

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA**

**CRIMINAL SESSION CASE NO. 55 OF 2020**

**REPUBLIC**

**Vs**

**GERALD S/O BALTAZARI BOKII**

**JUDGMENT**

*Date of last Order: 2-11-2022*

*Date of Judgment: 24-11-2022*

**B.K.PHILLIP, J.**

The accused is charged with murder contrary to section 196 of the Penal Code .The particulars of the offence are as follows; that on the 2<sup>nd</sup> day of August , 2017 at Kilimamoja Village within Karatu District in Arusha Region, the accused person did murder one Maria Baltazar @ Maria Fokasi.

The learned State Attorneys Yunis Makala and Riziki Mahanyu appeared for the Republic whereas the accused was represented by the learned Advocate Rogers Mlacha .

Briefly, the facts of the case presented in Court by the prosecution side during the preliminary hearing show that the accused is a peasant , resident of Kilimamoja ,within Karatu District in Arusha Region.The deceased was the accused's mother. The accused and the deceased were living together in residential house. On the fateful day the accused

returned home and found the deceased sitting on a verandah. He took her in the house because she was disabled. Then, he assaulted her on different parts of her body especially on the head and buttocks. Consequently she was injured and passed on due to the injuries she sustained. In proving the charge against the accused person, the Republic summoned a total of four (4) witnesses namely ; Josephina Vicent , Paulo Phillipo,D.6419 S/M Victor and Dr. Mgheni Tumaini Mziray who appeared as PW1, PW2 , PW3 and PW4 respectively. The accused person's caution statement was tendered in Court and admitted in evidence as Exhibit PE1.

PW1 testified as follows; that the deceased was her mother in law. She was staying with the accused just two of them since the accused is not married. The deceased is the accused's mother. PW1 was staying in the same compound with the accused but in a separate house. PW1's house was close to the accused's house. On the 2<sup>nd</sup> August 2017, the accused came back home very late at around midnight. PW1 heard her mother in law (deceased) screaming at around 12.00 o'clock midnight. Thereafter the accused came to her. She opened the door to see what was the matter, only to find the accused person standing at her door with a stick. She asked him what happened to his mother because she heard her screaming. The accused person told her that the deceased wanted to burn PW1's house. Thus, he beat her with a stick. The accused left and went back to sleep. In the morning at around 9.00 am the accused person went to PW1's house and requested her to go to the room where the deceased was staying. She went to the accused's house

where she found the deceased lying on the bed. She was not able to speak. Thereafter, PW1 called the neighbors and village leaders. She told them that the accused assaulted the deceased. PW1 identified the accused person in Court by pointing at him by her finger .

Upon being cross examined by the advocate for the accused person, PW1 told this Court the following; that the accused was drunk. He knew the time when the accused came to her house. She checked the same in her cell phone. In the morning she went to fetch water as she normally does. After coming back from fetching water, she prepared porridge for her mother in law ( deceased) and took it to her but she found her asleep. It was the accused who requested her to prepare the porridge. Moreover, PW1 told this Court that she was not in good terms with the deceased because the deceased loved her children only. At the beginning of her marriage she was staying with deceased but later on she moved to the accused's house . The deceased was disabled.

When she was re-examined by the learned State Attorney , PW1 told this Court that she used to go to her mother in law in the afternoon. She is the one who called the neighbor and the accused's sister. In response to questions from the assessors, PW1 told this Court the following; that the accused person is the one who told her to prepare the porridge. The deceased did not drink that porridge.

Another piece of evidence from the prosecution side is that of PW2 ( Paulo Phillipo), the accused's cousin. This witness told this Court that he knew the deceased. She was his aunt and her name was Maria Phocas. On 2<sup>nd</sup>

August, 2017, he received a call from the accused's sister namely Julitha Juma who informed him about the demise of deceased. He went to the deceased's house. He took the corpse to the Hospital. At the deceased's home he found the accused's brother in law , her sister, one person whom he did not recognize and the accused who was lying on the ground behind the house. The police officers came and arrested the accused person. On 5<sup>th</sup> August , 2017 the deceased was buried. Before burial ceremony the corpse was examined by the doctor who told them that the deceased's cause of death was injury inflicted to her body by using a blunt instrument. He identified the accused person in Court.

Responding to the question posed by the learned Advocate Mlacha, PW2 told this Court that the Doctor who conducted the post-mortem examination of the deceased told them that the deceased's cause of death was injuries on her body inflicted by using a blunt instrument.

