

IN THE HIGH COURT OF SWAZILAND

REX

Vs

PHUMZILE SBHABANE NGCAMPHALALA

Criminal Case No. 109/2006

Coram	S.B. MAPHALALA - J
For the Crown	MISS ZWANE
For the Defence	IN PERSON

REASONS FOR SENTENCE

20th April 2007

[1] The accused person has been convicted of the crime of culpable homicide where it is alleged by the Crown that upon or about the 24 February 2006, at or near Mkhweli area in the region of Lubombo, the said accused did unlawfully assault Sthembiso Ngcamphalala and inflicted upon

her certain injuries which caused the death of the said Sthembiso Ngcamphalala on the 27th February 2006, at home and the said accused person did thereby negligently kill the said Sthembiso Ngcamphalala.

[2] The Crown read into the record a statement of agreed facts and I proceed to reproduce it for the record as follows:

1. Upon or about the 24th February 2006, and at or near Mkhweli area in the Lubombo region, the said accused person did unlawful assault Sthembiso Ngcamphalala and inflicted upon her certain injuries which caused the death of the said Sthembiso Ngcamphalala on the 27th February 2006 at home and the said accused person did thereby negligently kill the said Sthembiso Ngcamphalala.
2. Accused person admits that the injuries the deceased died of were inflicted by her and further that no intervening action caused the death of the deceased other than the action of the accused.
3. The accused admits that:
4. On the 24th February 2006, she was at home where she stayed with her mother (the deceased);
5. A fight ensued between the deceased and the accused and heated words were exchanged;
6. As a result of the fight, the deceased was pushed on the ground and beaten by the accused with a stick all over the body;
 4. The accused went to stay with her boyfriend until the 27th February 2006, when she returned home.
7. The accused found the deceased health deteriorating due to the injuries inflicted by her on the 24th February 2006;
8. She noticed that in the late afternoon the deceased condition was getting worse and later that evening the deceased passed away at home.
9. The accused pleads guilty to culpable homicide.
10. The accused person was arrested on the 27th February 2006.
11. The post-mortem report is handed in as exhibit "A" and the statement of agreed facts is handed in as exhibit "B".

[3] In mitigation of sentence the accused stated the following: i) that she apologized to the deceased family, her own family, to the Chief of the area and to His Majesty the King for what she has done ii) she also applied to the court to be lenient as she is in custody with her minor child who is less than one year old iii) she stated that she is 18 years old and has never attended school iv) the father of the child has since died and v) she has been in custody since the 27th March 2006.

[4] 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, the interest of society and the interest of the accused. According to Holmes JA in the case of *S vs Rabie 1975 (4) S.A. 855 (A) at 862 G*:

"Punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances".

"Despite their antiquity these wise remarks contain much that is relevant to contemporary circumstances (they were referred to, with approval, in *S vs Zinn 1969 (2) S.A. 537 (A) at 541*) "a judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interest of society which his task and the objects of punishment demand of him. Nor should he strive after severity; nor, on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a human and compassionate understanding of human frailties and the pressures of society which contributes to criminality ..."

[5] The balance in the triad is not equal. The interest of society is the most important.

[6] In *casu* I have considered the above legal principles and the facts of the matter. In the present case the accused person has been incarcerated with her minor child for over one year. This is not only punishment to the accused person who it has been proved has committed the offence but punishment to the small child who knows nothing about accused crimes. Such cases are becoming common in this court like the one I had last week where the accused who was also a mother had been in custody with a small baby for close to two years. In the circumstances of this case the accused is sentenced to 7 years imprisonment, 6 years of which is suspended for a period of three years on condition that the 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 27th March 2006.



S.B. MAPHALALA