

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CRIMINAL SESSION CASE NO. 36 OF 2003**

**REPUBLIC**

**VERSUS**

**HAMZA MUSSA @ BENCH BOY**

**PROCEEDINGS**

**27/4/2006**

Coram: Mlay, J

For the Republic: Ms Chilongozi State Attorney

For the Defence: Mr. Betwel Advocate

Accused : Present

Assessors: 1<sup>st</sup>

2<sup>nd</sup>

3<sup>rd</sup>

CC: Aza.

Information is read over and explained to the accused person in a language he understands and asked to plead thereto:-

**Plea of Accused:** It is true.

**Court:** Entered as Plea of Country to Manslaughter C/S 195 of the Penal Code.

**FACTS.**

**Ms Chilongozi State Attorney:** On 8/11/2001 the accused HAMZA MUSA @ BENCH BOY at Ubungo Traffic Lights in Kinondoni District within Dar es salaam Region unlawfully caused the death and HASSAN ABDALLAH @ MASKIO. On that day the deceased HASSAN ABDALLAH @ MASKIO and accused HAMZA MUSA @ BENCH BOY went to drink at a bar at Ubungo known as MAMA MOSHAS BAR, where was also a dance. At midnight the deceased and the accused left Mama Moshis Bar. When they reached the Traffic Lights before crossing the road, the deceased found one Pearson suffering from unsound mind sitting and the deceased started throwing rotten mangoes at the person with unsound mind. The accused asked the deceased not to throw rotten mangoes at the sick person. The deceased was not pleased with the accused for intervening behalf of the mentally sick person and a fight ensued between the deceased and the accused. In the course of the fight the accused hit the deceased with a stone on the head, causing the decease to bleed. The fight was stopped at the intervention of one OSCAR MASHOTO and both the accused and the deceased left, each going his on way. On 16/11/2001 the health of the deceased deteriorated and he

was sent to Mwananyamala Hospital where he was referred to Muhimbili Hospital and died on the same day. On 17/11/2001 the accused was arrested by the Police and he made a cautioned statement in which he admitted fighting with the deceased on 08/11/2001. The accused was also sent to the Justice of Peace and made an Extra Judicial Statement in which he admitted to have fought with the deceased on 8/11/2001. The Postmortem report on the body of the deceased shows that the deceased died of HEARD INJURY. I pray to produce the cautioned statement of the accused and the Extra Judicial Statement of the accused if the Defence has no objection. The Postmortem Report was produced during the Preliminary hearing as Exh. PI.

**Mr. BETWEL** I have no objection to the production of the caution statement and the Extra judicial statement.

**Court:** Caution of statement and Extra judicial statement of accused admitted as Exh. P2 and P3, respectively.

**ACCUSED:** The facts given by the State Attorney are true. They are the truth.

**Order:** The accused is convicted of Manslaughter C/s 1952 the Penal Code, Cap 16 RE 2002, on his own Plea of Country.

  
J.I. Mlay,  
**JUDGE**

**27/04/2003**

**Ms Chilongozi:** There is no record of accused's previous conviction.

**MITIGATION.**


**Mr. BETWEL:** I pray that in making its decision the following matter be taken into consideration. First, the State Attorney has stated that the accused is a first offender. He was therefore a reliable and respected person of the society. What has befallen him, could have visited any person under the circumstances. The accused has been in custody for five years now. This is sufficient punishment for what he did. The accused is 32 years old and he would be more useful to the society if he was free. He has shown remorse by pleading guilty. The deceased and the accused were friends and were drinking together. The deceased without any justification threw rotten mangoes to a mentally deranged person which led to the fight with the accused and consequently the jury which led to his death. The accused did not intend to injure

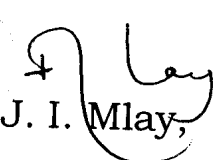
the deceased but help the mentally derranged person and did not intend the injury to cause his death. I pray that this court shows leniency in assessing the punishment. That is all.

### **SENTENCE.**

The accused has admitted causing the injury which subsequently led to the death of the deceased. The facts show that it is the deceased who created the circumstances which led to the fight between him and the accused and he was injured in the course of that fight. The accused was intervening in the cause of a mentally derranged person, to whom the deceased was throwing rotten mangoes. Although the deceased was injured on 8/11/2001, there is no evidence that he reported the matter to the police or sought medical treatment for eight days, before his health deteriorated on 16/11/2001 when he was seen in hospital and died. His unfortunate death could have been averted if he had obtained medical attention in time. Having given due consideration to these factors and the fact that accused has been in custody for nearly five years now, and that he is a first offender, the period he has spent in custody is sufficient punishment for what he did.

The accused a sentenced to one year imprisonment which is suspended for a period of six months, provided that he does not commit an offence involving assault within the said suspended period of six months.



  
J. I. Mlay,

**JUDGE,**

**27/04/2007.**