

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT BABATI

CRIMINAL SESSION NO. 77 OF 2019

(Originating from PI. No. 10/2017 in the Resident Magistrate Court of Manyara at Babati)

REPUBLIC.....COMPLAINANT

VERSUS

CHRISTOPHER S/O MARTINE.....ACCUSED

SENTENCE

02/03/2022 & 02/03/2022

GWAE, J

In this court, the accused person, Christopher s/o Martine stood with the offence of Murder to section 196 of the Penal Code Chapter 16, Revised Edition, 2002 ("Code"). However, when the case was called on for trial, the accused offered a plea of guilt to the offence of Manslaughter c/s 195 and 198 of the Code.

Brief facts of the case being that, on the 7th November 2017 Ngii at Ngii-Kilombero village, within Simanjiro District in Manyara Region, the accused met one Rachel Joseph, a young girl aged 3 years whom sudden grabbed, took her to the bush and raped her. In the course of raping the accused prevented the said Rachel Joseph, now deceased person from

raising an alarm as result the deceased died of severe bleeding leading to brain hypoxic.

This court having convicted the accused person of the offence of manslaughter, it is now the duty of the court to assess appropriate sentence by considering both aggravating and mitigating factors. Ms: Mgaya for the Republic though did not have any record in relation the accused's previous conviction yet she prayed for imposition of a severe sentence against the accused on the following reasons; that, the deceased was vulnerable person, that the deceased's death was due to the accused's sadistic conducts, that the accused as a grown person would seduce any other woman rather than raping the deceased

Praying for lenient sentence, the accused through his learned counsel, Mr. Ndonjekwa advancing the following mitigating factors; that, the accused was intoxicated as depicted in the extra judicial statement, that, the accused has spent about five years in custody (from 8th November 2017), That, the accused has pleaded guilty to the offence and that his parents are dependents on him

Considering the aggravating factors, that, the deceased was a vulnerable person (her age at the commission of the offence was three years), hence, the deceased was unable even to defend herself from the

accused's acts which to sadistic conducts as rightly argued by the learned counsel for the Republic. The level of seriousness of the offence is therefore high level.

I have also to consider if the defence of intoxication advanced by the defence carries weight, the accused is said to have been drunk when he raped the accused, section 14 of the Code reads'

(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to a criminal charge if by reason thereof the person charged at the time of the act or omission complained of he did not understand what he was doing and-

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

(3) Where the defence under subsection (2) is established, then in a case falling under paragraph

(a) of that subsection the accused shall be discharged and in a case falling under paragraph

(b) of that subsection the provisions of this Code and of the Criminal Procedure Act relating to insanity shall apply.

Provision of the law cited quoted above were interpreted by the Court of Appeal of Tanzania in **Republic v. Marco Chibing'ati** (1983) TLR 141 where it was held that;

If the appellant's story would have been true, the intoxication must have been self-induced. He did not state anywhere in his defence that the alleged intoxication had put him in a state of temporary insanity. Gathering from the sequence of events in the killing of the deceased, we are wholly convinced that the appellant was alert of what was happening and we are satisfied that he had formed the intention to kill the deceased. In the circumstances, we consider this defence as a package of lies and dismiss it."

In our case, the accused, must have known what he was doing since he grabbed the deceased and then took her to the bush where he had carnal knowledge with her. If the accused was truly intoxicated to the extent of not being capable of knowing what he was doing he could have raped her at the place where he met her instead of forcibly taking her to the bush. Also, his subsequent taking the deceased's body to somewhere else with a view of hiding it, is an indication that he knew what he was actually doing. Had he absolutely been insane by reason of intoxication,

he could not take her to the bush. The said incriminatory factors against the accused are depicted in both cautioned statement and extra judicial statement (PE3 & PE4)

I have however considered the accused person's mitigating factor that, he is the first offender, the factor which entitles him a merciful sentence. Similarly, that had been in custody since 8th November 2017 to date. Considering vulnerability of the deceased and her age as well as the sadistic acts of the accused, the actual sentence that may meet ends justice in this unlawful and killing of the innocent child is the term of **thirty-two (32)** years imprisonment.

Moreover, the accused must benefit from his plea of guilty as per the Tanzanian Sentencing Manual at page 24, a reduction of 1/4 from the actual sentence imposed herein. The reduction is of 1/4 out of the actual sentence and not 1/3 by considering decree of lateness as the accused person pleaded guilty when the matter was placed before me for trial and when prosecution witnesses had entered appearance as opposed to an indication of plea of guilty during plea taking, the term of **thirty-two (32)** years imprisonment is therefore reduced to **twenty four (24)** years imprisonment.

Consequently, the accused person, **Christopher Martine** is hereby sentenced to **twenty-four (24)** years imprisonment in order to be a deterrence to the public at large, the imposed sentence to start running from when he was placed in police custody that is on the **8th November 2017**.

Order accordingly.



**M. R. GWAE,
JUDGE
02/03/2022**

Court: Right of appeal to the Court of Appeal of Tanzania fully explained to the parties.



**M. R. GWAE,
JUDGE
28/02/2022**

