

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT KARAGWE**

CRIMINAL SESSIONS CASE No. 78 OF 2021

REPUBLIC

Versus

- 1. CLIAN CHRISTOPHER @CHIDE**
- 2. FELISTER PETRO**

JUDGMENT

13th October & 4th December 2023

OTARU, J.:

The life of **Fortunatus Paschal @Cassian**, a fifteen-year-old youngster was mercilessly cut short on the night of 2nd March 2021 at Masheshe Village within Kyerwa District in Kagera Region. His body was discovered the following morning. **Clian Christopher @Chide** and **Felister Petro**, the 1st and 2nd accused respectively, were apprehended in connection with the death. They both stand charged with the offence of Murder contrary to sections 196 and 197 of the **Penal Code** (Cap. 16 R.E. 2019).

The accused Clian and Felister Petro were lovers who had vowed to keep their love affair a secret at any cost, even if it meant taking one's life. It is with this premise that the Prosecution urged this court to find the accused duo guilty of the offence of murder as charged. The main evidence that the Prosecution relied upon are confessions by both accused persons. Their

confessions were recorded in Cautioned Statements which were tendered and admitted in court as exhibits P2 and P3 without any objections. Both accused have also confessed in court to have committed the offence. In the Cautioned Statements each of them explained the role they took and narrated how the incident happened. They planned every detail of their mission, which they successfully executed on the day as planned.

The facts leading to this case are such that prior to the day of the incident, the deceased had discovered the love affair that the accused duo had, and apparently, he revealed their secret affair to some persons. They were not pleased with that fact so they decided to exterminate him. The 1st accused purchased a knife and tricked the unsuspecting deceased to go with him to a pre-arranged spot. Meanwhile, the 2nd accused, who was not far, was waiting for a sign; a phone call from the 1st accused. When her phone rang, she quickly went to the pre-arranged spot. They tricked the deceased to lie down. As he did, the 2nd accused sat on him, holding him tight to the ground. The 1st accused cut the deceased's throat while the 2nd accused pressed down his lower body. They almost separated the head from the body. When they were absolutely sure that the deceased was no more, they walked away calmly, as if nothing happened. They continued with their daily routines until the day they were arrested. The 1st accused was among the people to have been last seen with the deceased. the 1st accused implicated the 2nd

accused and led to her arrest. As stated earlier, they both admitted to have been involved in the crime.

When the matter came up for hearing, the prosecuting Republic was represented by Mr. Amani Kyando and Mr. Erick Mabagara, learned State Attorneys. On the other side, the 1st accused was represented by Mr. Raymond Laurent, learned Advocate, while the 2nd accused enjoyed the services of Mr. Dickson Laurent, also learned advocate. I thank all Counsel for their proficiency and professionalism in performing their duties as officers of the court.

When the accused were asked to plead in court, they each admitted killing the deceased, but claimed that at the time of commission of the offence, they were minors of 17 years of age. Trial proceeded. The Prosecution called five (5) witnesses and tendered four documentary exhibits in the form of a Post Mortem Report (exhibit P1), Cautioned Statements of both accused (exhibits P2 and P3) and Site Plan (exhibit P4). The accused were the only witnesses for the Defense. They testified under oath, the 1st accused produced a clinic card to prove that he was a minor. It was admitted as exhibit D1. After closure of the Defense case, parties preferred not making final submissions.

The Republic has urged this court to hold that Cliau Christopher @Chide and Felister Petro are responsible for the death of Fortunatus Paschal

@Cassian. That the killing was done with malice aforethought. This being a criminal case, the burden lies on the prosecution to prove beyond reasonable doubt that the accused and only the accused murdered Fortunatus Paschal @Cassian. This is by virtue of section 3(2)(a) of the **Evidence Act** (Cap. 6 R.E. 2019). Also see the case of **Nathaniel Alphonse Mapunda & Benjamini Alphonse Mapunda v. Republic** [2006] TLR 395. The accused have no duty in proving their innocence.

The necessary ingredients to prove the offence of murder are, *that Fortunatus Paschal @Cassian is **dead**, that his death was from **unnatural cause**; that the **accused are responsible** for the death and that there was **malice aforethought*** involved.

As regards the first ingredient, if Fortunatus Paschal @Cassian is dead, the answer is without any doubt a 'yes'. Both accused named the person they killed as Fortunatus Paschal @Cassian. Further to that, Wilbart Kabakama Mutabuzi (PW3) testified that he witnessed his grandson Fortunatus Paschal @Cassian being dead.

If Fortunatus died from unnatural cause, the answer is again a 'yes'. Both accused explained that they killed the deceased by cutting his throat with a knife. Their explanation tallies with the testimony of Aristides Ruhikula (PW1), the doctor who performed the Post Mortem. PW1 stated that the death of the deceased was due to *hypoxia, secondary to excessive bleeding*

after slaughter of Anterior of Neck about ¾ of the neck (exhibit P1). The same has also been witnessed by PW1 and PW3.

As to whether the accused are responsible for the death of Fortunatus Paschal @Cassian; as stated earlier, both accused persons have admitted to have committed the offence at the Police Station as well as in this court. Their Cautioned Statements (exhibits P2 and P3) contained very detailed and explicit confessions. The accused decided to kill the deceased because he exposed their love affair.

