



IN THE HIGH

COURT OF ESWATINI

JUDGMENT

Case No. 305/2012

In the matter between:

REX

And

NCAMSILE TSABEDZE

Neutral citation: *Rex v Ncamsile Tsabedze (305/2012) [2020] SZHC 64 (24 July 2020)*

Coram : **T. L. Dlamini J**

Heard : 18/10/2017 up to 29/04/2020

Delivered : 24 July 2020

Summary: *Criminal law – Murder – Accused person charged with the murder of her new born baby – Accused recorded a confession before a Magistrates’ court – The defence attorney put to the crown witnesses that the accused suffered what is called ‘postpartum depression’ – A medical specialist on Psychiatry and Mental Health was subpoenaed to testify – Accused elected to exercise her constitutional right not to give evidence at the trial.*

Held: *That on the basis of the evidence of the medical specialist, the accused did not suffer a postpartum depression – And that the accused is guilty of the murder of her new born baby.*

Held further: *That on consideration of the psychological factors which the legislator recognizes in the Proviso to s.296 (1) of the Criminal Procedure and Evidence Act, 1938, and the absence of an infanticide law, the accused is sentenced to imprisonment for 1 year.*

JUDGMENT

Background

- [1] Ncamsile Tsabedze is an accused person who is before this court indicted on a charge of Murder. The Indictment states that upon or about the 09 March 2012 and at or near Nkoyoyo area in the Hhohho Region she unlawfully and intentionally killed an unnamed baby and did thereby commit the crime of Murder.
- [2] The crown led five witnesses to prove its case. In agreement with the attorneys for the crown and the defence, the court subpoenaed a medical specialist in Psychiatry and Mental Health, Dr. Violet Mwanjali, to give evidence on ‘postpartum depression’, a psychological condition which the defence submitted to have been suffered by the accused when committing the offence.
- [3] The accused elected not to give evidence at the trial. In so doing, she exercised a constitutional right granted to accused persons by s.21 (9) of the Constitution of the Kingdom of Eswatini, Act 001 of 2005. It provides as quoted below:

“21 (9) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial.”

- [4] The above mentioned Constitutional right is also provided for by **s.174 (5)** of the **Criminal Procedure and Evidence Act of 1938 (as amended)**. The section provides as quoted below:

“174 (5) At the close of the evidence for the prosecution the proper officer of the court is required to ask the accused, or if more than one, each of them, or his legal representative, if any, whether he intends to adduce evidence in his defence.” (own emphasis)

Evidence of the crown

- [5] The first witness for the crown (PW1) is Dr. R.M. Reddy. He is a Police Pathologist and conducted a post-mortem examination on the body of the new born baby that the accused is alleged to have killed.
- [6] PW1 testified that he conducted the post-mortem on a male new born who was identified by a police officer with force number 4869 and by the accused who is the mother. He further testified that his examination revealed that the new born baby was born alive and that the death was caused by injuries inflicted on the neck. Three were on the right to the midline, one to the midline and one on the left side to the midline. The fatal injury was inflicted on the right side of the neck. This injury went deep into the neck bone and injured a vessel, hence the right-side carotid artery was torn. This is the blood vessel that delivers blood to the brain and head. Due to the torn carotid artery, blood going to the brain was reduced as it leaked into the

body instead of going to the brain. As a result, the brain became pale, according to PW1.

[7] During cross-examination it was put to PW1 that the new born was not alive at the time of his birth but was already dead. This was denied by PW1 who stated that the hydrostatic test of the lungs showed that the new born was born alive. It was put to PW1 that the congestion observed in the baby's left eye, as column 22 of the post-mortem examination report reflects, is proof that the eye was not working because the new born was already dead at the time of his birth. PW1 responded by stating that a congestion is a sign that the baby was alive. He explained that congestion only occurs on living things and cannot be seen on dead things. On human beings, it only occurs on a living person.

[8] The crown's second witness (PW2) is Mthobisi Pascal Shongwe. He testified that in March 2012 he resided at home in Nkoyoyo with his grandfather Leonard Shabangu, grandmother Grace Simelane, Ncamsile Tsabedze (the accused) and another guy whose name he has forgotten. He further testified that on the 9 March 2012 at around 11:00 hours he was asked by his grandfather about a funny smell in the yard. Then at around 13:00 hours his grandfather instructed them to pursue the accused who was fleeing from the homestead.

