

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIM. CASE NO. 229/08

In the matter between:

REX

v

LWAZI KNOWLEDGE MYENI

CORAM

Q.M. MABUZA -J

FOR THE CROWN

MR. M. NXUMALO OF THE
DIRECTORATE OF PUBLIC
PROSECUTIONS

FOR THE ACCUSED

MR. N. MANANA OF B.S.
DLAMINI & ASSOCIATES

JUDGMENT ON SENTENCE 21/4/11

[1] On the 4th November 2010, I found the Accused guilty of the crimes of murder and rape. I now have to decide whether or not in respect of the conviction of murder there are extenuating circumstances.

[2] Mr. Manana, attorney for the Accused has stated that the Accused was young and immature when the offence was committed. He was 18 years old. He acted in the heat of the moment when he held the deceased by the neck squeezed and

let her go. The murder was not premeditated. The weapon used namely his arm was not as lethal as the run of the mill dangerous weapons such as a knife or firearm. He felt provoked by the deceased at the time.

[3] Mr. Nxumalo for the Crown has argued that there are no extenuating circumstances. He has submitted that there was no provocation as the response by the deceased to the Accused's question did not amount to provocation nor could the words she offered have deprived the Accused of his self-control and what he did was intended by him.

[4] Mr. Nxumalo's argument is that the youthfulness of the Accused itself is not an extenuating circumstances but it may in conjunction with other factors, amount to an extenuating circumstance.

[5] In the matter of Rex v Maponi Celani Ngubane and 3 Others, Criminal case No. 46 of 2002 (unreported) Masuku J in his erudite judgment cited the dictum of Holmes J in the case of S v Letsolo 1970 (3) SA 476 (A) wherein the learned Judge said of extenuating circumstances.

"Extenuating circumstances have more than once been defined by this Court as any facts bearing on the commission of the crime, which reduce the moral blameworthiness of the accused, as distinct from his legal culpability. In this regard, a trial Court has to consider -

- a. whether there are any facts which might be relevant to extenuation, such as immaturity, intoxication or provocation (the list is not exhaustive);
- b. whether such facts, in their cumulative effect, probably had a bearing on the accused's state of mind in doing what he did;
- c. whether such bearing was sufficiently appreciable to abate the moral blameworthiness of the accused in doing what he did."

In deciding (c) the trial Court exercises a moral judgment. If its answer is yes, it expresses its opinion that there are extenuating circumstances."

[6] It is common cause that the accused was young when he committed the murder. He was about 18 years old. He was still in junior high school, Form II. His youth and consequent immaturity is a material factor which I shall take into account together with other factors. On the night of the murder when he walked the deceased home he asked her to pay him some money that she owed him for walking her home on the previous day. She responded that she had no money for boys. He was provoked by her response and immediately encircled her neck with his arm applied pressure, dispossessed her of her mobile phone and chain. He released her and she fell. At the same time he informed her that he would return her mobile phone and chain when she had paid him. She was alive when he left her because she spoke to him and threatened to report the Accused to a male friend of hers. This was not a cold-blooded merciless act but it was an act

which occurred on the spur of the moment. He acted impulsively and as an immature person might act in those circumstances.

[7] I find therefore that there are extenuating circumstances in the present case which in my view abate the moral blameworthiness of the accused in what he did.

[8] Coming to mitigating factors in respect of both the murder and rape charges, it is common cause that the accused is a first offender and that he has been in custody since his arrest on the 2nd February 2008.

[9] At the time of the commission of the offences he was very young and still at school, in junior high school. Mr. Manana has submitted on his behalf that he is still a young man who will live the rest of his life with a guilty conscience of having caused the death of a person and raped another I might add.

[10] Mr. Manana has further submitted that this court should also take into account that the Accused was raised by a single parent, his mother who had great hopes that he would grow up to be a successful person. Also that he was a great help to his mother.

[11] Mr. Manana requested the court to be lenient on the Accused and to pass a sentence that would allow him to come out of prison a reformed and responsible member of society.

[12] Mr. Nxumalo for the Crown on the other hand submitted that the mitigation factors advanced on behalf of the Accused should not deprive the Court from taking into account the fact that the Accused committed very serious crimes that of murder and rape. That the Accused killed a defenseless woman who had entrusted her life to him and that he became a monster to her. That her mother had lost a daughter.

[13] Mr. Nxumalo submitted that cases of women being murdered are rising at an alarming rate and that the Court should put a stop to them by imposing stiff sentences to deter would be offenders and to remove the accused from society.

[14] Mr. Nxumalo implored the Court to send a message to men that women were equally important as men and also had rights to life.

[15] In respect of the charge of rape, Mr. Nxumalo submitted that the Court should consider that the Accused raped a pregnant woman who was in severe pain as she was in labour. That he continued to rape her even after she had told him that she was in labour; this Mr. Nxumalo states showed that the Accused was a heartless man and that his youth should not be taken into account as a mitigating factor.

[16] In passing sentence I have taken into account the submissions from both Mr. Manana and Mr. Nxumalo. I recall the agony of the mother of the deceased as she gave evidence upon finding out that the corpse outside her gate on the side of the road was her dead daughter. I recall too the trauma of Bonsile Dlamini as she retold of her ordeal in the hands of the Accused.

[17] Nevertheless I still have to find a medium, pass a sentence that is also tempered with mercy. The Accused is a young person and must be given a chance to reform. At the same time I must consider society's horror at what he has done and pass a sentence that is both just, merciful and a deterrent to other would be offenders.

[18] The Accused is sentenced as follows:

(a) In respect of the charge of murder the Accused is sentenced to 15 years imprisonment without an option of a fine.

(b) In respect of the charge of rape, the Accused is sentenced to 15 years imprisonment without an option of a fine.

(c) The sentences in (a) and (b) above are ordered to run concurrently and are both backdated to the 2nd February 2008, the date on which the Accused was arrested.

G.M. MABUZA

JUDGE OF THE HIGH COURT OF SWAZILAND