

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA

AT TARIME

(ORIGINAL JURISDICTION)

CRIMINAL SESSIONS CASE NO. 89 OF 2020

THE REPUBLIC THE PROSECUTOR

VERSUS

MARO JOSEPH @CHACHA..... THE ACCUSED

JUDGMENT

12th & 14th July, 2021

Kahyoza, J.

Ruhoro S/O Geswene died an unnatural death at a very early age. At time of death, **Ruhoro S/O Geswene** was staying with his elder sister Jackline and their uncle Maro Joseph @ Chacha, the accused person. Jackline was seven years old when her younger brother met his demise. The mother of Jackline, **Ruhoro S/O Geswene** and their five other siblings deserted them. Maro Joseph @ Chacha, the accused person, took care of Jackline and **Ruhoro S/O Geswene**, while other relatives took care of the remaining children. Following the mysterious death of **Ruhoro S/O Geswene**, the police charged Maro Joseph @ Chacha for intentionally killing him. Maro Joseph @ Chacha denied to kill **Ruhoro S/O Geswene** contending that bees bit him to death.

The issues for determination are whether Maro Joseph @ Chacha killed **Ruhoro S/O Geswene** and whether he did so with malice aforethought.

The prosecution arraigned **Maro Joseph @ Chacha** with an information of murder contrary to section **196 and 197** of the **Penal Code [Cap. 16 R. E. 2019]**. The prosecution alleged that on 15th day of July, 2019 at Ring'wani village within Serengeti District in Mara Region, the accused murdered one **Ruhoro s/o Geswene**. The accused person pleaded not guilty.

It is not disputed that **Ruhoro S/O Geswene** died unnatural death on the 15th day of July, 2019 at Ring'wani village. The post mortem examination report, admitted during the preliminary hearing as Exh.P1, indicated that death was due to severe intracranial bleeding. The summary of report was that-

"On the examination of deceased body I found a depression on the right side of parietal and frontal bore external clots on right sided of depressed skull ...the probable cause of death could be intracranial bleeding."

Another matter, which is not disputed is that the accused person is the deceased's uncle. Further, there is no dispute that the accused was living with the deceased together with the deceased's sister Jackline.

Given the undisputed facts, only two elements of murder are in dispute; **one**, whether it is the accused person who killed the deceased; and **two**, whether he killed him with malice aforethought. Malice aforethought is simply the intention to cause either death or serious bodily injury.

The prosecution's evidence is that on the 16th July, 2019 the accused person raised an alarm calling for help. People responded, among them was **Dorcas Amos (PW1)**. They found **Ruhoro S/O Geswene** dead.

Ruhoro S/O Geswene's body was lying on the mattress, the face was swollen and it had an injury on the occipital. The accused person and **Jackline Mata Joseph (PW3)** told people that the bees bit **Ruhoro S/O Geswene** to death. People present including the accused person's relative became suspicious.

Dorcas Amos (PW1), the accused person's neighbor and close ally to **Jackline Mata Joseph (PW3)** and the deceased as she used to supply them free milk conversed with **Jackline Mata Joseph (PW3)**. At first, she told her that bees bit them. She later changed and told her that the accused person, their uncle, beat them. Jackline showed them a stick their uncle used to beat them. The stick had blood stains. **Dorcas Amos (PW1)** examined **Jackline Mata Joseph (PW3)**, she too had swollen eyes and breathing abnormally.

Dorcas Amos (PW1), **Jackline Mata Joseph (PW3)**, the accused person and Maro Nyamarasa went to police station. **G. 8889 P/C Christopher (PW2)**, a police constable, received them. Maro Nyamarasa reported to **G. 8889 P/C Christopher (PW2)**. **G. 8889 P/C Christopher (PW2)** gazed at Jackline saw bruises all over her body and some parts of her body swelled. Jackline told **G. 8889 P/C Christopher (PW2)** that bees bit her. He asked her what inflicted bruises, she could not explain. He put Maro in the lock up and took the Jackline in the OCS' room. He interrogated Jackline. Jackline told them that the accused beat them because **Ruhoro S/O Geswene** delayed from fetching water.

Jackline requested **G. 8889 P/C Christopher (PW2)** not to tell her uncle what she disclosed to him as her uncle promised to kill her if she told

anyone that he beat them. She informed her that her younger brother was lying down not breathing.