In response to questions from by the Court assessors, PW2 told this Court that the deceased was staying with the accused person .They were staying just two of them. When he arrived at the accused's house he found the accused crying and complaining on the accusation leveled against him by his sister in law ( PW1) that he killed his mother. He was lamenting that how can he kill his mother. Moreover, he told this Court that he was not aware of any misunderstanding between the accused and the deceased. The deceased was staying with the accused.

PW3 (D. 6419 S/M Victor ) was the investigator of the case. His testimony was to the effect that he recorded the accused's caution statement (

Exhibit PE1) . He observed all required legal procedures in recording the accused person's caution statement, including making sure that the accused made his caution statement in a free environment without fear or threat whatsoever. The accused told him that he did not want anybody to be around while recording his caution statement. He recorded the accused's caution statement under section 58 of the Criminal Procedure Act (" CPA"). He started recording the caution statement at 11.00 am and finished at 12.24 pm. The accused told him that he was arrested by Robert Paulo and Andrea at 9.00.am. He tendered in Court the accused's caution statement which was admitted as Exhibit PE1. Moreover, PW3 told this Court that he was involved in the investigation of the case. He went to Hospital to identify the corpse together with the deceased's relatives. The post-mortem was conducted by Dr. Mgheni, ( PW4). The post-mortem report, sketch map of the scene of the crime were under his custody.

In addition to the above, PW3 attempted to tender in evidence the sketch map of the scene of the crime but the same was not admitted in evidence following the objection raised by the learned Advocate Mlacha that it was different from the one that was filed in Court and served to the advocate for the accused person.

Upon being cross examined by the advocate Mlacha, PW3 told this Court the following; that the accused person did not tell him the exact time his mother ( deceased) passed on. He told him that he beat his mother on her buttocks with a stick at around 10.00pm while he was drunk. The accused does not know how to read and write. He recorded the

accused's caution statement after obtaining information from him upon asking him question. He did not examine the accused whether he was drunk or not. The post-mortem of the deceased was conducted at around 4.00pm.

Upon being re-examined by the learned State Attorney, PW3 told this Court that the Doctor is the one who can know the cause of death of the deceased. The accused person narrated to him how he caused the death of his mother ( the deceased).

Responding to questions from the Court assessors, PW3 said that he did not manage to get the stick which was used to beat the deceased. When he met the accused person he was in good condition and did not tell him that he was harassed in any way.

The last prosecution witness was Dr . Mgheni Tumaini Mziray ( PW4).His testimony was to the effect that he conducted the post-mortem examination of the deceased and found out that the cause of death was internal hemorrhage in the brain. The deceased body had marks of strokes of sticks on the buttocks and at the back of the head she was injured and swollen. He testified further that the injury on the head suggested that the deceased was hit by a club ( " Rungu").The corpse was identified to him by the deceased's relatives ,namely Paulo and Robert in the presence of Victor, the police officer. The deceased was Maria Baltazar. Being lead by the learned State Attorney, Yunis Makala, PW4 attempted to tender in evidence a post-mortem report unsuccessfully since the same was different



from the copies of the post-mortem reports served to the advocate for the accused and filed in Court.

Upon being cross examined by Mr. Mlacha , PW4 told this Court that the he did not ascertain the time the deceased passed on and it was not necessary to do so. In conducting the post-mortem he opened the deceased's skull and noted that there was clotted blood in the brain. When a person dies blood clots too.

Responding to questions from Court assessors, PW4 told this Court he saw strokes of sticks on the deceased's buttocks. The injury on the head was caused by a heavy blunt instrument such as a club. The deceased was assaulted before her death. The deceased was brought to hospital by her close relatives and the police officer namely, Victor.

