



## IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIM. CASE NO. 43/2009

In the matter between:

**REX**

v

**DELISA TSELA**

<u>CORAM</u>	:	Q.M. MABUZA -J
FOR THE CROWN	:	MR. PHUMLANI DLAMINI OF THE DIRECTORATE OF PUBLIC PROSECUTIONS
FOR THE ACCUSED	:	IN PERSON

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JUDGMENT  
4/02/2010

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[1] The earlier proceedings of the 19/01/2010 are hereby expunged from the record. The accused was charged with two counts; namely:

**Count 1:** The accused is charged with the crime of attempted murder in that on or about the 16<sup>th</sup> August 2008 at or near Dambathi area he unlawfully and with intent to kill did shoot Sibongile Motsa with a .22 revolver.

**Count 2:** The accused is charged with the crime of contravening section 11 (1) read with section 11 (8) of the Arms and Ammunition Act 24/1964 as amended by section 6 of 1988 in that on or about the 18<sup>th</sup> August 2008 at or near Dwaleni area in the Manzini District the accused not being a holder of a licence or permit did unlawfully possess a .22 revolver.

[2] He pleaded guilty to both counts. The Crown accepted the pleas. A statement of agreed facts detailing the events that led to the commission of the offences was read into the record and filed off record as exhibit B. It is dated 19/01/2010. The medico-legal report was filed by agreement of the parties as exhibit A.

[3] The medical report reveals that the bullet entered on the right side of the chest but did not exit. X-ray revealed that the bullet was still lodged on the left side of the complainant's neck.

- [4] The agreed facts reveal that on the 16<sup>th</sup> August 2008, the accused telephoned the complainant who is the mother of his two children aged 5 and 2 years. She did not answer the phone; instead a relative answered. The complainant was apparently at her parental home at Bhunya. The accused had called her to inform her that he would be coming to see her.
- [5] Upon arrival at her home, the accused did not find her. He was in the company of Josephat December Dlamini (PW4). The accused left some groceries which he had brought for the children and together with PW4 went to look for the complainant.
- [6] Along the way they met the complainant and proceeded with her to a bar at Dambathi where they enjoyed some drinks.
- [7] They thereafter proceeded to the Dambathi bus station. The accused demanded that the complainant should leave with him. She responded that she had not been informed beforehand that she would have to leave with him. A scuffle ensued as the accused tried to force the complainant to go with him. This scuffle took place in full view of Phetsile Dlamini (PW3) and PW4.

[8] The accused produced a gun (a. 22 revolver) and fired once at the complainant and the bullet hit her. The accused walked off; and PW4 organised transport for the complainant. She was taken to the nearby health centre at Sappi Usuthu Forest. She was later transferred to the Raleigh Fitkin Memorial Hospital at Manzini where she was treated. The bullet was never extracted from the complainant's body. The revolver was handed in by consent as Exhibit 1. It was examined by the police armourer and found to be serviceable.

[9] The accused was found guilty and convicted in respect of both counts.

[10] In mitigation he requested this court to be lenient with him even though he did not exercise leniency towards the complainant. He stated that he was remorseful and that in the past he had not led an exemplary life. He informed the court that since his 16 month incarceration he had learnt how to lead an exemplary life. He had accepted the Lord Jesus Christ as his personal saviour and had become a changed person. He even leads religious services in the correctional services and this is the life he will lead once he has

been released from custody. He will no longer be harmful to society but will help others.

[11] He informed the court that he grew up in poverty without his parents who had separated, nobody taught him good morals. He wished to be released to enable him to look after his small family and the mother of his children. He hoped upon his release that he would be able to find a good job to enable her to get good medication.

[12] He stated that he no longer drinks and smokes. He has abstained from smoking since his incarceration. He is 34 years old. He attended school up to Form I. Before his arrest he was self-employed. He used to draw plans for chicken runs. He lived with the complainant and used to support her and their children. He had apologised to the complainant for this incident.

[13] He was arrested on the 18<sup>th</sup> August 2008 and is a first offender.

[14] In passing sentence I have taken the above submissions into account. I have also taken into account that the accused pleaded guilty and did not

waste the court's time. I have taken into account that the accused was drinking on that day.

[15] I have to take into account the circumstances of the victim. She walks around with a bullet in her body; a sad reminder that the accused almost killed her. I have to take into account the ease with which the accused obtained and kept an unlicensed firearm. I have to take into account the ease with which he used it on the complainant; a woman he was supposedly in love with and the mother of his children.

[16] I have to also take into account the interest of society which expects that offenders be punished as a deterrent to other would be offenders; especially gender based violence as this case is.

[17] The sentence of the court is as follows:

**Count 1:**

The accused is sentenced to 7 years imprisonment; two years of which are suspended for three years on condition that the accused is not convicted of any crime of which assault is an element.

## **Count 2**

The accused is sentenced in terms of section 11 (8) (c) (ii) of the Arms & Ammunition Act 24/1964 to 2 years imprisonment without an option of a fine.

The sentences in both counts are to run concurrently.

The firearm is to be forfeited to the state. The police are hereby ordered to destroy the firearm and to file with the Registrar of this court a certificate of destruction within three months of such destruction.

**Q.M. MABUZA-J**