- [9] PW2 further testified that they pursued the accused. While she was being pursued, she carried a handbag that she opened and removed a plastic bag from inside and put it down. PW2's grandfather was following them behind and told this witness (PW2) to take the plastic bag. The plastic bag was black and had the shape of a ball, according to PW2. He took it and walked back with it to his grandfather. The accused stopped running away and followed him slowly as he walked back to his grandfather with the plastic bag.
- [10] This witness further testified that they thought the plastic bag had meat inside but when his grandfather opened it they saw hair and an ear protruding and his grandfather then stopped opening it. He then called all those who were present, including this witness' grandmother. Police were thereafter called but delayed to arrive. At around 17:00 hours this witness' grandfather then asked another man to take the accused to the police station.
- [11] PW2 was asked in-chief if he can tell whether the accused was pregnant at around that time. His response was that he was not aware about any pregnancy but stated that the accused had a tendency of wearing a big jacket, hence he suspects that she was pregnant.
- [12] During cross-examination, PW2 was asked if the accused was running away or walking when they pursued her. His response was that she was running away as they even caught up with her at a distance.

[13] PW2 was then informed by the defence attorney that after catching up with her, she easily complied with what they instructed her to do and she returned back with them without any resistance. It was then put to PW2 that this conduct is not consistent with that of someone running away. This witness agreed but stated that the accused could not continue to run away as she knew that they would catch-up with her.

[14] It was also put to PW2 that the accused was crying and feeling remorseful when the plastic bag was opened. PW2 stated that she noticed the accused person crying when the police were called.

[15] The third crown witness (PW3) is Ndumiso Shongwe. He is a former Magistrate before whom the accused recorded a confession. He testified that the accused came to his Chambers on the 15 March 2012 and informed him that she came to make a confession concerning a crime that she was alleged to have committed. He further testified that before recording the statement, he made sure that the only people present were himself, the court interpreter Mbuso Dlamini and the accused person. He also made sure that no other person heard what they talked about.

[16] PW3 also testified that before he recorded the confession, he satisfied himself that the accused came to make the confession freely and voluntarily. He did so by asking her certain questions. On being satisfied that the

confession was being made freely and voluntarily by the accused, PW3 then recorded the confession. He used English language and the interpreter translated from English to Siswati. The confession was read for the record. It reads as quoted below:

“On the 5/3/12 I gave birth to a child at Nkoyoyo in my house, at the homestead where I was employed. I throttled the child and put into a plastic.

I kept the plastic in the house until Friday the 9/3/12.

On the 9/3/12, I told my employer that I was quitting my job. In turn she told her husband. Her husband told me to leave and that I will not get any money from them.

I bathed and packed all my belongings. They requested to look into my bag. They took the plastic and they found the dead child inside.

They immediately called the police, who did not arrive. Eventually they took me to the Police station. That is all.”

- [17] On cross-examination, the defence attorney informed PW3 that the accused has seen the confession and instructs him that the word “throttled” which is used is a bit harsh to be used as she said that she touched the baby’s veins around the neck in order to see if there was any pulse. The defence attorney stated that the accused said that she applied force around the neck and did not tell PW3 that she throttled the baby. In response, PW3 stated that they were using the Siswati language on that day and the interpreter translated to English. He maintained that the word “throttled” is the correct translation of the Siswati word that the accused used and that she even signed the confession.

[18] The fourth crown witness (PW4) is Mbuso Dlamini. He was the court interpreter on the day the accused made the confession. PW4 testified that the accused came with a police officer who informed him that the accused came to record a confession. He then informed the Magistrate (PW3) about their presence and the Magistrate directed him to bring them in. The police officer introduced themselves to the Magistrate and the accused was allowed to take a seat while the police officer was asked to excuse them. After the police went out PW4 closed the door and only the Magistrate, the accused and himself remained inside the Magistrate's Chambers.

[19] PW4 also testified that the Magistrate introduced himself and PW4 to the accused. He then asked the accused to say what she wanted him to know and to record as her confession. Before she could say anything, the Magistrate told the accused that she should be free and tell him what is in her heart. She also informed her that whatever she will tell will be recorded. PW4 further testified that the Magistrate then asked the accused questions that are meant to ascertain if the accused person freely and voluntarily decided to make the confession.

[20] According to PW4, the confession was made by the accused in Siswati and he translated it to English. At the end, the Magistrate read the confession in English and he translated it back to the Siswati language. On being asked by the Magistrate, the accused confirmed that the confession is a true reflection of what she said and meant. The accused then signed it, and PW4 and the Magistrate signed it as well.

