear in mind the need:

a) to show an understanding of and compassion for the weaknesses of human beings and the reasons why they commit serious crimes, by avoiding an overly harsh sentence;

b) to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate and. If necessary, a severe sentence; and

c) to pass a sentence, which is balanced, sensible, and motivated by sound reasons and which therefore meet with the approval of the majority of law-abiding citizens. If I do not, the administration of justice will not enjoy the confidence and respect of society.

[5] From the facts of the present case as gleaned in the "Statement of Agreed Facts" and the submissions by *Mr. Mngomezulu* in mitigation of sentence, it is my considered view that the accused has paid in punishment more than is required by the law. She has been in custody from the time she was a confused teenager until now when she is an adult of 23 years. She has to go outside into the world, which she last saw six (6) years ago. This is indeed by all standards a daunting task. In the present case after assessing all the facts before me I have come to the considered view that the following sentence be imposed.

> "The accused is sentenced to 5 years imprisonment, the whole sentence is suspended for a period of 3 years on condition the accused is not convicted of an offence in which violence is an offence committed during the period of suspension".

S.B. MAPHALALA

JUDGE