Upon the closure of the prosecution case, I analyzed the evidence made by the prosecution witnesses and found out that the prosecution established a *prima facie* case against the accused person. Thus, I ruled out that the accused had case to answer. I accorded the accused person an opportunity to enter his defence. The accused stood in the witness box as DW1 led by Mr. Mlacha, learned advocate. He gave his defence as follows; that the deceased was his mother. He was staying with her and his young brother's son who was in standard three. In 2014, the deceased got an accident. She fell in a gorge and both legs sustained fractures, and five ribs on her right hand side got fractures too. Also, she was injured on the back of her head. After the said accident the deceased was not able to walk or move from one place to another. He used to carry her wherever

she wanted to go. The deceased was not able to lay down due to the damages she sustained in her backbone. Thus, she used to sit upright all the time supported with a bag. He went on testifying that the deceased passed on the 3<sup>rd</sup> August 2017 at 8.00 am due to hunger because in her last days her condition deteriorated. She refused to eat anything. He used to feed her like a baby since she was not capable of feeding herself. On the fateful date he was around at his home. When he entered in the room where the deceased used to stay he was surprised to find her lying on the bed while she always used to sit upright on the bed supported with bag. He went outside to call people who were working at the shamba near by his house to assist him to check the condition of his mother. Those people were females. They came and assisted him to lay down the deceased and covered her properly. Thereafter, Josephine (PW1) after noticing that there were many people around his (accused) house she went there and started calling other people including the police men. When the police men came they found him sitting with his sister. Upon being asked by the policemen on who caused the death of the deceased, PW1 pointed at him. The police officer arrested him and took him to Karatu Police Station. It was around 11.00 am. His caution statement was recorded by a policeman called Victor. When he was recording his caution statement there were three other policemen in the room. Victor did not tell him any of his rights before recording the caution statement. During the interrogations he told Victor that he did not beat the deceased. He refused to confess that he caused the death of the deceased but they forced him



to admit that he caused the death of the deceased .They assaulted him and forced him to put his thumb print on the caution statement.

Furthermore, the accused testified that PW1 told the police officers that he beat the deceased because he had a conflict with her over ownership of a farm ( "shamba") which the deceased had allowed PW1 and her husband to cultivate it but later on decided to stop them from cultivating it and gave the same to the accused. PW1 was not happy. She has grudges against him.

Upon being cross examined by the learned State Attorneys , the accused told this Court the following; that after the accident they took the deceased to Mang'ola hospital but she did not recover. She was supposed to taken to KCMC or Muhimbili hospital for further treatment but that was not done. Most of the time the deceased used to sit on a bed made of small sticks fitted together, that is why the Doctor ( PW4) saw on her buttocks marks of strokes of sticks . He admitted that the medical practitioner is the one capable of knowing the cause of death of the deceased than him. However, he insisted that the deceased died of hunger because in her last days she was not eating anything and her health had deteriorated so much. He admitted that during cross examination he did not cross examine Mr. Victor ( PW3) about the harassment he alleged in his testimony in chief because he was not the one cross examining him. He was not able to remember the names of the women he called to assist him.

In response to questions from the Court assessors the accused told this Court the following; that at night the deceased told him that she was not feeling well. She was shivering. The deceased passed on at 8.00 am. He was the one preparing food for the deceased. PW1's testimony is not truthful. He had conflicts with PW1 and normally they were not talking to each other. He was accused of causing the death of the deceased because he was staying with the deceased and was not in good terms with PW1.

At the end of the hearing of the case, the learned Advocate Mlacha prayed for time for filing a closing submission. I granted his prayer and he filed his closing submission within the time ordered by the Court. The same is appreciated. Having analyzed the evidence adduced by both sides, before embarking of determination on the issues arising from the evidence adduced, let me point out the facts not in dispute as stated during the preliminary hearing; **One**, the accused's personal particulars which includes his name ( Gerald Baltazar Bokii) , age ( 45 years) and address ( resident of Kilimamoja area) **Two**, the deceased's death occurred on 2<sup>nd</sup> day of August 2017. **Three** , the deceased was the accused person's mother

In the determination of this case I am of settled legal opinion that the key issues for determination which I included in my summing up to the assessors are as follows;

- i) *Whether or not the deceased died unnatural death .*

ii) *Whether the evidence adduced by the prosecution has proved that the accused person beat the deceased with a stick.*

*If the first issue is answered in the negative then,*

iii) *Whether the circumstantial evidence adduced by the prosecution can connect the accused to the cause of death of the deceased.*

iv) *Whether the prosecution has proved the accused's guilty to the standard required by the law.*