[21] PW4's attention was drawn to the word "throttled" which is used in the confession and was then asked in-chief to tell the court the exact *Siswati* word that he translated to "throttled". His response was that the accused used the word '*kukhama*'. He was then asked to tell the court about how he would have translated the words "I applied force or pressure". His response was that he would have translated that to read "*ngase ngifaka emandla or ngase ngibamba ngiyacinisa*".

[22] During cross-examination, PW4 was asked about the use of the word 'throttled'. He was told that the accused used the word 'pressure' and that she used it because she was telling about an attempt that she made to feel the pulse on the neck of the baby. This was denied by PW4 who stated that the accused used the word '*kukhama*'. PW4 was told by the defence attorney that he was instructed by the accused that she used the words "**I used pressure**" and not 'throttled'. This was however denied by PW4.

[23] The crown's fifth witness (PW5) is police officer 4869 D/Const. Sijabulile Fakudze. She works under the police Domestic and Violence Unit in the CID Section. She testified that on 10 March 2012 whilst stationed at Mbabane Police Station she received a report of a birth concealment that she investigated. The reporter was Grace Simelane of Nkoyoyo. She reported that she found a plastic inside the bag of her domestic helper who was then leaving her homestead. The plastic contained the body of a dead small baby. At the time, the suspect was already in the custody of the police and the dead

body was at the morgue. It was her evidence that she went to the police cell and introduced herself to the accused as a police officer investigating the murder of her new born baby.

[24] PW5 also testified that after having cautioned the suspect according to the Judges' Rules, the suspect elected to say something. Thereafter she took her to the Mbabane Government Hospital where she was examined by a doctor to determine if she was pregnant and gave birth. Indeed the doctor's examination confirmed that the accused was pregnant and has given birth. PW5 then arranged for a post-mortem which she attended with the accused. The dead body of the baby was wrapped with many plastics. When the plastics were untied, a pair of scissors fell down.

[25] She further testified that when the dead body was on the examination table, she noticed that the neck had wounds on the left, right and centre parts. The wound at the centre was bigger than the others. Worms had started to come out of these wounds. After gathering evidence, PW5 cautioned the accused who thereafter said something. She then formally charged her for the murder of her new born baby. Having indicated her willingness to tell about what happened, the accused was taken to a Magistrate where she recorded a confession.

[26] During cross-examination, it was put to PW5 that it is strange that a mother would kill her own baby. PW5 agreed that it is strange but explained that it

does however, happen. She was also asked if she agrees that the accused was under some challenging mental condition at the time she committed the offence. PW5 answered by stating that it is difficult for her as a police officer to say that the accused suffered any form of mental condition at the time. She explained that only experts on mental health can make that conclusion. When PW5 was further asked about why she did not take the accused for mental evaluation as she has testified that her conduct of killing the new born baby was strange, she responded by stating that any suspected mental condition should have been noticed by the doctor who examined the accused when she was taken to the hospital to determine if she was pregnant and had given birth.

[27] Lastly, PW5 was asked if she knows or has heard anything about a mental condition called post-natal depression. Her response was that she has heard from doctors that immediately after birth, the mother suffers from a certain mental condition that causes depression.

[28] A medical report that was prepared by a doctor at the government hospital when the accused was taken for determination of whether she was pregnant and has given birth was handed-in by consent of the parties' attorneys. The report was read into the record. It reflects that the patient (accused) was pregnant and gave birth. Its date stamp is for 12 March 2012 and was admitted as part of the crown's evidence and marked as EXHIBIT "C".

- [29] The crown then closed its case. The defence informed the court that it will not lead the accused in evidence but wish that a doctor be called in order to give evidence concerning the mental condition of mothers immediately after giving birth.
- [30] Pursuant to the defence attorney's expressed wish that a doctor should be called in order to testify about the mental condition of mothers immediately after giving birth, the court subpoenaed a specialist from the National Psychiatric Referral Hospital. Dr Violet Mwanjali who is a Medical Specialist; Psychiatry and Mental Health, responded to the subpoena and attended the trial and was led in evidence and cross-examined. This was after she had performed an assessment and an examination of the accused. She prepared and submitted a report of her assessment findings.
- [31] According to the examination report, the doctor came to the conclusion that the accused is of sound mind, is able to think clearly, make a decision and put thoughts into meaningful words. She further concluded that the accused was able to appreciate the consequences of her actions at the time she committed the offence. She was however reminded by the defence attorney that the issues before this court happened in 2012 and the assessment was done in 2019. She was then asked if there are any challenges caused by the lengthy delay of doing the assessment. In response the doctor stated that there are no challenges as the assessment and examination was on a person who was able to recall everything that happened. She further testified that as clinicians, they are able to make clinical and clean evaluations irrespective

of the time period that has elapsed. The only challenge is when the person to be assessed and evaluated is of very old age and cannot recall what happened. The doctor further stated that there are clients of old age who are able to remember, hence if there is any challenge, it is with that individual client.