Jackline Maro Joseph (PW3) a child of tender age, after promising to tell truth deposed that the accused person, their uncle beat them. He beat Ruhoro in the head and back. She added that he beat her also in the head and back. After he had beaten them, the accused person promised to buy her medicine. The accused left and when he came back, he found the Ruhoro dead. She deposed that the accused told her that if she tells neighbor that he beat Ruhoro, he will be beat her again.

Jackline Maro Joseph (PW3) deposed that the accused beat them with hoe handle. He beat them at night, that is the night before 15th day of July, 2019.

G. 8889 P/C Christopher (PW2) and other police including the OC-CID Mr. Kebe went to the scene of the crime together with **Dorcas Amos (PW1)**, **Jackline Mata Joseph (PW3)**, the accused person and Maro Nyamarasa. Upon reaching the crime scene, the OC-CID ordered the accused to show them where bees were. They accused took them to the anthill where they did not find bees.

Then, according to **G. 8889 P/C Christopher (PW2)** police entered the house saw the deceased's body. It was laid on the mattress, with scars on the head, back and legs. They saw a hoe handle with blood. They took the statements of the witnesses.

Maro Joseph (**Dw1**), the accused, gave his account of events on oath denying to kill on oath to kill the deceased as that; on the 15/7/2019 he went to his farm leaving **Jackline Maro Joseph (PW3)** and her brother, the deceased at his home place. He returned home at 05:00 pm.

He cooked food for **Jackline Maro Joseph (PW3)** and her brother. He went to village centre to pass time and returned at 09:00 pm. The following day he woke up and went to the farm, when he returned home, **Jackline Maro Joseph (PW3)** told him that bees bit them. The deceased had a scar, which he sustained while running to escape bees. He went to his neighbour where he got kerosene or paraffin and applied it to the deceased's body.

The following day he went to Nyaringana where he got Tzs. 10,000/= so as to take the deceased to hospital. He returned home and found the deceased dead. He, then, notified his relatives. He deposed that the case was fabricated by Maro Nyamasoro due to their misunderstanding.

The accused person summoned Marwa Ruhoro Masiko (**Dw2**) who deposed that on the 15/7/2019 he heard a call for help. He responded. He went to the accused person's place. The accused person told him that bees bit the children he was living with. He added that the accused told them that bees bit the deceased to death. Marwa Ruhoro Masiko (**Dw2**) did not stay long he left to take his child to hospital.

At the conclusion of the trial, the learned defence advocate and the learned State Attorney made eloquent submissions which I will refer to while answering the issues.

The first issue is whether the accused person killed the deceased. The prosecution evidence is that the accused person killed the deceased by striking him to death. The accused person's defence is that bees bit the deceased to death. He did not kill the deceased. The defence advocate submitted that the prosecution did not prove the offence of murder. It did not prove that the accused killed the deceased with malice aforethought.

The State attorney submitted that **Jackline Maro Joseph (PW3)** the eye witness proved that the accused person beat the deceased causing his death.

I scrutinized the evidence in this case to find out whether the prosecution established that the accused person killed the deceased beyond doubt. The answer is in affirmative, for the grounds that; **one**, the prosecution eye witness, **Jackline Maro Joseph (PW3)** although she gave evidence without taking oath, her evidence is reliable. She had no reason to tell lies. She had narrated the ordeal to **Dorcas Amos (PW1)** and **G. 8889 P/C Christopher (PW2)** on the day her younger brother met his demise. She deposed that her uncle the accused threatened her not to tell the true story that he beat them instead he coached her to lie that bees bit them. She explained how the accused person (their uncle) beat them a hoe handle. She showed them the hoe handle. **Dorcas Amos (PW1)** and **G. 8889 P/C Christopher (PW2)** saw the hoe handle with blood stains. I have no reason to doubt her testimony. She gave plausible explanation why she had first said Ruhoro was bitten to death by bees. She is a reliable witness.

Two, there was undisputed evidence that the deceased's death was due to severe intracranial bleeding. The summary of report was that-

"On the examination of deceased body, I found a depression on the right side of parietal and frontal bore external clots on right sided of depressed skull ...the probable cause of death could be intracranial bleeding."

Had bees bitten the deceased, the doctor would not have found a depression on *"the right side of parietal and frontal bore external clots on*

right sided of depressed skull ..". Not only that but also the deceased would not have died of severe intracranial bleeding. The injuries the deceased sustained proved circumstantially that the accused beat the deceased causing his death. This piece of evidence negates completely the accused person's account that bees bit **Jackline Maro Joseph (PW3)** and the deceased.

