

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

'MATEBELLO SEKANTSI

HELD AT BUTHA BUTHE

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lenohla
on the 10th day of June, 1991

The accused stands charged first in Count 1 with the crime of Murder; it being alleged that on the 14th December 1989 and at or near Phahameng, Khokhoba in the district of Berea she unlawfully and intentionally killed her newly born child. The accused pleaded guilty to this charge as it stood; but the explanation, later given by her counsel, was that by that she meant that she was pleading guilty to culpable homicide. The Crown's attitude towards this explanation was that it accepted the plea of culpable homicide offered by the accused. In Count 2 she was charged with contravention of Section 2(1) of the Concealment of Child birth Proclamation 3 of 1943, it being alleged that on 14th December 1989 she intentionally and unlawfully disposed of the body of a newly born baby with the intent to conceal the fact of its birth. To this count the accused pleaded guilty.

For the benefit of my assessors the Crown outlined what was involved in this case. First of all the Crown told us that the accused who had been pregnant and was obviously so before and up to the 14th of December 1989

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happened a day or two afterwards to have been not so obvious. The women who stayed with her reported the matter to the chief who in turn reported the matter to the police who investigated. There was a search for the body everywhere outside the house where the accused was staying, but it later turned out that the body had been concealed somewhere behind the articles in the house; and that it was kept in a cardboard box in a place where it couldn't easily be seen, perhaps the intent was that it was going to be disposed of at a later stage under, probably, cover of darkness.

The accused was charged with the two offences as set out in Count 1 and 2. She has been warned all along by police to report herself, and therefore hasn't been in custody. The accused is therefore convicted on her own plea on each count.

The accused's counsel in mitigation of sentence told the Court that the accused has four children and that in fact the fourth is the one who was disposed of. It was explained that the accused fell to the temptation of getting rid of her child because she feared that her husband would be cross with her because this child was not fathered by him.

I have been told that the accused feels awfully sorry and is ashamed of what the environment in her place of abode think of what she has done; and that she is going to, no doubt, suffer from tremendous social pressure. I am told that her husband is at home and is critically ill, and that the accused and he are not working.

My attitude to the fact that the accused committed this offence to hide or to escape the anger of her husband or even the community is that her fear is nothing worse than what she has done. In other words preservation of her pride at the expense of an innocent newly born baby is a

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very bad thing indeed, but what's worse is that the child's life was lost in the process.

I have no doubt in my mind she being a married woman and who had had three children before knew exactly what she was doing, when she indulged in sexual act that later led to the birth of this child. It also shows that she was not faithful to her husband.

As for the disgrace that she fears she is going to be subjected to, from the community in which she lives; it is a matter that she brought about to herself and she has only herself to blame because as I have said she is an experienced woman, albeit of only twenty five years of age, and must have known what the consequences were going to be.

Well, having said this, I have had regard to Section 314 of 1981 Act sub-section 2 which advises that in offences of this type the Court is at large to suspend the sentence. I therefore sentence the accused to a term of imprisonment for three years in Count 1 and in Count 2 to a sentence of 18 months imprisonment, both these sentences are suspended for two years on condition that the accused is not found guilty of an offence related to any of the offences tabulated under the counts, spelling out the charges preferred against her, committed during the period of the suspension.

J U D G E

10th June, 1991

For Crown : Mr. Qhomane

For Defence: Mr. Fosa.