

IN THE HIGH COURT OF SWAZILAND

RE X

V s

JABULOMKHAMBATSIMKHONTA

Criminal Case No. 206/2005

Coram

S.B. MAPELALALA - J

For the Crown

MR. N. DLAMINI

For the Defence

MR. B. SIMELANE

REASONS FOR SENTENCE

6th March 2007

[i] The accused person is charged with the murder of her own child in the Lomvohe region, upon or about the 25th September 2004, at or near Langa area, in the Lomvohe region, the accused did intentionally and unlawfully kill one

Njokuthula Shongwe. The accused tendered a plea of guilty in respect of the lesser offence of culpable homicide which was accepted by the Crown. The court proceeded to convict the accused person of culpable homicide. Crown Counsel has read into the record a statement of agreed facts as follows:

1. Upon or about the 26th September 2004 and at or near KaLanga area in the Lubombo Region, the accused did unlawfully and negligently kill one Nokuthula Shongwe a female minor aged eight (8) years old.
2. The accused admits that the cause of death of the deceased is as a result of injuries, which were inflicted by her (accused) and further that there are no intervening actions, which caused the death of the deceased other than the actions of the accused.
3. The accused further admits that the deceased was her biological child.
4. On the fateful evening the deceased had gone to play with other children from neighbouring homesteads and had returned home to the accused late in the evening. The accused was angered by the deceased coming home late in the evening yet the accused had previously warned the deceased about her coming home late.
5. The accused then gave the deceased a tongue-lashing and at that time the accused was already carrying a rope which she used to tie the deceased around the neck. The deceased thereafter died from this action.
6. When the accused was tying the deceased with the rope around her neck, the deceased screamed and informed the accused that she was hurting her. The accused subsequently realized that the deceased had suddenly died and removed the rope.
7. The accused has no intention of killing the deceased but was only trying to instill discipline to her.
8. Upon realizing that the deceased had suddenly died, the accused thereafter went to a neighbouring relative to report the incident. Further the accused requested the relatives to assist her (accused) in calling the police.
9. The accused has been in custody since 26th September 2004.
10. The post-mortem report is handed in by consent to be marked by this Honourable

[2] At this stage of the proceedings, the court has to pass an appropriate sentence. Three competing interests arise for the proper balance by the court. These are referred to in legal parlance as the *triad*. The nature of the crime, 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 1987 (1) S.A. 479 at 480* where the learned Judge in that case made the following remarks:

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, and in weighing these considerations I should bear in mind the need:

- z- to show an understanding of and compassion for the weakness of human beings and the reasons why they commit serious crimes, by avoiding an overly harsh sentence;
- r to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate and, if necessary, a severe sentence; and
- i 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.

[3] Factors in mitigation of sentence on behalf of the accused person were advanced from the bar by *Mr. Simelane* as follows: (i) that the accused has three other minor children; (ii) that the accused was unemployed at the time of her arrest; (iii) that the accused is 29 years old and (iv) that she was punishing the child and unfortunately she overdid it.

[4] Indeed this is a very sad state of affairs where a mother kills her own child within the rubric of chastisement. It is further difficult for the court to pass sentence in these circumstances. The accused has been in custody since the 25th September 2004, and in my humble view the period she has been in custody has taught her valuable lessons on the sanctity of life.

[5] In the circumstances of the case I find that the following sentence will meet the justice of the case.

The accused is sentenced to 7 years imprisonment, 5 years of which is suspended for a period of three (3) years on condition that accused is not convicted of an offence in which violence is an element committed during the period of suspension. The sentence is backdated to the 25th September 2004.



S.B. MAPHALALA

JUDGE