Three, it is difficult to follow the accused defence. He was not even sure when the deceased passed away. He deposed that on the 15/7/2019 went to his farm. He came back prepared food for **Jackline Maro Joseph (PW3)** and the deceased he went to the centre. He came back at 09:00pm The following day he went back to the farm. When he returned, **Jackline Maro Joseph (PW3)** told him that bees bit them. He got kerosene and applied it onto them. That was on the 16/7/2019. On the following day, he went to Nyaringana for financial assistance. He got Tzs. 10,000/= . When he came back he found Ruhoro dead. That is to say Ruhoro died on the 17/7/2019. It is undisputed fact that Ruhoro died on 15/7/2019. Not only that but also, the accused person's evidence contradicted the testimony of his witness, Marwa Ruhoro Masiko (**Dw2**). Marwa Ruhoro Masiko (**Dw2**) deposed that he heard a call for help on the 15/7/2019. I was unable to believe the accused person's account.

It is trite law that every witness (including the accused person) is entitled to credence unless there is a cogent reason to question his credibility. **In Goodluck Kyando v. R**, [2006] TLR 363 and in **Edison Simon Mwombeki v. R.**, Cr. Appeal. No. 94/2016 the Court of Appeal stated that-

"Every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness."

The accused person's evidence was not trust worthy. It was contradicting the fact admitted during the preliminary hearing that the deceased met his demise on the 15/7/2019. The accused was trying to be wise after the event. His defence did not raised a reasonable doubt.

Lastly, even if **Jackline Maro Joseph (PW3)**'s evidence required corroboration to support conviction, I find that the cause of death explained in Exh.P.1 corroborates her evidence. **Jackline Maro Joseph (PW3)** deposed that the accused beat them in the head and back. Exh. Shows that the deceased had a depression in the head. The injury proves that the deceased was beaten in the head.

I find that the prosecution proved that the accused killed the deceased. The remaining issue is whether he did so with malice aforethought.

The defence advocate Ms. Rebecca submitted that the prosecution did not prove that the accused killed the deceased with malice aforethought. She contended that **Jackline Maro Joseph (PW3)** deposed that the accused beat them because the deceased delayed to come from the well. She concluded that the accused person killed Ruhoro in the cause of punishing them. She referred the court to the case of **Mashimba Dotto@ Lukubanija V. R.**, Cr. Appeal No. 317/2013 CAT (unreported) where the Court of Appeal held that-

"There is no dispute that murder is a very serious offence which upon conviction attracts the death penalty. That being the case, it is always expected that its investigation and eventual prosecution would always be done with great care."

The prosecution replied that it proved that the accused killed the deceased with malice aforethought. He contended that the accused person malice aforethought is established by the fact he used excessive force to beat the deceased and he beat him to sensitive parts of the body. He broke the deceased' skull.

It is trite law that malice may be construed from the amount of force the assailant applied to the victim and parts of the body the attack was directed. See the case of **Enock Kipela v Republic**, Criminal Appeal No. 150 of 1994 (unreported) and **Mosses Michael alias Tall V R.** [1994] TLR. 195. In the former case the Court of Appeal held that-

"Usually an attacker will not declare to cause death or grievous bodily harm. Whether or not he had that intention must be ascertained from various factors, including the following:-

- (1) the type and size of the weapon if any used in the attack;*
- (2) the amount of force applied in the assault;*
- (3) the part or parts of the body the blows were directed at or inflicted on;*
- (4) the number of blows, although one blow may, depending upon the facts of the particular case be sufficient for this purpose;*
- (5) The kind of injuries inflicted.*
- (6) The attacker's utterances if any; made before, during or after the killing and the conduct of the attacker before and after the killing.*
- (7) The conduct of the attacker before and after the killing.*

I am of the considered view that the above case is distinguishable from the current one. In the case at hand the accused person was not an attacker. He stood in the shoes of the deceased's parents admonishing he deceased and her sister for coming home late from the well. **Jackline Maro Joseph (PW3)** deposed during cross-examination that the accused person cooked for them, looked after them all that time. She said he beat them because they "went for water". She did not provide explanation why did the accused beat them while they had gone for water. The accused was not an attacker referred to in the case of **Enock Kipela v Republic**, but a provider and a care taker of the deceased and **Jackline Maro Joseph (PW3)**.

I concur with the two Ladies assessors who opined that the accused person is guilty of manslaughter and not murder. The first opined that the accused punished the deceased and his sister as a parent, unfortunately in the course killed the deceased. It was the second assessor's opinion that the accused killed the deceased out of bad luck. He had stayed with the children for fairly a long time.

