

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Criminal Case No. 48/2008

REX

Vs

SANDRA EVONE SITHOLE

Coram: S.B. MAPHALALA – J

For the Crown: MR. S. FAKUDZE

For the Accused: MR. S. BHEMBE

JUDGMENT ON SENTENCE

13<sup>th</sup> March 2008

[1] The accused person has been convicted of the crime of culpable homicide after being indicted for the crime of murder. It is alleged in the indictment that upon or about 24<sup>th</sup> December 2005, and at or near Manganganeni area in the Hhohho Region, the said accused did unlawfully and intentionally kill one Khanyisile Mnisi.

[2] A Statement of Agreed Facts was read into the record to prove the commission of the offence.

For purposes of the record the said statement reads as follows:

1. The accused pleads guilty to culpable homicide and the Crown accepts the plea;
2. Upon or about 24<sup>th</sup> December 2005, and at or near Manganganeni area, the accused did unlawfully and negligently kill Khanyisile Mnisi;
3. The accused accepts that the deceased died as a direct consequence of her unlawful and negligent conduct;
4. The deceased died "due to stab wound to chest; inflicted upon her by the accused with a knife. The report on post mortem examination on the body of the deceased be submitted to form part of the evidence;
5. The accused and the deceased shared a boyfriend, one Michael Mandlazi. However, the accused and the said Michael Mandlazi were living in courtship.
6. On the fateful day, at around 20:00 hours, the accused returned to her house which she shared with her boyfriend. As she approached, she saw the deceased coming out of the house. She was infuriated and confronted deceased. A physical fight broke out between the two, and the accused was the aggressor. The fight was, however stopped by their boyfriend. The accused, without being noticed swiftly advanced towards the deceased and stabbed her once on the chest with a knife. The deceased collapsed and lay motionless on the spot. She was certified dead upon arrival at the hospital.
7. The accused was arrested on the same day, 24<sup>th</sup> December 2005 and has been in custody ever since.

[3] In mitigation of sentence Counsel for the accused submitted a number of facts as follows:

- (i) That accused asks the court to be lenient as she pleaded guilty and did not waste the court's time.
- (ii) That at the time of the commission of the offence she was 19 years old and has two minor children one born in 2001 and the other 2003.
- (iii) That the accused acted in rage and fits of the jealousy after seeing her

boyfriend with another woman.

[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] Having considered the above-cited legal principles it appears to me that what happened in the present case is contained in the old adage that "hell has no fury like a woman scorned". Indeed, accused acted in fury after seeing her lover in the arms of another woman. The accused has been in custody since the 24<sup>th</sup> December 2005, and it is my considered view that she has learnt of the sanctity of life during this period of incarceration.

[6] In the result, for the afore-going reasons the accused is sentenced to 7 years imprisonment 5 years of which is suspended for a period of 3 years on condition that accused is not convicted of an offence in which violence is an element committed during the period of suspension backdated to the 24<sup>th</sup> December 2005.

**S. B. MAPHALALA**

**JUDGE**