Starting with the first issue, as can be deduced from the summary of the evidence adduced, in this case among the issues in dispute is the deceased's cause of death and whether or not she died a natural death. In establishing the cause of death, the prosecution brought in Court Doctor Mgheni (PW4) who conducted the post-mortem examination. In his testimony PW4 testified that the deceased's cause of death is internal hemorrhage in the brain and that the deceased had strokes of sticks on her buttocks, and an injury on back of her head which showed that it was caused by blunt instrument. As I have alluded earlier in this judgment the post-mortem report was not tendered in evidence following the objection raised by the advocate for the accused and upheld by the Court. I have taken into consideration the accused's defence that the deceased died of hunger because she refused to eat and had told him that she was not feeling well. In the morning she passed on. However, the same has not shaken the testimony made by PW4 because upon being cross examined by the learned State Attorney and asked clarification questions by Court assessors on why he did not take any action/step to assist the

deceased instead of leaving her in the house , he failed to give any convincing answer. Not only that the accused also admitted that the deceased had marks of strokes of sticks on her buttocks. The explanations which he gave on why the deceased had the marks of strokes of sticks on her buttocks leaves a lot to be desired and did not shake the prosecution case. In his testimony the accused made two contradictory assertions. He told this Court that he used to carry the deceased from one place to another because she was disabled. At the same time alleged that the deceased used to sit on a bed made up of sticks fitted together to the extent that she got marks on her buttocks which looked like strokes of sticks. In my opinion the two assertions aforesaid made by the accused cannot go together and made his defence a sham. The bottom line is that the accused person did not dispute that the deceased had marks of strokes of sticks on her buttocks.

In addition to the above, I have taken into consideration all relevant arguments raised by Mr. Mlacha in his final submission .However , with due respect to Mr. Mlacha, some of the arguments he raised were afterthoughts and irrelevant in this case at this stage, and I have not given them any consideration in this case. One of those arguments is that the charge sheet did not contain sufficient particulars of the offence charged against the accused.

Now, back to the relevant arguments, Mr.Mlacha's contention that PW4's testimony is doubtful on the reason that according to exhibit PE1 the accused confessed that he beat the deceased on the buttocks ,legs and head how come PW4 testified that the marks of strokes of sticks were

found on the buttocks only. In my opinion Mr. Mlacha's concern has no merit because the Doctor ( PW4) said the strokes of sticks which were visible and he managed to see .

Another argument raised by Mr. Mlacha was that PW1 and PW2 did not say anything on the appearance of the deceased body in general , that is whether it had bruises, marks or injury despite the fact that PW1 alleged that she called the police and other people after the death of the deceased and PW2 testified that he took the deceased to the hospital. In my opinion this argument is devoid of merit because in their testimonies PW1 and PW2 did not say that they had opportunity to check the deceased's body and most importantly, the fact that they did not say anything on the appearance of the corpse cannot shake the evidence of PW4, who is the medical Doctor and conducted the postmortem examination .

Mr. Mlacha also, contended that in his testimony PW4 was using the plural -first person pronoun "we" and when cross examined on the use of the word "we" he said that he was referring to himself, PW2 ( Paulo) and PW3 ( Victor) which means that PW4 conducted the post-mortem examination together with unqualified people that is , PW2 and PW3. With due respect to Mr. Mlacha, his aforementioned argument is misconceived because PW4 when he was explaining on the general appearance of the corpse and the cause of death he did not use the plural first- person pronoun " we". He said what he observed and how he examined the deceased himself. He mentioned PW2 and PW3 as people who identified the deceased and showed him the same for conducting post-mortem

examination, but at no point in time during his testimony he testified that PW1 and PW2 participated in the post-mortem examination and determination of the deceased's cause of death.

The above being said, now, the pertinent question is; can this court rely on the testimony of PW4 in the absence of the postmortem report? In my considered opinion the answer is "yes" because PW4, is the one who conducted the post-mortem examination of the deceased. His testimony was consistent and his answers to the question posed to him during cross examination and re-examination as well as questions from the Court assessors were consistent. He was stable and made his answers with great confidence. In short, his was a credible witness. I am alive that a cause of death can be established even in the absence of a postmortem report by relying on the evidence of a witness who handled the corpse. In the case of **Jacob Mwashitete and four others Vs D.P.P, Criminal Appeal No. 24 of 2019** ( unreported) the Court of Appeal held as follows;

*"The position of this Court has always been an autopsy report or a post-mortem examination report is not the only proof of death or cause of death. In YUSUPH SAYI, MALISHA SAYI & MACHILU SAYI V. R., CRIMINAL APPEAL NO. 589 OF 2017 (TANZLII) we said: "It is settled that the cause and incident of death can be proved by direct evidence from eye-witnesses who saw or handled the deceased's body or even circumstantial evidence... .in the instance case the testimonies of PW1, PW2 and PW4 sufficiently proved the cause and incidents of death. While PW1 and PW2 adduced evidence on how the deceased was hacked to death on the spot, PW3, who went to the scene*



*in response to the alarm, confirmed to have found the mutilated lifeless body of his mother lying on the ground."*

From the foregoing it is the finding of this Court that the deceased died unnatural death.