I differ with the last gentleman assessor, who opined that the accused committed the offence of murder. He opined that the accused killed the deceased with malice aforethought because he applied excessive amount of force and he used the hoe handle to strike the deceased causing his death. He added that he also threatened to kill **Jackline Maro Joseph (PW3)** if she disclosed the truth. I totally agree with the gentleman assessor that the accused used excessive force to punish, it was unreasonable to use hoe handle to beat a child of five years or below and to beat him in the head. All in all, he did so as the parent. He had an

intention to admonish and not to cause death or grievous harm to the deceased person.

Section of 200 of the Penal Code provides in no uncertain terms that-

200. Malice aforethought shall be deemed to be established by evidence proving any one nor more of the following circumstances-

*(a) **an intention to cause the death of or to do grievous harm** to any person, whether that person is the person actually killed or not;*

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although that knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) an intent to commit an offence punishable with a penalty which is graver than imprisonment for three years;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed an offence.

It is trite law that where the Court is in doubt if the accused intended to kill the deceased should proceed to convict with the offence of manslaughter. See the case of **Augustino Kaganya, Athanas Nyamoga and William Mwanyenje V. R** [1994] T.L.R pg. 17, where the court observed that "*in a charge of murder, only where it is doubtful on the evidence that the accused intended to kill or cause grievous harm to the deceased will the Court give the benefit of doubt to the accused and find him guilty, not of murder, but of manslaughter.*"

I am of the firm view that the accused person had no intention as a parent to cause death or grievous harm to the deceased. I, therefore, find the accused person, Maro Joseph @ Chacha, caused death of **Ruhoro S/O Geswene** without malice aforethought. Consequently, I find **Maro Joseph @ Chacha** guilty and convict him of the offence of manslaughter u/s 195 and 198 of the Penal Code [Cap. 16 R.E. 2019].



J. R. Kahyoza

JUDGE

14/7/2021

SENTENCE

The accused was charged with the offence of murder, after a full trial he was found guilty and convicted with the offence of manslaughter contrary to section 195 & 198 of the Penal Code [Cap. 16 R. E 2019].

The offence the accused has been convicted with, of manslaughter attracts a maximum sentence of life imprisonment. The convict beat his nephew, Ruhuro Geswene to death using a hoe handle. The hoe handle was not tendered as evidence but Jackline (Pw3) the eyewitness and the victim confirmed that the accused used a hoe handle.

Not only but also that the accused beat the deceased in the head. He was highly negligent. He ought to have known that using a hoe handle to beat a child of five years old or below in the head would result in a grievous harm or his death. For those reasons, I agree that the offence's

level of seriousness is high. The sentence for such category of the offence is a minimum of 15 years and a maximum of life imprisonment as provided in the sentencing guidelines.

The prosecution's aggravating factors are one, that the accused killed an innocent younger body whose feature was not known, but he had a right to live his life; **two** the deceased died a violent death and died in agony as the accused beat him at night and gave him no assistance until he met his death the following morning; **three**, the accused beat him with a hoe handling and;

Lastly, that the accused was not remorseful. He deployed all means to ensure is not netted by law. He threatened to kill Jackline (Pw3) disclosed the truth. He has not been remorseful to this Court either. He told this Court that bees bit the deceased.

The mitigation on the part of the accused is that he is the first offender and he is suffering from HIV. There is also another mitigating factor that the accused is a good person. He volunteered to take care his sister's children after they were deserted.


After considering the aggravating and mitigating factors, I am of the view that aggravating factors outweigh the mitigating factors. Mitigating factors that induced me to reduce a sentence from the maximum sentence are that the accused was a person of good character until he committed the offence, and that he took into his care two children, the accused person's sister deserted and provided them with basic needs depending on his capacity. He is the first offender.

He is Also an HIV victim. However, the fact that he is not remorseful, the way he administered the beating, the way he was determined to avoid

the justice by coaching and threatening Jackline (**Pw3**) in order to save his neck, I find a sentence of 15 years' imprisonment a just one.

The accused has been in custody for period of two years. I therefore, sentence him to 15 years' imprisonment subject to deduction of the period he has been in custody.

It is ordered accordingly.



J. R. Kahyoza, J

14/7/2021

Court: Right of appeal explained. The accused may appeal against the conviction and sentence after lodging a notice of appeal within 30 days from today.



J. R. Kahyoza, J

14/7/2021