[32] The doctor conceded that some women suffer the postpartum effect. It causes the mother to be a danger to herself and to the baby as well. Most of these conditions require medical treatment for the woman to regain her sound mind. The woman, according to the doctor, would require extensive admission and treatment.

[33] It was put by the defence attorney to the doctor that when the incident occurred in 2012 the accused was not in her normal mind condition but suffered from the postpartum effect. The doctor informed the court that she did extensive assessment of the mind of the accused and went back to 2012 during her pregnancy. She found and concluded that there are no signs which suggest that she had a mental problem. She only had a depression that was caused by the unknown outcome of the case that she is facing and this was not present before then. She further testified that only a person with a severe state of the postpartum effect would commit the offence which the accused has been charged with, and that such person would not have regained her mind even today without being treated.

[34] The doctor further testified that police officers know the symptoms of people who are mentally challenged and they bring them to the National Psychiatric Referral Hospital very often. The fact that the police did not bring the accused to the Psychiatric Hospital is a sign, in her opinion, that they did not notice any unusual thing about her mind.

[35] The doctor was asked by counsel for the crown about how she would define the postpartum condition. In response the doctor testified that the condition normally presents itself in abnormal behavior which is characterized by violence, aggressive behavior, lack of self-care and overly talkative. Some people do not talk however. These people need medical attention, according to the doctor, as the condition does not heal on its own.

[36] The doctor was further asked by counsel for the crown if the postpartum condition doesn't occur simply because a woman is giving birth. Her response was that she declares that as truly correct. She further testified that there are few women who suffer from the postpartum condition.

Analysis of the evidence

[37] The evidence of the doctor (pathologist) is that the baby was born alive and the death was caused by injuries inflicted on the baby's neck. The fatal injury went deep into the neck bone and injured a vessel and a carotid artery was torn on the right side of the neck. This torn blood vessel delivers blood

to the brain and head. As a result, the blood going to the brain was reduced as it leaked into the body instead of going to the brain.

[38] The doctor's finding is consistent with the confession which the accused made before former Magistrate Ndumiso Shongwe (PW3). The confession states that on the 5 March 2012 the accused gave birth to a child at Nkoyoyo in her house at the homestead where she was employed. She throttled the child and put it into a plastic bag and kept it in the house until 9 March 2012.

[39] Murder is defined by **His Lordship Leach JA** of the Supreme Court of Appeal of South Africa in his judgment in the matter of the **Director of Public Prosecutions, Gauteng vs Pistorius (96/2015) [2015] SZSCA 204 (3 December 2015)** as "*the unlawful and intentional killing of another person.*" (para [25]).

[40] **Leach JA** also states in the same paragraph that "*In order to prove the guilt of an accused on a charge of murder, the state must therefore establish that the perpetrator committed the act that led to the death of the deceased with the necessary intention to kill, known as 'dolus'.* Based on the evidence placed before court, I find that the accused caused the death of her new born baby.

[41] In order for the crown to secure a conviction on a charge of murder, it needs to prove intention to kill on the part of the accused. For a murder charge, intention is in two forms. There is *dolus directus* and *dolus eventualis*. The first occurs when the accused decides and deliberately sets out to kill another person whilst the latter occurs when the accused has not consciously taken the decision to kill but his action is such that death might occur from his act but he nonetheless carries on with such act reckless as to whether death occurs or not. **See: The King v Bongani Bavukile Dlamini (333/2014) [2017] SZHC 143 (01 August 2017).**

[42] In the case of **R v Motsa (3/1999) [2000] SZHC 8 (08 March 2000)**, His Lordship Masuku J cites with approval **Kotze JA in Rex v Jollyand 1923 AD 176 at 187** who states that “*The intention of an accused person is to be ascertained from his acts and his conduct.*”

[43] In the case before court the accused fell pregnant but concealed the pregnancy so that no one may become aware that she is pregnant. When PW2 who resided in the same homestead with the accused at Nkoyoyo was asked if the accused was pregnant at the relevant point in time, his response was that he was not aware about any pregnancy and stated that the accused had a tendency of wearing a big jacket. He therefore suspects that she was pregnant.

