

**IN THE HIGH COURT OF SWAZILAND**

**CRIMINAL TRIAL CASE No. 40/04**

**In the matter between**

BONISILE MATSEBULA

VS REX

**CORAM:** : S.M. MONAGENG J

FOR THE CROWN: : MR. S. FAKUDZE

FOR ACCUSED: : MR. K. VILAKATI

ACCUSED: : PRESENT

**SENTENCE 22<sup>nd</sup>  
OCTOBER 2008**

## **Defence Counsel**

### **[1] MITIGATION**

The accused is 26 years old today. At the time of the commission of the offence she was 21 years old and therefore young. She had two minor children with the deceased and the eldest was 6 years old while the younger one was 4 years old. This means that she became a first time mother at 15 years. On the day of her arrest the two children were taken away from her by the deceased's relatives and to date she has not seen them.

[2] She is pregnant and is on her 9<sup>th</sup> month. It has been submitted that she is a first offender and I urge the Court to extend the mercy that is normally extended to first offenders to her. She was incarcerated for 5 months and I submit that she now knows what real life is. I submit that to send someone to gaol is for purposes of correcting that person. In the present case there is no evidence that she committed any other offence after the five months.

[3] I humbly submit that she is corrected. She has pleaded guilty and a plea of guilty is a sign of penitence on the part of the accused. I am aware that sentencing is the discretion of the Court but I ask the Court to consider a wholly

suspended sentence. She is unemployed and relies on her new boyfriend and parents for support.

[4]            **STATE COUNSEL**

On the purpose of sentencing, Counsel says the purpose is to correct but we submit that correcting is but one of the many reasons that one takes into account. Retribution is one and retribution is closely related to building the confidence of law abiding citizens.

[5]            In the short period that my lady has been in this country, these killings are so rampant. Day in, day out, the Court is made to decide on such cases. This one is unfortunate because the victim died. The deceased's children were deprived permanently of their father. The relatives of the deceased have nothing but the sentence of this Court as solace.

[6]            It has been stated that she has constriction because she pleaded guilty. She accepts that a wrong was committed and is therefore willing to pay for it. It is the impact on the society that is paramount. I submit that a wholly suspended sentence is nothing but a pat on the back. It will not send out the required message of this Courts abhorrence of this offence.

[7]            **SENTENCE**

This is a case where the deceased was quite obviously the real aggressor. He started the assault on the then 21 year old woman. She had to run out of the house through a window, because the deceased had locked her inside the house and hidden the key and was assaulting her. Her defence of herself became excessive and reckless as to be consequences of her actions.

[8]            She was 21 years old then and I am prepared to grant her the excesses of youthful exuberance. She has pleaded guilty, which in a way shows remorse. She is nine months pregnant and about to give birth to a child. I am informed that after this unfortunate incident her two older children were taken away from her till this day. She is a first offender and as indicated above was quite young at that time.

[9]            I have anxiously considered what an appropriate sentence could be in this case, and have come to the decision that given her personal circumstances and most importantly the fact that the deceased died of a single injury, which was obviously caused in the spur of the moment, given the situation she was in, I should temper justice with mercy.

[10]          I am aware that I should consider what is

acceptable to society and balance it with the antecedents of the accused. I should state that in doing so, I have considered that the same society took her two young children away from her, and to me this is a very serious trauma especially for the young mother she then was. Although^ I have not been asked to, this Court bears the responsibility to her unborn child as the upper guardian of the child. ; \*

[11] I cannot ignore the fact that s]ie is about to deliver a baby, and this is over and above her other antecedents. She has already spent 5 months in gaol. In this circumstances I will very exceptionally sentence her as follows:

1. She is sentenced to 4 years imprisonment
2. The four years shall be wholly suspended for a period of 3 years, on condition that she is not convicted of any offence of which violence of any kind is an element.

S.M. MONAGENG

JUDGE