IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CORAM: Mwakasendo, J.A., Makame, J.A. and Kisanga J.A.

CRIMINAL APPEAL NO. 34 OF 1981

B e t w e e n

SILVANUS LEAONARD NGURUWE ..... APPELLANT

A n d

THE REPUBLIC ..... RESPONDENT

(Appeal from the conviction of the High Court of Tanzania at Mtwara (Mushi, J.), dated 29th June, 1981

in

Criminal Sessions Case No. 19 of 1980

J U D G E M E N T

MWAKASENDO, J.A.

The Appellant, SILVANUS LEONARD NGURUWE, pleaded guilty to manslaughter before the High Court sitting at Mtwara. The learned trial judge convicted him on his own plea and sentenced him to twelve years imprisonment. He is appealing against the severity of this sentence.

It is, of course, trite law that this Court cannot alter a sentence imposed by the High Court on the mere ground that if we were the judges trying the case we might have passed a somewhat different sentence. Before we can interfere with the trial High Court's sentence, the appellant must, satisfy us either that the sentence imposed is manifestly excessive or that the judge in passing sentence ignored to consider an important matter or circumstance which he ought to have taken into consideration or that otherwise, the sentence imposed is wrong in principle.

Mr. Jadeja, learned Counsel who appeared before us for the appellant, argued for the reduction of the sentence imposed by the High Court on the ground that the sentence of twelve years imprisonment was manifestly excessive in all the circumstances of the case. He drew our attention to some of the circumstances which the Counsel contended were not considered by the judge when assessing sentence. Counsel vigorously argued that if the learned trial judge had taken into account all the circumstances disclosed in the case he would not have felt it his duty to impose a sentence of twelve years imprisonment.

We will now refer to those circumstances which were not considered by the judge when assessing sentence. One of such circumstances which were referred to us by Mr. Jadeja in his submissions is the fact that

the learned trial judge did not give due weight to the fact that although the appellant was clearly guilty of assaulting the deceased, his conduct could not properly be described as vicious in view of the prosecution's own concession that the appellant hit the deceased only once with a stick. The other factors which, in our view, were material to the assessment of an appropriate sentence in the case but which, once again, the judge appears not to have considered are: the advanced age of the appellant; the period of two years which the appellant spent in remand custody before being brought to trial; and lastly, the fact that the appellant pleaded guilty to manslaughter thereby saving the trial court and the Republic from needless trouble and expense both in time and money. Further by pleading guilty, the appellant clearly demonstrated a spirit of contribution which, in our view, was a circumstance entitling him to a consideration of a more lenient treatment by the trial High Court.

However, Mr. Uronu, learned State Attorney appearing for the Republic has submitted that the learned trial judge was justified in the circumstances of the case to impose the sentence of twelve years imprisonment having regard to the prevalence of this type of offence in the area of jurdisdiction of the trial High Court. With respect, while we agree with the learned State Attorney that the prevalence of a particular class of crime in an area of the Court's jurisdiction may be a ground for a sentence of more than usual severity being imposed on an offender, we think the learned State Attorney's submission is in other respects misleading and takes a very narrow view of the problem before the Court. Prevalence of an offence is indeed a factor which a trial court should always take into account when assessing a proper sentence to impose in any particular case; but it would be contrary to principle to consider this factor either as the predominant or the only factor that must guide the court in its consideration of sentence. That is where, in our opinion, the learned trial judge erred in the instant case. All the circumstances to which we have referred in this judgement were equally important in the consideration of sentence and all of them ought to have received his careful attention before deciding on sentence. For these reasons, we think we are entitled to interfere with the sentence imposed in this case.

We accordingly, allow the appellant's appeal against sentence, set aside the sentence of twelve years imprisonment and substitute therefore a sentence of eight (8) years imprisonment. It is so ordered.

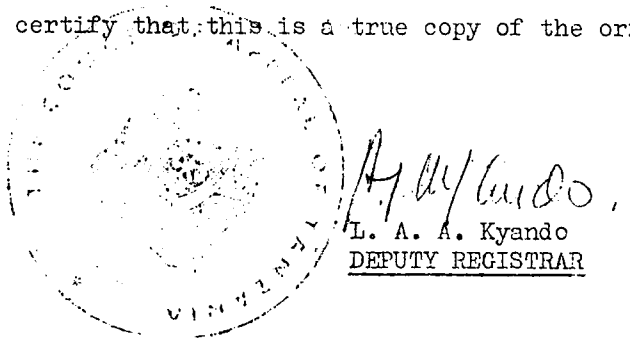
DATED at DAR ES SALAAM this 18th day of August, 1982

Y. M. M. Mwakasendo
JUSTICE OF APPEAL

L. M. Makame
JUSTICE OF APPEAL

R. H. Kisanga
JUSTICE OF APPEAL

I certify that this is a true copy of the original



L. A. A. Kyando
DEPUTY REGISTRAR