

CRI/T/24/2001

IN THE HIGH COURT OF LESOTHO

In the matter between:

REX

and

'MATHISETSO RAKHOSI

Accused

JUDGMENT

Delivered by the Honourable Mr. Justice M.M. Ramodibedi

On the 13th August 2002

In this matter the accused is charged with murder it being alleged that during the month of September 1996 and at or near Ha Kappa in the district of Berea, she unlawfully and intentionally killed her newly born baby.

The accused pleaded guilty to culpable homicide and this plea was accepted by the Crown today the 13th August 2002.

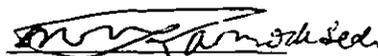
It becomes pertinent then to have regard to the provisions of section 240 (1) (a) of the Criminal Procedure and Evidence Act 1981 which reads as follows:

“(1) If a person charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on that charge, and the prosecutor accepts that plea the court may –

- (a) if it is the High Court, and the person has pleaded guilty to any offence other than murder, bring in a verdict without hearing any evidence;”

Applying the above mentioned section to the instant case and, satisfied as I am that the accused’s plea was unequivocal as well as made freely and voluntarily, I find the accused guilty of culpable homicide on her own plea.

My Assessors agree.



M.M. Ramodibedi

JUDGE

13th August 2002

For the Crown: Mr. Mokoko

For the Accused: Mr. Moruthane

SENTENCE

The Court is now enjoined to determine an appropriate sentence in the matter that is to say a sentence that will safeguard the interests of justice as well as the offender. It need hardly be

stated that although sentence is preeminently a matter for the discretion of the trial Court this discretion is not an arbitrary one but is one that must be exercised after due consideration of all the relevant factors. It is to that extent a delicate balance which must take into account the main principles of sentencing namely deterrence, prevention, reformation, rehabilitation and retribution.

I should mention that the accused has given evidence in mitigation of sentence. She has painted a pathetic picture of a woman deeply in distress. She gave birth to a child which was not fathered by her husband and the latter was extremely furious about it demanding the "removal" of the baby as he did not want an "unfathered" child in his house. A suggestion was made that the accused should take the child to its biological father – a dreadful thing on its own. She went and sought help from her paternal aunt in vain and on the way back to her home she threw the baby in a stream with running water. This is how it met its death.

There can be no doubt in my mind that the accused committed the offence she has been convicted of under extreme confusion and pressure from her husband. The Crown did not seek to challenge this version and fairly so. I find that she had also not

fully recovered from the effect of giving birth. This was only the fourth day. Accordingly there is every reason to believe that her mind was disturbed at the time of the commission of the offence (see Section 297 (2) (a) of the Criminal Procedure and Evidence Act 1981).

I have taken into account the fact that the accused is a first offender and that accordingly she has never clashed with the law before. She states on oath, and there is no reason to doubt her as she is unchallenged, that she will never repeat a similar offence. I have taken into account all that has been advanced by Mr. Moruthane on her behalf including her personal circumstances. She is aged 33 years and is married with 5 minor children. She is unemployed. She makes a living by selling fruits which she grows "sometimes".

I have also considered in favour of the accused the fact that she has admittedly now made peace with her husband. She has a 9 months old baby fathered by the latter.

Although this Court believes in the sanctity of human life I am satisfied that a suspended sentence of three (3) years

imprisonment will safeguard both the interests of justice and the personal circumstances of the accused as fully set out above. Moreover the Court is not unmindful of the fact that the case has been hanging over her head with the resultant anguish and mental torture for almost six years now.

Accordingly the accused is sentenced to three (3) years' imprisonment the whole of which is suspended for three (3) years on condition she is not, during the period of suspension, found guilty of an offence involving the killing of a human being.

My Assessors agree.


M.M. Ramodibedi
JUDGE
13th August 2002

For the Crown: Mr. Mokoko
For the Defence: Mr. Moruthane