Having made a finding that the deceased died unnatural death, now the next issue is; who caused the deceased's death. The answer to this issue shall be found in the determination of the 2<sup>nd</sup> and 3<sup>rd</sup> issue. I will deal with both issues conjointly because they are intertwined. The key evidence from the prosecution as far as these issues are concerned is the testimony of PW1 the accused's sister in law and the accused's caution statement. Let me start looking the testimony of PW1. I do not need to be repetitive. However let me state in nutshell that PW1 alleged that she heard the deceased screaming at midnight and thereafter the accused came to her house and told her that he beat the deceased with a stick and he was holding a stick in his hand. PW1 did not see the accused person beating the deceased. However, she alleged that she heard the deceased screaming. PW1's testimony that her house was nearby the accused' house was not challenged. So under the circumstances, it means it was possible for PW1 to hear the deceased's screams.

With regard to exhibit PE1 (the accused person's caution statement), its contents are to the effect that the accused beat the deceased on her head and buttocks with a stick and caused injury on the back of her head. He beat the deceased while he was drunk. However, it has to be noted that in his defence the accused person denied to have confessed that he beat the deceased. I am alive that the position of the law is that

generally it is dangerous to convict an accused person based solely on retracted confession without corroboration. In the case of **Dickson Elia Nsamba Shapwata and Another Vs Republic, Criminal Appeal No.92 of 2007**, Court of Appeal had this to say ;

*"With respect, we agree with Mr.Mkumbe that,it is always desirable to look for corroboration in support of a confession which has been retracted/repudiated before acting on it to the detriment of the appellant."*

*However, according to the current state of the law , Court may convict on a retracted /repudiated confession even without corroboration. In the words of Duffs, V.P in **Tuwamoi v.Uganda (1967) EA 84** at page 91-*

*"The present rule then as applied in East Africa,is regard to retracted confession,is that as a matter of practice or prudence the trial court should direct itself that it is dangerous to act upon a statement which has been retracted in absence of corroboration in some material particular, but that the court might do so if it is fully satisfied that in some circumstances of the case that the confession must be true"*

Also, in the case of **Hemed Abdallah V Republic (1995)TLR 172** the Court of Appeal held that generally it is dangerous to act upon a repudiated or retracted confession unless it is corroborated in material particulars or unless the Court , after full consideration of the circumstances , is satisfied that the confession must be true.

In his final submission Mr. Mlacha submitted that in his defence the accused person testified that he was not told his rights before recording Exhibit PE1 and he was not cross examined on that issue . Thus, he was of view that the accused's assertion should be believed, which means that what he said is correct. He cited the case of **Bomu Mohamed Vs Hamisi**

**Amiri , Civil Appeal No.99 of 2018** ( unreported) , to cement his arguments.

Mr. Mlacha urged this Court to treat Exhibit PE1 with utmost circumspection. With due respect to Mr.Mlacha, Exhibit PE1 indicates clearly that the accused person was told his rights before recording his caution statement. Under the circumstances the case of **Bomu Mohamed** (supra) is distinguishable from the facts of this case.

In the instant case, the evidence of PW1 corroborates the contents of exhibit PE1. As alluded earlier, in his testimony PW1 told this Court that when the accused went to her house at night he was drunk and was holding a stick. In the caution statement it is indicated that the accused beat his mother ( deceased ) with a stick while he was drunk. During cross examination the accused admitted that he used to take alcohol. I have taken notice that during the hearing of the prosecution case no any concern was raised by the accused that he was tortured and /or forced to sign exhibit PE1 as he alleged in his defence. The accused's allegations that he was forced to sign the caution statement during his defence is a pure an afterthought which cannot be given weight by this Court. It is a well known legal procedure that if at all the accused person was forced to sign the caution statement then he should have raised that concern during the hearing of the prosecution case to move the Court to conduct a trial within a trial so as to ascertain whether or not he was forced to sign the caution statement in question. Under the circumstances I am convinced that the confession made by the accused person must be true.