The duo formed intention to kill and hatched up a plan to materialize their intention. According to the 2nd accused, she was waiting for a sign from the 1st accused. It came as expected. What exactly transpired, is found in exhibits P2 and P3. It is indicated that the 1st accused asked the 2nd accused to go to the hill as planned. Meanwhile, the 1st accused purchased the knife at the market and walked to the destined hill with the deceased, who did not have the slightest idea of their evil plan. It was around 19.00hrs to 20.00hrs. When they reached their destination, they lured him into lying down on his back so the lovemaking would begin. Once he did, the 2nd accused sat on him and held his lower body to the ground while the 1st accused cut his throat.

In the landmark case of **Tuwamoi v. Uganda** [1967] EA 84 at 91, it is stated that:-

*'What this passage says is that in order **for any confession to be admitted in evidence, it must first and foremost be adjudged voluntary.** If it is involuntary that is the end of the matter, and it cannot be admitted. If it is adjudged voluntary and admitted but it is retracted or repudiated by the accused, the court will then as a matter of practice look for corroboration. But if corroboration cannot be found, that is, if the confession is the only evidence against the accused, the court may found a conviction thereon, if it is fully satisfied that the confession is true.'*

In the instant case, none of the confessions were retracted or repudiated, as a result, conviction may lie based solely on confessions of the accused, this is further supported by the case of **Umalo Mussa v. the Republic**, Criminal Appeal No. 150 of 2005 (CAT Bukoba) (unreported), where the Court held that, *a confessional statement, if it was voluntarily made, does not require any further corroboration.*

I find it undisputed that both accused persons made confessions to have committed the crime charged in their Cautioned Statements. When their respective Cautioned Statements were tendered in court none of them objected to their admission. Both accused, at the Preliminary Hearing conducted on 20.04.2023 admitted to have made the statements. The duo have maintained their stance even at the trial when the Cautioned Statements were tendered and at their own defense. I have thus no scintilla of doubt that

the Cautioned Statements were made by the accused persons voluntarily. As such, even if there had been no other evidence corroborating the confessional statements, conviction could still be based solely on them.

The prosecution has established that the killing of the deceased was done by the accused persons. The question that remains to be answered is whether the killing was done with malice aforethought. This again is answered positively. By virtue of section 200(a) of the **Penal Code** (supra), *malice aforethought* is established by evidence proving that the accused intended to cause the death to the deceased. It is evident from the facts that both accused intended to cause the death of the deceased. So, they hatched the plan which the two of them meticulously executed with full knowledge and participation as to the consequences thereto.

Although each accused is recorded to have mentioned the other as the originator of the plan, they both executed it as planned. In law, if the act was performed together with a common intention, all are equally responsible for the offence committed and it does not matter whose idea it was. Section 22 of the **Penal Code** (supra) is relevant. For purpose of this case, section 22 (1) and (2) are quoted hereinbelow; -

22.-(1) When an offence is committed, each of the following persons is deemed to have taken part committing the offence and to be guilty of the offence, and may be charged with actually committing namely: -

*(a) every person **who actually does the act** or makes the omission which constitutes the offence,*

*(b) every person **who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;***

The 1st accused actually did the act of slaughtering the deceased. He is the person who did the actual cutting of the deceased's neck with the knife, thereby falling under section 22(1)(a) of the **Penal Code** (supra). The 2nd accused, although did not do the actual killing, she pressed the lower body of the deceased to the ground, an act that enabled the 1st accused to successfully accomplish the plan. In fact, knowing the 1st accused had a plan to kill the deceased, she did not do anything to prevent this from happening. Even if she did not do the actual killing, the action of the 2nd accused of participating in the plan without any effort to disrupt it and aiding the 1st accused to accomplish it is well covered under section 22(1)(b) of the **Penal Code** (supra). Consequently therefore, each of the accused persons is deemed to have taken part in committing the offence of murder.

I find that all these facts taken together are incapable of any reasonable explanation other than of the guilt of the accused persons. I am therefore satisfied beyond reasonable doubt, that the accused **Clian Christopher @Chide** and **Felister Petro**, are guilty of the offence of **Murder** contrary to section 196 of the **Penal Code** (supra) and I convict them as such.

Dated at Karagwe, this 04th day of December 2023.



M.P. Otaru

Judge

SENTENCE

There is only one penalty for the offence of **Murder** provided under section 197 of the **Penal Code** (Cap. 16 R.E. 2019), that is, death. By virtue of 226 of the Penal Code persons below 18 years of age are exempted from this penalty. Therefore, having entered conviction against the accused persons **Clian Christopher @Chide** and **Felister Petro**, I am required to determine their appropriate ages. As such, I sought for assistance from Social Welfare Office as amicus curiae, to enquire into the ages of both accused persons under section 113 of **the Law of The Child Act** [Cap. 13 R.E. 2019].


According to the Social Enquiry Report dated 27th October 2023 (exhibit C1), the 1st accused was born in 1997 and started primary education in January 2004. Because his exact date of birth is not known, it may be assumed that he was born on the last day of that year, that is on 31st December 1997. In that case, in March 2021 at the time the offence was committed he had already celebrated his 23rd birthday. On the part of the 2nd

accused, she was born in 2002 and started primary education in 2009. Her exact date is as well not known. Making the same assumption as we did for the 1st accused, the 2nd accused had already attained eighteen (18) years of age at the time of commission of the offence.

Therefore, both accused persons namely, **CLIAN CHRISTOPHER @CHIDE** and **FELISTER PETRO** had attained the age of 18 years when they committed the offence charged. They had full control of their actions and knew the consequences thereof. I therefore, sentence each one of them to suffer death by hanging as per the law.

Dated at Karagwe, this 04th day of December 2023.





M.P. Otaru
Judge

Court:

The right of appeal to the Court of Appeal is explained to the convicts.




M.P. Otaru
Judge
04th December 2023