

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

CRIMINAL JURISDICTION

CRIMINAL SESSION NO. 37 OF 2022

REPUBLIC

VERSUS

ANISETH ^S/o PEYARA @ MATOFALI

JUDGMENT

Date of Last Order: 02/08/2022

Date of Judgment: 05/08/2022

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 06th day of April, 2021 at Kilembo village within Sumbawanga District in Rukwa Region, the accused did unlawfully cause the death of one ROZALIA d/o MGAWE. When the charge/information on Manslaughter was read to the accused and asked to plead thereto, the accused pleaded guilty.

The prosecution adduce facts constituting the offence of Manslaughter. When given opportunity to admit or state on the correctness otherwise on the adduced facts the accused admitted all the facts to be correct, he even shortly explained the source of their fight.

In the circumstances I am of the satisfied view that the plea of the accused was from his own will and thus unequivocal. I hereby 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

2/08/2022

PRE SENTENCE HEARING

Ms. Kashindi State Attorney: My lord we don't have previous criminal record, we yet agree that the accused is facing the charge of Manslaughter, yet we submit that according to the medical report on the cause of death it is true that the accused used excessive which led to the death of the deceased.

The deceased had been subjected to serious cruelty, which lost her life which cannot come back again. Not only that the cruelty has subjected the five children to miss love and affection from their mother. The

deceased was still young as age was 47 years she was a manpower. The country has lost the manpower for production.

The cruelty subjected to the deceased has been normal in our country the women have been subjected to the beatings and even killings by their husband. In the circumstances, I pray the court to consider all what I have stated above. I pray the accused be given stiff sentence as a lesson to him and to others of such a caliber.

That is all.

Mr. Budodi Defence Counsel: My lord I have heard the submission the State Attorney. I concur with the State Attorney that the accused is the first offender of all his life.

Further, according to the facts adduced the accused had been very cooperative to investigation organs. In all the processes the accused has been offered confessing. Even today before this court he has pleaded guilty. By so doing the accused has served investigation and trial expenses knowing to have committed the alleged offence.

Furthermore from the arrest to date, the accused has stayed in remand prison for one years and four (4) months. That is quite reasonable for him to learn it is as if he was imprisoned.

It is not indispute that the deceased has left five children. They no mother to take care of them. But the accused being in prison has made them to parental care as well. Even the act of the accused of loosing his

wife is a sufficient punishment to him. I don't think if the accused used excessive force. I pray the court to consider all the circumstances that all them were drunkard. Further the accused was tolerant enough because he had been abused from when they were at the pombe shop but while at home, the deceased extended the abuse to the parents of the accused. I pray for the lenient sentence if it pleases he be offered conditional discharge.

That is all.

Order: 1. Sentence on 05/08//2022
2. AFRIC

Sgd: D.B. Ndunguru
Judge
02/08/2022

SENTENCE

The accused person is convicted of the offence of Manslaughter contrary to section 195 of the Penal Code (Cap 16 R.E 2019). The statutory sentence for the offence is provided under section 198 of the Code. That is life imprisonment. The law does not provide for the minimum sentence. Further, there is no statutory guide for that.

Looking at the wording of the provision (section 198) the sentence is not mandatory but discretionary. But in exercising such a discretion the court must act judiciously. The court must be guided to avoid abuse of

judicial discretion, disparities in sentencing and arbitrariness. The guide is contained in Sentencing Manual for Judicial Officers published by the Judiciary of Tanzania and CAT decisions.

In exercising the discretion, it is the duty of the court to find out and consider the maximum and minimum sentence set by law. This is trite because in imposing sentence it is unlawful to exceed the maximum sentence provided by law. But again the position is that if the law provides for the minimum sentence then it is that sentence which is to be imposed. The maximum should only be imposed when the offence comes close to worst type See **Regina Vs. Mayera (1952) SR 253.**

Having in mind that the sentence is discretionary, the level of seriousness of the offence and its sentence range must be taken into account. In determining the level of seriousness of the offence; I have considered the nature and circumstances in which the offence was committed. The facts reveal that the offence was resulted from the fight. I have also taken into account the culpability of the offender; that the accused had no any motive of committing such an offence. But the accused has subjected the deceased to gender violence. Taking all that to my assessment the offence's seriousness is of medium level. The level attracts the medium level of sentence. The sentence range in this level is from four (4) years imprisonment to 10 years.

I have also considered the mitigating as well as aggravating factors brought to my attention. Together with mitigating factors brought to my attention, but I consider the act of the accused of running away make me find the accused had the high degree of responsibility for the offence though not pre – meditated.

I hereby sentence the accused to serve five (5) years imprisonment in jail for the offence of Manslaughter Contrary to section 195 and 198 of the penal code (Cap 16 R.E 2019).

It is so ordered.




D.B. NDUNGURU

JUDGE

05/08/2022