

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mustafa, J.A., Mwakasendo, J.A., and Makame, J.A.)

CRIMINAL APPEAL NO. 52 OF 1980

B E T W E E N

CATHERINE CHRISANT APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the Conviction and Sentence
of the High Court of Tanzania at Bukoba)
(Rubama, J.) dated the 30th day of May,
1980,

in

Criminal Sessions Case No. 131 of 1979

JUDGMENT OF THE COURT

MUSTAFA, J.A.

The appellant was having a fight with P.W.1 Teopista and was hitting P.W.1 Teopista with a stick. Teopista, at the material time, was carrying a three-month-old child on her back, and in the fight the child was hit on the head and died as a result of the head wound which produced cerebral compression leading to cardiac arrest.

In the fight P.W.1 suffered some not serious injuries, three injuries on the face, her hands, especially the left, were swollen and her left hand middle finger was badly injured. The appellant was chasing P.W.1 out of her (appellant's) house and was beating P.W.1 with a stick which got broken in the beating. The stick could not have been a lethal weapon as otherwise the injuries on P.W.1 would have been much more severe. The injuries on P.W.1 were not categorised by the medical assistant who examined her, but they do not appear to have constituted grievous harm.

We are satisfied that at the time of the attack the appellant was the aggressor. We are, however, not satisfied that the appellant, in attacking P.W.1, was intending to kill P.W.1 or cause her grievous harm. The appellant did not intentionally hit the child, who was struck incidentally when the appellant was hitting P.W.1. However, in the course of the unlawful attack on P.W.1 the child was hit on the head and died as a consequence of the blow.

The trial judge found the appellant guilty of murder of the child. The trial judge was of the view that the appellant, in attacking P.W.1, was intending to kill P.W.1 or cause her grievous harm, but instead killed the child. With respect, we think the trial judge erred in holding that the appellant had malice aforethought in the circumstances. There was this fight between the appellant and P.W.1, the stick used was not shown to have been lethal, the injuries inflicted on P.W.1 were comparatively minor and a blow, which need not have been severe, could easily have caused skull compression to a three-month-old child. We think it was more a case of manslaughter, rather than murder of the child committed by the appellant.

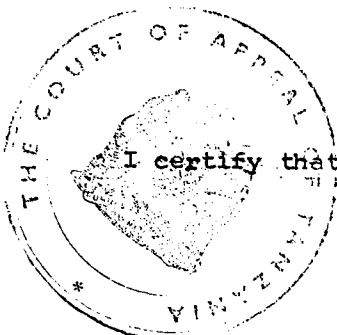
Accordingly, we quash the conviction of murder and set aside the sentence of death passed on the appellant and substitute therefor a conviction of manslaughter. We sentence the appellant to two years' imprisonment from the date of conviction.

A. MUSTAFA
JUSTICE OF APPEAL

Y.M.M. MWAKASENDO
JUSTICE OF APPEAL

L. M. MAKAME
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



(C. G. MTENGA)

REGISTRAR