IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL SESSION CASE NO. 57 OF 2022

REPUBLIC

VERSUS

HAPPYNESS FURAHA @ KARUKWEPA

PROCEEDINGS

20/07/2022

Coram: D.C.Kamuzora, J

Ms. Lilian Kowero, State Attorney for the Republic

Ms. Ester Malima, Advocate for the accused person who is also present under custody

Mr. Anold Mlay, Social Welfare Officer

B/C Mariam Kimomwe

Court: Notice of trial for plea taking and trial of information for murder c/s. 196 and 197 of the Penal Code [Cap 16 RE 2019] was duly served on the accused person who is before this court this 20/07/2022. As the accused is the child, the Social Welfare Officer Anold Mlay was also served and in attendance.

Sgd. D.C. KAMUZORA

JUDGE

20/07/2022

Ms. Lilian Kowero (SA): the matter was scheduled for plea taking, we are ready to proceed.

Ms. Ester Malima Defence Counsel: We are ready to proceed.

Social Welfare Officer Anold Mlay: We are ready

Court: Information of murder c/s. 196 of the Penal Code [Cap. 16 RE 2019] is read over and explained to the accused person in Swahili language which he understands and he is asked in terms of section 275 of the CPA to plea thereto.

Accused: Nilimuua lakini sio kwa makusudia (It is true that I killed the deceased but it was not intentional)

Court: Enters Plea of Not guilty to the charge/information for murder.

Sgd. D.C. KAMUZORA

JUDGE

20/07/2022

Ms. Ester Malima: - we pray that the accused be allowed to plea to the lesser offence of manslaughter and we are ready to proceed.

Ms. Lilian Kowero: - we have no objection to the prayer for plea of lesser offence of manslaughter and we are ready to read the lesser offence of manslaughter C/S. 195 and 198 of the Penal Code as he killed without malice aforethought.

Court: this court cause the information of manslaughter C/S. 195 and 198 of the Penal Code Cap 16 RE 2019 to be read over and explained to the accused person in Swahili language which he understands and the accused is asked to plea to thereto.

Accused: - Ni kweli nilimuua bila kukusudia (It is true I killed him but not intentional).

Court: - the plea of guilty to the offence of manslaughter is entered against the accused person.

Sgd. D.C. KAMUZORA

JUDGE

20/07/2022

Ms. Lilian Kowero: Fact are ready, I pray to read facts as prepared under section 192 CPC Cap. 20 RE 2019.

Ms. Ester Malima: We are ready to proceed.

FACTS OF THE CASE

That, the accused person is Happyness Furaha @ Karukwepa, Christian, 13yrs, Sukuma, resident of Moshono, Arusha.

That the accused is charged for the offence of manslaughter contrary to section 195 of the Penal Code Cap. 16 R.E 2019.

That, the incident occurred on 17/09/2021 at Moshono are within Arusha District in arusha region. The accused caused death of Natali Essau Mosha without intention a child aged 4 years.

That, before the incident the accused was employed as house maid by Janeth Essau Mosha who is deceased's mother.

That on the date of incident the accused was left at home with Natalia Essau Mosha and another young child for her to take care of them.

That the accuse did phone Janneth Essau Mosha informing her that the deceased was complaining of stomach pain since morning and she had diarrhoea.

That, at evening hours, the accused phoned the decease's mother telling her that the deceased was in bad condition and the mother went home immediately.

That, when she reached at home, she found the deceased lying down facing down and she tried to awake the deceased but could not wake up.

That the deceased's mother screamed for help and the neighbours went to her home and did take the deceased to Mount Meru Hospital but it was discovered that the child had already passed away.

The deceased's body was examined and the post-mortem examination report indicated that the cause of death was severe traumatic brain injury.

That, during the examination it was also discovered that the decease had other injuries as she had fractured right shoulder and bruises in her face and buttocks something implying that the deceased was hit with a blunt object.

That, the report was made to the police station and since the accused was the only one staying with the deceased at home as the parents were at work, she was arrested and interrogated and she admitted to beat the deceased using a stick.

The accused was then brought to court and she is now charged with the offence of manslaughter.

If no objection, I pray to tender the post-mortem examination report as exhibit in this case. That is all.

Ms. Ester Malima: we have no objection.

Court: report on post-mortem examination is admitted and marked as Exhibit PE1.

Sgd. D.C. KAMUZORA

JUDGE

20/07/2022

Court: In terms of section 192 (2) of the CPA, the accused person is refreshed of the facts read over by Ms. Lilian Kowero and he is now asked to state the facts which are admitted and the facts not admitted.

