

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

CRIMINAL JURISDICTION

CRIMINAL SESSION NO. 39 OF 2022

REPUBLIC

VERSUS

REVOCATUS ^S/o PASCAL @MADENI

JUDGMENT

Date of Last Order: 03/08/2022

Date of Judgment: 03/08/2022

NDUNGURU, J

The accused person stand charged with an offence of Manslaughter contrary to section 195 and 198 of the Penal Code (Cap 16 R.E 2019). It is alleged by the prosecution that on 4th day of April, 2021 at Ntemba village within Nkasi District in Rukwa Region the accused unlawfully did cause the death of one SAYUNI d/o MADENI.

Upon plea of guilty to the charge by the accused person when the same was read and explained to him in the language he understands, the facts constituting the offence of Manslaughter were adduced.

The adduced facts were read and explained to him. When given opportunity to admit or state on the correctness of the facts, the accused person admitted the facts to be correct.

In the premises I am satisfied that the plea is unambiguous. It is unequivocal plea. I therefore, convict the accused person for offence of Manslaughter Contrary to Section 195 of the Penal Code (Cap 16 R.E 2019).

It is so ordered.

Sgd: D.B. Ndunguru

Judge

03/08/2022

PRE SENTENCE HEARING

Ms. Kashindi Aman State Attorney: My lord we have no previous criminal record. That cause of death was due to the failure of the deceased to come back.

My lord, it is true that the accused did not intend to kill the deceased but the punishment was so severe to cause nervous shock. The accused was required to use wisdom but instead he used excessive force. The deceased had a life dream, which have been cut short by death, yet her life cannot be reverted back. If not such a punishment she could have been alive.

I pray the accused be given severe punishment it be a lesson to the accused and others of the caliber. That is all.

Mr. Chambi Defence Counsel: My lord, the accused is the first offender. Further the accused has pleaded guilty to the offence. He also has been very cooperative to the investigation organs. My lord the cause of death is that the accused did beat the deceased by using stick and he was disciplining her for the immoral behavior.

My lord it was the duty of the parent to discipline the deceased as she was under the parents. My lord the weapon used is just a stick it is not stated how big it was to cause death. That the cause of death according to Medical officer was neurogenic shock, this is a shock like any other shock.

My lord the accused is 57 years old. Yet he is depended by children. The intention of the accused was just to discipline the child. My lord loss of the child is quite a sufficient punishment to him.

I pray the court to exercise leniency when punished him. The accused has stayed in prison for one year. We pray all that be considered.

SENTENCE

The accused has been convicted for the offence of Manslaughter. The statutory sentence of the offence is life imprisonment. This is provided under section 198 of the Penal Code. Life imprisonment is the maximum offence sentence. The law does not provide for the minimum sentence. Further there is no statutory guidance to that effect.

The sentence of life imprisonment is not mandatory but discretionary. In exercising its discretion there are some factors which must be taken into account

The first factor is the level of seriousness of the offence whether high, medium or low and starting and maximum range of sentence at particular level. In considering on the way the offence was committed that is a parent punishing her daughter for bad behavior and the

culpability of the accused I find it to be a low seriousness level of the offence whose sentence range is four (4) years imprisonment to conditional discharge.

The other factor is the relevant aggravating and mitigating factors which may lead to increase or decrease of sentence within the range. Frankly speaking, there is no sound relevant aggravating factor has been brought to my attention. But as regards mitigating factors, the counsel has brought to my attention that the accused is the first offender, he has shown cooperation to the investigation organ, he has family depending on him and that he has pleaded guilty to the offence. To me all these are relevant factors for consideration.

The other factor is the accused's personal circumstances. On that aspect I have considered the cooperation offered by the accused to investigate organ after his arrest. I have also considered the family circumstances of the accused person and the likely impact of sentence on the family.

I have further taken into account the accused plea of guilty as merited factor due to the fact that it is in the public interest as it has served the court's time and expenses in conducting full trial. See

**Charles Mashumbo Vs. Republic (2005) TLR 90 and Swalehe
Ndungajikungu Vs. Republic (2005) TLR 94.**

I have further taken into account the time the accused has spent in remand prison from the date of his arrest to date when the case is coming to its finality, that is one year and four months. All those factors make me find that the accused need mercy of this court.

I hereby sentence the accused to serve term of one (1) year imprisonment in jail for the offence of Manslaughters contrary to section 195 and 198 of the Penal Code (Cap 16 R.E 2019).

It is so ordered.



D. B. Ndunguru
D.B. NDUNGURU

JUDGE

03/08/2022