IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: RUTAKANGWA, J. A., ORIYO, J. A., And KAIJAGE, J. A.)

CRIMINAL APPEAL NO. 293 OF 2012

SHIDA JOSEPH ..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

(Appeal from the Decision of the High Court of Tanzania, at Mwanza)

(Mruma, J.)

Dated the 20th day of November, 2012
in
Criminal Sessions Case No. 18 of 2012

.....

JUDGMENT OF THE COURT

17th & 24th September, 2013

KAIJAGE, J.A.:

The appellant, SHIDA JOSEPH, was initially charged with the murder of THOMAS SHIREKI, contrary to section 196 of the Penal Code, Cap 16 R.E. 2002. However, on 20/11/2012, he offered a plea of guilty to the lesser offence of manslaughter contrary to section 195 of the Penal Code for which he was consequently convicted and sentenced to serve ten (10) years imprisonment. He was aggrieved, hence the present appeal against sentence.

The appellant appeared before us in person being represented by Mr. Antony Nasimire, learned advocate. The respondent Republic was represented by Mr. Paschal Marungu, learned State Attorney who resisted the appeal.

Mr. Nasimire, came with one ground of appeal which reads thus:-

> *"That, the sentence of ten years imprisonment imposed upon the appellant was manifestly excessive given the circumstances of this case and the mitigating factors which were presented before the trial court before sentencing."*

The uncontroverted facts of the case which led the learned High Court Judge to impose the impugned sentence could be stated, briefly, as follows:- Thomas Shireki, the deceased, was one of the invitees to the wedding ceremony of Daudi Sayi which took place during the night of the 10th day of July, 2010 at Nyanga village, in Magu District. Apparently, the deceased was in attendance and was a choirmaster of a group which entertained the invited guests. As and when the group was performing,

the appellant together with an undisclosed number of his youth colleagues appeared determined to disrupt the ongoing wedding ceremony. The said intruders disconnected the source of electric power which illuminated the venue of the ceremony. The place experienced total darkness.

Following the electric power outage, a fight ensued between the appellant and the deceased. The appellant was eventually forced out of the place and the deceased remained at the ceremony venue talking to one Edina d/o Sololo. Later on, the appellant returned with a big stick which he used to hit the deceased on the head. The deceased fell down and died on the spot. According to the autopsy report (Exh. P1), the deceased sustained a big cut wound on the head resulting into excessive bleeding which caused his death.

Submitting in support of the appeal, Mr. Nasimire faulted the learned trial judge for his failure to consider a critical mitigatory circumstance when passing the impugned sentence. He contended that the learned trial judge did not take into account the circumstance that the appellant readily pleaded guilty to the charge thereby demonstrating contrition for the unlawful killing of the deceased. He urged us to find and hold that the

sentence imposed on the appellant was too excessive in the particular circumstances of this case. In this regard, he referred to us the decisions of this Court in **CHARLES MASHIMBA V. R.**; [2005] T.L.R 90 and **EVANCE RICHARD @ MTABOYELWA V. R.**, Criminal Appeal No. 145 of 2012(CAT unreported).

Responding to Mr. Nasimire's submission, Mr. Marungu, learned State Attorney, strenuously submitted that the circumstances surrounding the unlawful killing of the deceased do not merit this Court's intervention by way of reducing an appropriate sentence meted out by the High Court judge against the appellant. He contended that the trial judge considered all the mitigating circumstances put forward on behalf of the appellant, much as he did not make it, in express terms, the fact that the appellant readily pleaded guilty to the charge of manslaughter.

The learned State Attorney went on to submit that the circumstances surrounding the case under scrutiny, should guide this Court to hold that the sentence imposed by the trial judge was appropriate and not excessive. In elaboration, he said that the unlawful killing of the deceased was not accidental. It was preceded by wilful disruptive acts perpetrated by the

appellant and his colleagues against those who attended the wedding ceremony and later by a sudden infliction of a fatal blow on the deceased who was at the material time defenceless and talking to one Edina d/o Sololo. The learned State Attorney thus impressed upon us not to disturb the sentence imposed by the learned trial judge.

The question whether an appellate Court can interfere with the sentencing discretion exercised by a trial court has been a subject of numerous decisions of this Court. (See, for instance; **SWALEHE NDUGAJILUNGU V. R.**; Criminal Appeal No. 84 of 2002 (CAT unreported), **SILVANUS LEONARD NGURUWE V. R.,** (1981) T.L.R 66; **NYANZELA MADAHA V. R.;** Criminal Appeal No. 135 of 2005; and **MUSSA ALLY YUSUFU V. R.**; Criminal Appeal No. 72 of 2006 (both CAT unreported).

On the strength of the foregoing Court's decisions, law is well settled that an appellate court will only interfere with the sentencing discretion of the trial court where:-

a) The sentence imposed is manifestly excessive or it is so excessive to shock.

b) The impugned sentence is manifestly inadequate.

c) The sentence is based on a wrong principle of sentencing.

d) The trial court overlooked a material factor.

e) The sentence has been based on irrelevant considerations.

f) The sentence is plainly illegal.

g) The time spent by the appellant in remand prison before conviction and sentencing was not considered.

The question we ask ourselves, at this stage, is whether in the present case there are circumstances calling for our interference of the sentence imposed by the learned High Court judge.

The record has it that following appellant's conviction, Mr. Mushobozi, learned advocate, stated the following in mitigation:-

> *"My Lord we pray for leniency. The accused is a young man. He was 18 years at the time of the commission of the offence. He is now 20 years old.*

He has been in remand custody for 2 years. ***The accused has readily pleaded guilty to the offence.*** *He is the first offender. He has already learnt a lot. He pray to be released." (Emphasis supplied).*

Before passing the impugned sentence, the learned High Court judge said:-

"The accused is a first offender and a youngman of about 20 years old (according to the record). Taking into consideration the circumstances under which this offence was committed, the age of the accused and the time he has spent in prison, I sentence the accused person Shida s/o Joseph to ten (10) years imprisonment."

Admittedly, the trial High Court judge before passing sentence considered almost all mitigating factors put before him, but overlooked to take into account the fact that the appellant readily pleaded guilty to the charge of manslaughter contrary to section 195 of the Penal Code. We

accept that in a deserving case, the mitigating factor which the learned judge overlooked, taken in isolation or in conjunction with other mitigating factors would attract a lenient sentence than the impugned sentence in the present case under scrutiny. Generally, courts of law accept that by pleading guilty, offenders demonstrate both contrition and their preparedness to take responsibility of their actions.

However, in recognition of the fact that each case must be decided on its own merit, we are hesitant, in the present case, to hold that the custodial sentence which the appellant is currently serving is excessive. On the basis of the uncontroverted facts constituting circumstances in which the deceased met his untimely death, as correctly pointed out by the learned State Attorney, we are also of the firm view that a sentence of ten (10) years imprisonment imposed on the appellant was appropriate and lenient for an offence of manslaughter which carries with it a maximum penalty of life imprisonment. We have thus found no material basis upon which to interfere with a sentencing discretion exercised by the learned trial High Court judge.

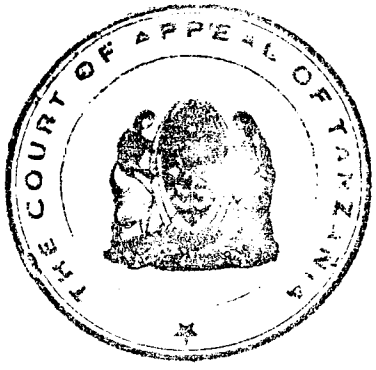
DATED at MWANZA this 23rd day of September, 2013.

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

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



P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL