

In the matter between

THE STATE

versus

NIHAOKXA GLACO

CORAM: LEVY. J.

Delivered on: 12/3/93

SENTENCE

LEVY, J. : It has been my unhappy duty to find the accused guilty of murdering her newborn baby. I found that there were extenuating circumstances. Extenuating circumstances are any factors which reduce the moral blameworthiness of the accused. These also influence the sentence which the Court must now impose.

Accused is ~~at~~, unsophisticated young Bushman girl, presently about 18 years of age. She was no more than 17 years old when this unfortunate deed was done. Never before had she been out of Bushmanland, but she was forced to come to Windhoek to take her 2-year old child out of hospital. This in itself must have been disturbing, particularly as she was 7 months pregnant at the time.

On her way back to Bushmanland and in the vehicle in which she was driven, she started to get contractions. The vehicle stopped, her premature baby which everyone with her

believed to be dead, was born to her. While those with her wanted to bury her baby there and then, she clutched the little fellow to her breast and he started breathing. It is natural and it is indeed the custom of the Bushman people that the mother keeps her baby with her after birth.

At the hospital, however, where she was taken to, she was put into a ward, her baby was put into an incubator in another room. She understood that the incubator was intended to help the baby, but this was an alien development in her life. In the hospital, no-one could talk to her, and she could talk to no-one. Her language was not understood, and she did not understand any other language. After she was admitted to the hospital, her husband, and those who had brought her to the hospital, left for Bushmanland. Whatever support this young and simple little girl had in those most traumatic circumstances, whatever support she had then, was whipped away from her.

The evidence was that after birth women often become depressed and can do strange things, including killing themselves or their babies. Dr Liebenberg thought the accused may indeed have been depressed. And Ursulla Araes, who witnessed the baby being thrown to the floor, thought accused was disturbed. There was however no evidence that this was the case. For a woman, clearly attached to her first child, to have done something of this nature to a second child, she must indeed have been extremely distraught.

This happened on July the 5th, 1992. She says the doctor

spoke to her afterwards, she could not understand what he said, but she heard the word "tronk", which she knew meant prison. Since then she must have lived in fear of going to prison.

Being four to five months pregnant now, her ordeal is beyond comprehension.

For the rest of her life she must carry in her heart the knowledge that she terminated the life of her little boy. Can there be a greater punishment? It is argued that a suspended sentence will hang over her head as a deterrent in the future. Her suffering is her deterrent. She needs no sentence to remind her of the horror which she has experienced.

I sentence you to be detained until the rising of this Court.

A handwritten signature in cursive script, appearing to read "J. Levy", written over a horizontal line.

LEVY, JUDGE