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IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CRIMINAL SESSIONS CASE NO.72 OF 1990

THE REPUBLIC.....PROSECUTOR

versus

CRECENSIA AMATUS.....ACCUSED

J U D G M E N T

BAHATI, J.:

The accused Crecensia Amatus stands charged with the offence of infanticide contrary to section 199 of the Penal Code in that on or about 25th May, 1989 at Gongo la Mboto area within the District of Ilala and the region of Dar es Salaam, she did cause the death of her child, it being a child under the age of twelve months, by a wilful act, to wit, by burying the said child behind a house; but at the time of the said act the said Crecensia Amatus had not fully recovered from the effect of giving birth to the said child, and by reason thereof the balance of her mind was then disturbed.

The accused pleaded not guilty to the charge claiming that the child was born dead. At the preliminary hearing, the following facts were not in dispute. In 1989 the accused was living at Gongo la Mboto, in Ilala District. In that year the accused was pregnant and on the night of 25th May, 1989 the accused suffered some stomach pains and shortly thereafter she gave birth to a male baby. The accused was alone when she delivered the baby. After delivery the accused dug out a hole and buried the baby in it. The accused informed no one about her giving birth to the baby. At the time the deceased was buried in the hole, the accused had not yet recovered from the effect of giving birth to the baby, and her balance of mind was then disturbed as a reason thereof. On the following day i.e. 26th May, 1989 one D7270 P.C. Sylvester received a report to the effect that a dead body of a male child had been seen. Later the body was recovered from the hole which the accused had dug out. The dead body was conveyed to Muhimbili hospital where a post mortem examination was conducted on it. The doctor who performed the post mortem examination was of the opinion that cause of death was asphyxia. The accused was arrested and escorted to a Police Station and later taken to hospital to be examined. The doctor who examined the accused formed the opinion that the accused had recently given birth to a baby after about a full term. The contents of the PF.3 marked exhibit P.1 was also not in dispute.

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Since almost all the facts are not in dispute, there remains only one fact in dispute namely whether the baby was born alive. The Prosecution went about proving that the baby was born alive as the accused was alleging that the child was dead when she delivered him. Dr. Kibopile PW.1 a specialist in pathology at the Pathology and Morbid Anatomy Department at Muhimbili Medical Centre, told the court that he examined the deceased in this case and conducted a post mortem examination on the body. He was able to see some sand in the windpipe and in the lungs of the deceased although the body and its organs had started to decompose. The presence of the sand in the lungs and windpipe (trachea) convinced the doctor that the child must have breathed while buried in the hole thereby breathing in sand and subsequently dying of asphyxia. The report of the post mortem examination was tendered as exhibit P2. The doctor disputed the fact put to him by the defence counsel that sand could have got into the trachea and lungs through the decomposed body. He said that in his opinion the child was born alive and that he was certain of this.

The accused gave an unsworn statement in which she simply said that she was pregnant and then she gave birth to a child whom she buried because it was dead. Then she was taken to hospital. She said in reply to questions put to her that she never heard the child cry and that the child was cold and never breathed. She also said that she had never seen a dead person.

After the usual submissions by counsels from both sides and the summing up, the assessors were unanimous in their view that the accused was not guilty as charged because the child was dead when she buried it. They said that the sand could have entered the trachea and the lungs through the outside as the body had decomposed and not necessarily as a result of breathing.

In this case the only fact in dispute is whether the child was born alive. After due consideration of the evidence and the submissions as a whole, I am satisfied that the child was born alive. The doctor's evidence who is an expert in this field of Pathology and Morbid Anatomy was to the effect that the child was born alive because he could find sand in the trachea and lungs which could come there only through breathing. The doctor clearly discounted the suggestion put to him that the sand could have percolated into the trachea and the lungs through the body which had decomposed. The court would need very strong reasons to disregard the evidence of the Doctor and hold the contrary. Indeed although there was some decomposition, it was not so grave as to make the body disintegrate and allow sand to percolate as it were through the body. After

all the post mortem examination was done on 26/5/1989 at 10 a.m. when death had occurred on 25/5/1989 at night. The degree of decomposition would not be such as to make the body porous as it were to enable sand to pass through up to the lungs. I have no reason to doubt the Doctor's evidence on this matter. The accused's statement does not advance her case as against the expert evidence. She claims that the child did not cry and that it was cold and it did not breathe. But this was her first time birth and it would be wrong to think that she knew what temperature the child should have and whether the child was breathing. She told the court in cross - examination that she was standing and the child was delivered in that position.

I therefore differ with the gentlemen assessors for the reasons given above and I find as a fact that the child was born alive and subsequently died of asphyxia after inhaling sand in its body. Since the accused buried the child who was alive and who subsequently died due to lack of air, I find as a fact that she caused the child's death. And since the act of digging out a grave and burying the child was a deliberate one, I find that she caused her child's death wilfully. Under the circumstances in this case I find that she is guilty of infanticide under section 199 of the Penal Code.

I am satisfied beyond all reasonable doubt that the prosecution has proved its case as required by law. I therefore find the accused guilty as charged and I convict her accordingly.

Sgd. A. Bahati
JUDGE

10/1/1997

Mrs. Muruke: - No record of previous convictions.

Mitigation: - Mr. Msemwa.

The accused is praying for leniency as she is suffering from T.B. Moreover when she committed this offence she was aged 13 years. Now she is 19 years. The accused is praying for leniency as this is her first offence. She was not in her proper mind. Now she has a small child who is suffering from TB as well. There are these documents - medical charts showing that she and her baby are suffering from TB and are being treated. (Documents seen and noted.).

SENTENCE: - The accused has been convicted of infanticide under S.199 of the Penal Code. This is a serious offence attracting life imprisonment. However in mitigation the accused has said through her counsel that she is suffering from TB.
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as well as her child. She has also said that she was hardly 13 years when she committed the offence in 1989 as she is 19 years old now. She is therefor praying for leniency.

I take into account all those things said in mitigation. I however, am not oblivion of the fact that this is a serious offence which is prevalent in cities and towns and which involves loss of life to innocent children. After due consideration of the circumstances, in this case, I release the accused on condition that she does not commit a similar offence for a period of 12 months.

Sgd. A. Bahati
JUDGE

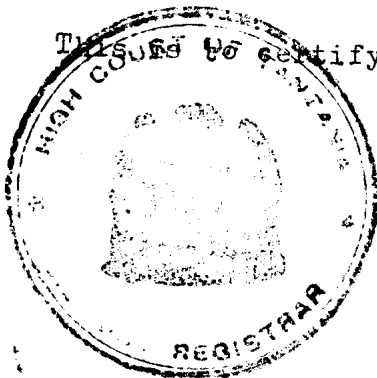
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Court: - Assessors thanked and discharged.

Sgd. A. Bahati,
JUDGE

10/1/1997

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AG. DISTRICT REGISTRAR