

IN THE HIGH COURT OF SWAZILAND

REX

Vs

TENINA SIMELANE

Criminal Case No. 21/2006

C

F. H. C.

F. H. D. C.

G. D. MASHALALA J.

MR. C. FAKHURZI

MR. C. MHOBE

REASONS FOR SENTENCE

12th April 2007

[1] The accused person pleaded guilty to a lesser offence of culpable homicide where she has been indicted for the crime of murder. It is alleged by the Crown that upon or about 1st April 2005, and at or near Kwaluseni

area, in the Manzini region, the said accused did unlawfully and intentionally kill one Nomvula Gwebu.

[2] The said accused person was convicted of the said crime after the Crown has read into the record a statement of agreed facts which was also endorsed by accused's legal representative. For the sake of completeness I proceed to relate the agreed facts in the said statement as follows:

[3] It is agreed that:-

1. Upon or about 1st April 2005 and at or near Kwaluseni area, the accused did unlawfully and negligently kill Nomvula Gwebu.
2. Accused accepts that the deceased died as a direct consequence of her conduct and that there is no intervening cause of death between her conduct and the death of the deceased.
3. The deceased was accused fifth born child. The deceased was very sickly during her lifetime and she was only just about one month old when she was killed by the accused.
4. On the fateful day, the accused set out for Mbabane Government Hospital after being given money by PW1, to take the deceased for medical attention. Indeed the accused arrived at the hospital but the deceased was not attended to because of a very long waiting line. The accused left the hospital without receiving any assistance.
5. Along the way back to PW1 's house where the accused was lodging, she decided to rid herself of the sickly deceased. It was already dark and she went to seat alone, together with the deceased at a bus stop shelter. There, the accused covered the deceased over the head and face with a plastic so that the deceased would not breathe. The accused, in doing so, suffocated the deceased until she was motionless and no longer crying.
6. Upon satisfying herself that the deceased had in fact died she put her on her back and proceeded to a pit-latrine at a certain homestead and dumped the body of the deceased into the pit-latrine. The accused then proceeded to PW1 's house.
7. Upon seeing that the accused came back without her child, PW1 and PW2 asked her as to where she left her. The accused made up a story to the effect that she had left her at her parental home. However, the duo were not convinced and decided to report the matter to the

8. After same questioning the accused was arrested and on the following day the 2ⁿ April 2005, the accused led the police to a certain Mbingo's homestead where in the pit-latrine, the deceased body was retrieved.
9. Accused has been in custody since the 1st April 2005, being her date of arrest.
10. The report on the post-mortem examination on the body of the deceased be handed in by consent and the accused accepts that the deceased died due to her unlawful conduct.
11. Accused is remorseful for her actions.

[4] In mitigation of sentence it was contended for the accused person as follows: Firstly, that the accused person pleaded guilty to the crime and did not waste the court's time and was truly remorseful. Secondly, that the accused person was 29 years old when she committed the offence. Thirdly, that she went up to Form III at school. Fourthly, that she was married in terms of Swazi law and custom with the father of the deceased and that the latter was the second bora of this union. Applicant has three other children besides these I have mentioned above. Fifthly, that one child is living with her in custody. This is a young girl of 4 years. Lastly and sixthly, the accused person has been incarcerated from 1st April 2005.

[5] It was further contended for the accused person that the court ought to consider the fact that the accused was suffering from post-natal depression and exhibited all the signs of this condition when she killed her new born child.

[6] The principles of sentence have been clearly enunciated in the South African case of *S vs Zinn* 1969 (2) S.A. 537 where the court propounded what has been commonly known as the *triad* composing of the interest of the accused, the interest of society and the gravity of the offence.

[7] In the present case the accused person was suffering from post-natal depression and therefore strictly speaking she cannot be made to suffer for her actions under the spell of depression. I have considered that she has been in custody for over 24 months from 1st April 2005 and it is my considered view that this has taught her a lesson about the sanctity of life. Further one of her children has been in custody with her during this time, this was not only an unjustified punishment to the innocent child but punishment to the accused to see her child in those hard circumstances.

[8] On the facts of the present case the accused is sentenced to 7 years imprisonment, 5 years of which is suspended for a period of 3 years on condition that the accused is not convicted of an offence in which violence is an element convicted during the period of suspension. The sentence is backdated to 1st April 2005.



S.B. MAPHALALA