I wish also to point out that I have taken into consideration the accused's assertion that he was not in good relationship with PW1 and that he had a dispute with her over the ownership of a farm. However, in my considered opinion the same has not shaken the prosecution having in mind the contents of Exhibit PE1.

From the foregoing, it is the finding of this Court that the prosecution has established that the accused person beat the deceased with a stick while he was drunk. Therefore the 2<sup>nd</sup> issue which was an alternative to the 1<sup>st</sup> issue has become redundant since the 1<sup>st</sup> issue has been answered in the affirmative.

With regard to the last issue which aims at assessing whether the prosecution side has proved the offence of murder against the accused person, I think it is imperative to start by stating the position of the law, that is, in proving the offence of murder, the prosecution is required prove two essential elements namely; the act of the accused killing the deceased / causing the death of the deceased and the second one is that the accused killed the deceased with malice aforethought /intent. More so, our law of evidence lays the burden of proving criminal cases upon the Republic/prosecution and the standard of proof is beyond reasonable doubts. The accused does not need to prove his innocence but rather to raise doubts on the case against him.

The findings I made in the 1<sup>st</sup> and 2<sup>nd</sup> issue proves that the accused person is the one who caused the death of the deceased since the testimony of PW4 established that the cause of death of the deceased

was internal haemorrhage in a brain which was caused by the injury on the deceased's head. The injury was caused by a blunt object. Also, it has been established by the prosecution witnesses that it is the accused who beat the deceased with a stick and caused injuries to her body. I am satisfied that the accused person caused the death of the deceased. So, the first element in proving the charge of murder has been met.

Coming to the second element, that is malice aforethought/intent, I am in agreement with the observations made by Mr. Mlacha in his closing submissions that the prosecution failed to prove the same. Mr. Mlacha submitted that if this Court believes the testimony of PW1 and exhibit PE1, which both are to the effect that the accused person beat the deceased with a stick, not a lethal weapon while he was drunk, then, the accused cannot be condemned of murder. The fact that he was drunk implies that he did not know the consequences of his action.

Both Court assessors were of the opinion that the accused caused the death of the deceased. However, on whether accused had intention to kill the deceased, they had different opinions. One said that the accused had no intention to kill the deceased because the evidence has revealed that he beat the deceased while he was drunk. The second assessor, was of the opinion that the accused person did not tell the court what efforts he made or steps he took to save deceased's life such as taking her to hospital because in his defence he alleged that the deceased was sick. She was of a strong view that prosecution side proved that the accused caused the death of the deceased with malice aforethought/with intent to kill her.



There are plethora of authorities on what constitutes malice aforethought . In the case of **Charles Bode v. Republic, Criminal Appeal No. 505 of 2016**, the Court of Appeal mentioned seven factors which have to be used in determination on whether the accused had an intention to cause death or grievous harm to the deceased in establishing the existence or non existence of malice aforethought , to wit; *the type and size of the weapon used in the attack, the amount of force used by the attacker, the parts of the body aimed by the attacker, the number of blows, the kind of injuries inflicted, utterances made by the attacker before or after the attack and lastly the conduct of the attacker before or after the incident.*

In this case the evidence adduced shows that accused person was arrested at his home. He did not run away to hide himself or make any resistance. PW1 told the Court the accused is the one who asked her to go to see the deceased in her room. I am of a settled opinion that though the accused beat the deceased he did not do so with malice aforethought /intention to kill her. Had it been so, he would have not asked PW1 to go to see her in the morning after assaulting her at night. The usual and expected action would run away/ hide himself so as to avoid being associated in any way with the death of the deceased. In addition to the above, the weapon used by the accused person is a stick. Not a lethal weapon. The evidence reveal that the deceased was disabled, thus, if the accused had intended to kill her he would have used a lethal weapon and the deceased had no any means of defending herself.

From the foregoing it is the finding of this Court that the prosecution has failed to prove that the accused caused the death of the deceased with



malice aforethought. Thus, I found the accused , Gerald Baltazari Bokii guilty of manslaughter contrary to section 195 of the Penal Code and convict him of manslaughter accordingly.

Dated this 24<sup>th</sup> day of November 2022



A handwritten signature in blue ink, appearing to read "B.K. Phillip", is written over a horizontal line.

**B.K.PHILLIP**

**JUDGE**