

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL TRIAL NO. 13/05

In the matter between:

ELLEN MUKILE SHONGWE

VS

REX

CORAM

MONAGENG, J

FOR CROWN

MR. S. FAKUDZE

ACCUSED

MR. MELUSI SIMELANE

SENTENCE
09th JULY 2008

[1] In this matter, the accused person pleaded guilty to the criminal offence of culpable homicide, it being alleged that on the 25th October 2004, she unlawfully poured boiling water on Christopher Fanilethi Vilakati, her husband, resulting in his demise six days later.

[2] In mitigation the accused's Counsel asked the Court to consider the following:

1. The accused and the deceased had a relationship of 32 years. The accused had no criminal intent but that this was result of matrimonial acrimony and

instability in the matrimonial home as evidenced by the agreed facts. Counsel further urged the Court to take into account that there were 13 children out of which 6 are minor, still at school. As a result of the demise of the deceased the accused is sole provider for the children. She is self-employed, makes grass mats and snacks to make a living not only for herself but for the minor children who are her responsibility.

2. Counsel further submitted that the Court should consider the refusal by the deceased to go to hospital which also contributed to his passing away.

He urged the Court to consider the fact that she was out of custody for almost 2 years, so that a custodial sentence would be unduly harsh considering that she has already spent time in gaol. The accused has shown remorse by pleading guilty to the charge thus not wasting the Court's time. Counsel asked the court to consider a suspended sentence. She is 54 years old.

[3] SENTENCE:

This is one of those cases that make very sad reading. There is a combination of factors here viz -

(1) what one could call a battered wife syndrome.

(2) intervening factors caused solely by the deceased when he refused to go to hospital for the reason that other men would laugh at him, until his body poisoned itself so to say, with pus and he died. I have seriously pondered these facts

and the basis of justification as requested by her defence Counsel.

[4] This is a woman who had been and was being subjected to a vicious attack by her husband and had to escape the attack. The injured husband then refused to have his injuries treated medically out of embarrassment. I have taken all her other mitigation into account. I am aware to the fact that she had previously been convicted of assault in 2004, but to the extent that she was cautioned and discharged, I will not use this conviction against her. She served almost two years imprisonment before she was released on bail. I find that this is a case where I should temper justice with mercy, and seriously consider her plea in mitigation.

[5] It is my view that the sentence she has served, the trauma of losing her husband are punishment enough. I also consider the plight of her minor children.

[6] The accused is sentenced as follows:

1. She is sentenced to 4 years imprisonment.
2. The 4 years shall be wholly suspended for a period of 3 years on condition that she is not convicted of any offence of which assault is an element during this period.
3. The sentence shall be backdated to 25th October 2004 when she was first incarcerated.
4. Right of appeal against severity of sentence only.

S. M MONAGENG
JUDGE