[44] The inescapable conclusion that I arrive at is that the accused did not want anyone to see and notice her pregnancy because she planned to kill the baby

at birth. I accordingly find that the crown has proved intention in the form of *dolus directus* on the part of the accused.

[45] Counsel for the defence submitted and argued that the accused suffered from what is known as postpartum depression. According to an online Diseases Dictionary, *“the birth of a baby can trigger a jumble of powerful emotions, from excitement and joy to fear and anxiety. But it can also result in something you might not expect – depression.*

[46] The online Diseases Dictionary continue to state what I quote below:

“But some new moms experience a more severe, long-lasting form of depression known as postpartum depression. Rarely, an extreme mood disorder called postpartum psychosis also may develop after childbirth.

Postpartum depression isn’t a character flaw or weakness. Sometimes it’s simply a complication of giving birth. If you have a postpartum depression, prompt treatment can help you manage your symptoms – and enjoy your baby.

Symptoms

Signs and symptoms of depression after childbirth vary, and they can range from mild to severe.

Postpartum depression symptoms

... the signs and symptoms are more intense and last longer, eventually interfering with your ability to care for your baby and handle other daily tasks.

Postpartum depression symptoms may include:

- **Depressed mood and severe mood swings**
- **Excessive crying**
- **Difficulty bonding with your baby**
- **Withdrawing from family and friends**

- **Loss of appetite or eating much more than usual**
- **Inability to sleep (insomnia) or sleeping too much**
- **Overwhelming fatigue or loss of energy**
- **Reduced interest and pleasure in activities you used to enjoy**
- **Intense irritability and anger**
- **Fear that you're not a good mother**
- **Feeling of worthlessness, shame, guilt or inadequacy**
- **Diminished ability to think clearly, concentrate or make decisions**
- **Severe anxiety and panic attacks**
- **Thoughts of harming yourself or your baby**
- **Recurrent thoughts of death or suicide**

Untreated, postpartum depression may last for many months or longer.

[45] On the basis of the evidence placed before this court, I am satisfied beyond reasonable doubt by the evidence of the crown that the accused caused the death of her new born baby. And based on the evidence of the Medical Psychiatry and Mental Health Specialist, Dr. Violet Mwanjali, I am satisfied that the accused did not suffer from postpartum depression. I am also satisfied, beyond reasonable doubt, that the intention to kill the baby has been proved on the evidence of the crown. For the foregoing, I find the accused guilty of the murder of her new born baby.

SENTENCE

[46] In mitigation, comprehensive submissions were made by the crown and the defence attorneys and I am grateful for that effort. Even at this stage of the proceedings the accused did not take the stand to give evidence in mitigation but left everything in the hands of her attorney. It was submitted on her behalf that she is a first offender. This was confirmed by the crown. It was also submitted that the accused cooperated with the police during investigations and even recorded a confession where she confessed to having committed the offence and how she carried it out.

[47] It was further submitted on her behalf that she committed the offence at the age of 27 years and she was young at the time as childhood ends at 35 years. She has a minor child aged 12 years and the court was urged to impose a lenient sentence so that the accused may return home to take care of the minor child. She is not married but is a single parent.

[48] The defence attorney also submitted that he has been instructed by the accused that she is still haunted by the act of ending the life of her new born baby and is not at peace with it. That experience alone is a sentence on its own. It was submitted that it was put to the crown witnesses that the father of the child distanced himself from anything that had to do with the baby and that fact is an extenuating factor to be considered by the court.

[49] The defence attorney implored the court to have regard to the proviso to **s. 296 (1)** of the **Criminal Procedure and Evidence Act of 1938 (as amended)** which recognizes that the balance of the mind of a mother after giving birth is disturbed, hence this state of mind leads mothers to committing the offence which the accused before court has been charged with. In similar matters, this court has held that Parliament has to enact a law that governs ‘infanticide’ and specifically provide for such offences. **See: Hlalisile Thwala v Rex, High Court Criminal Case No.108/2006 (unreported); Rex v Nontsetselelo Simelane (436/2013) [2014] SZHC 175 (07 August 2014) and Rex v Hlobisile Manyatsi (350/2013) [2019] SZHC (28 November 2019).**

[50] In the **Hlalisile Thwala (supra)** case, **Her Lordship Monageng J**, states what I quote below:

“One other observation I want to make is that, the legislature, because of the possible existence of puerperal insanity in such cases, should consider enacting a criminal offence called infanticide for this type of cases. This will comply with international trends and standards and also with the Criminal Procedure and Evidence Act to some extent.”
(para [27])