Accused: I admit all facts read to me by the State Attorney as they correct and true.

Court: The accused person has voluntarily admitted to all the facts read over to him which in my considered view they constitute the offence of manslaughter.

Sgd. D.C. KAMUZORA

JUDGE

20/07/2022

Sgd, Accused person Happyness Furaha

Sgd, Defence Counsel Ms. Ester Malima

Sgd, State Attorney Ms. Lilian Kowero

Sgd, Social Welfare Officer Mr. Anold Mlay

Sgd. D.C. KAMUZORA

JUDGE

20/07/2022

COURT FINDINGS

Following the accused plea to the offence of Manslaughter and subsequent admission of the facts of the case, the accused plea is found to be unequivocal. Based on the accused unambiguous plea of guilty, I hereby convict the accused person for the offence of manslaughter c/s.195 and 198 of the Penal Code Cap 16 RE 2019.

Sgd. D.C. KAMUZORA

JUDGE

20/07/2022

PREVIOUS CRIMINAL RECORDS

Ms. Lilian Kowero (SA): I have no previous criminal records of the accused person. We pray that the accused be punished in accordance to the law.

MITIGATION

Defence Counsel, Ms. Ester Malima: I pray this court to consider the age of the accused in sentencing the accused. I also pray this to also consider that, this the accused offender and did not intend to kill the child.

Social Welfare Officer: the accused is a child and she has admitted to the offence of manslaughter. She intends to continue studying. I pray this court to consider that while punishing the accused. I will prepare the report to be filed in this court within one week.

Court: the sentence is adjourned to allow the social welfare officer to submit social inquiry report. The social welfare officer is given one week to present the report.

Order: Sentence on 27/07/2022

Sgd. D.C. KAMUZORA

JUDGE

20/07/2022

27/07/2022

Coram: D.C.Kamuzora, J

Ms. Riziki, State Attorney for the Republic

Ms Ester Malima, Advocate for the accused person who is also present under custody

Mr. Anold Mlay, Social Welfare Officer

B/C Mariam

Ms. Riziki: The matter is coming for sentence

Ms. Ester: We are ready for the sentence

Mr. Anold: We filed the social inquiry report

SENTENCE

I have considered the submissions by the counsel for both parties on the previous criminal records of the offender. She is a child offender with the age of 14 years old but she was 13 years old when she committed the offence. I have also considered other mitigating factors as submitted by the defence counsel, the offender instant plea of guilty and the time spent in remand home waiting for trial. I also took into consideration the law governing sentence for the child offender, the **Law of the Child Act, Cap. 13 R.E. 2019** and **the Law of the Child (Juvenile Court**

Procedure) Rules, 2016, GN. No. 182 of 2016 which apply to this court by virtual of the **Judicature and Application of Laws (Adoption of Juvenile Court Rules in the High Court of Tanzania) Rules, 2019 GN. No. 154 of 2019.**

I have also considered the social inquiry report presented by the social welfare officer showing that, the offender is still a child with the age of 14 and her home of residence is Runzewe village within Bukombe District at Geita Region. The report also shows that, the child offender has never attended school but the social welfare office here in Arusha linked her to an organisation called Amani Centre here in Arusha where she has started to study on how to read and write and the said organisation have agreed to support her for her further studies. It is also shown that, the child offender had dreams for further studies but her mother wishes to see her back home.

In considering the circumstances of the case, I sentence the child offender to two years conditional discharge subject to Rule 50(1) of the Law of the Child (Juvenile Court Procedure) Rules, 2016, GN. No. 182 of 2016 and order her to be of good behaviour for that period. As the social welfare report indicate that the offender's home town is Runzewe village in Bukombe District at Geita Region and she has a mother residing there,

it is ordered that, she be repatriated to her home town for family reunion. She is however pressed under the supervision of the social welfare officer in the respective area, Bukombe District for the whole period of two years who will be responsible to make follow up of her development and assist her pursue her education dreams in possible ways using available resources within the locality or other possible areas where necessary. While waiting for repatriation, the child offender will be under supervision of the social welfare officer of Arusha Municipality and the Social Welfare Office of Arusha Municipality shall be responsible to repatriate the child offender to her home town.

D.C. KAMUZORA

JUDGE

27/07/2022

Court: Right to appeal to the Court of Appeal against sentence is fully explained.

D.C. KAMUZORA

JUDGE

27/07/2022