[51] Section 296 (1) referred to in the paragraph above provides as quoted below:

“296 (1) Sentence of death by hanging shall be passed by the High Court upon an offender convicted before or by it of murder, and sentence of death by hanging may be passed by such court upon an offender convicted before or by it of treason:

Provided that where a woman by any willful act or omission causes the death of her child under the age of twelve months, but at the time of such act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to such child ... , then, notwithstanding that the circumstances were such that but for this proviso the offence would have amounted to murder, she shall be guilty of culpable homicide and may be dealt with and punished accordingly:” (own emphasis)

[52] I concur with the observation of the Judges who have handled matters similar to this one that the above quoted provision recognizes that the mind of a mother is disturbed after giving birth and has to recover from the effect of giving birth. For this reason, they have held that mothers who have killed their new born babies are to be immediately taken for mental evaluation and assessment by a doctor.

[53] I am alive to the fact that *in casu*, a Psychiatry and Mental Health Medical Specialist gave evidence and was cross-examined. It is still of fundamental importance however, that the mental evaluation and assessment of the mother should be done immediately or as soon as it becomes practicable. In the present case, the mental evaluation and assessment was done in September 2019, more than seven years after the new born baby was killed by its mother. This fact somehow diminishes the crown's strength of the evidence concerning the mental condition of the accused mother at the time of committing the offence.

[54] The defence attorney submitted that there is leniency which this court has exercised in such cases and reference was made to the judgments in the cases of **Hlalisile Thwala (supra)** and **Nontsetselelo Simelane (supra)**. In the former the accused was sentenced to two years eight months imprisonment, a period that the accused had already spent in custody, and in the latter case the accused was sentenced to one year imprisonment. There is also another judgment in the case of **Hlobisile Manyatsi (supra)** where the accused was also sentenced to one year imprisonment. This court was implored to take a similar approach and be lenient to the accused.

[55] The crown submitted that the court has not been assisted by the accused and her attorney in finding out how and why the accused committed the offence in the manner that she did. This is because no evidence was tendered by the accused during the trial. Counsel for the crown however informed the court that what can be deduced from the submissions by the defence is that the

accused had problems with the father of the child. The crown further submitted that the truth can only be determined by asking the accused questions, an opportunity that the crown did not have because the accused elected not to give evidence at the trial.

[56] Counsel for the crown further submitted that in the similar cases which this court has determined, the accused persons gave their version yet that was not the case *in casu*. This fact differentiates this case from those other cases, submitted the crown. Another differentiating factor is that a Psychiatry and Mental Health Medical Specialist was called and gave evidence in the present matter whilst this advantage was not enjoyed in the other similar matters which this court determined.

[57] The crown submitted that it accepts as an extenuating circumstance that the accused was rejected by the father of the child she was pregnant with. It also submitted that it concedes that the accused was young at the age of 27 years. It further submitted that the accused is shy and keeps to herself and this court may consider that as an extenuating factor that made it difficult for her to even stand before this court and give her version of how and why she committed the offence. Counsel also submitted that she tried to engage the accused but she showed a tendency of wanting to keep to herself, hence in the opinion of counsel for the crown, the accused could not open up concerning the problems she encountered in her pregnancy.

- [58] The crown further submitted that it does not have aggravating factors to submit but do take notice of the fact that the accused is remorseful. It therefore urged the court to be guided by the cases referred to by the defence in deciding on the sentence to impose.
- [59] Having taken into consideration the personal circumstances of the accused, the offence and the interest of society, and the sentences imposed by this court in previous similar matters, I have come to the conclusion that an appropriate sentence to impose is one (1) year imprisonment without the option of a fine, and it is so ordered. The period of imprisonment is backdated to take into account any period that the accused has spent in custody in respect of this offence.
- [60] The court was informed that the accused was arrested in March 2012 and was released on bail in December 2012. The court was however not informed about the specific dates of her arrest and release on bail. This detention period, if correct, is approximately nine (9) months. The accused was however remanded back into custody by this court on 23 April 2020. She has therefore today served another three (3) months in custody. If the period she spent in custody following her arrest and before being released on bail totals a full nine (9) months, I order that she should immediately be released from custody as she would have served the one (1) year imprisonment term.

T. L. Dlamini

T. L. DLAMINI

JUDGE OF THE HIGH COURT

For the Crown : Ms. E. Matsebula

For the Accused : Mr. S. Jele