

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[ARUSHA DISTRICT REGISTRY]**

AT ARUSHA

CRIMINAL SESSION CASE NO. 24 OF 2023

REPUBLIC

VERSUS

PETER S/O BENEDICT @ ALPHONCE

JUDGMENT

05/04/2024 & 08/04/2024

BADE, J.

The accused person PETER S/O BENEDICT @ ALPHONCE stand charged with an offence of MANSLAUGHTER Contrary to Section 195 and 198 of the Penal code, Cap 16 R.E 2022)

The prosecution side was led by Lilian Kowero, State Attorney who presented information which revealed that the incident leading to the death of the deceased occurred on the 11th day of April, 2023 at Sokon I area within Arusha District and Region, whereby the Accused person is alleged to have unintentionally killed MWANAIDI D/O IDDI MBARUKU @MAMA ZULFA who is the deceased person.

The facts of the case briefly stated reveal that the deceased and the accused were a couple, living as a husband and wife in the Sokon I area in Arusha, and they were not blessed with any issues out of their union.

On the fateful date during night hours, the accused person and the deceased were at their matrimonial home. The neighbors heard noises as the couple was fighting, where the deceased was pleading with the accused not to beat her further and stop. The neighbours knocked on their door and the accused opened the door. They tried to resolve the matter between the two, after which the deceased and the accused were able to go back to sleep.

On the next day, the 12th of April 2023 one of the neighbors (Hadija Abdallah went to the deceased house and found both the deceased and the accused sleeping. She was able to see the deceased who complained of feeling quite unwell and had swollen on the left side of her face. As it happened, the deceased never got out of bed from the incident day.

It is stated that on the 15th of April 2023, the deceased fell; she was taken to the Hospital and was admitted until the 21st of April 2023 when she was discharged and taken to her daughter MWAJUMA MAULID JAFFARY. The deceased despite being discharged she complained that she was not feeling

well and that she had severe headaches. Three days later on 24th April 2023, the deceased condition worsened and she was taken back to the hospital. She was admitted and succumbed to her condition on 25th April where she passed away.

On 26th April 2023, the deceased body was medically examined and an autopsy revealed the cause of death to be "traumatic head injury due to blunt force". Upon the police officers investigating the crime, visiting the crime scene, and drawing a sketch map of the scene of the crime, the Accused was interrogated and arrested as he admitted to having quarrelled with the deceased and slapping her where she fell over a charcoal stove nearby. He was also taken to Justice of Peace and admitted the same. He was thus arraigned on charges of MANSLAUGHTER. The prosecution also tendered a post-mortem report, which was not objected to by the defence side, and admitted as **Exh P1**.

On the defence side, the accused person did not deny having committed the offence. He did not dispute any of the facts related by the prosecution and voluntarily conceded to all of them as being true. The accused person unambiguously pleaded guilty to the offence charged. On this account, this court had little input in finding that the facts as presented by the prosecution

and acceded by the accused person constitute the charge of manslaughter contrary to section 195 and 198 of the Penal Code Cap 16 RE 2022 for which the accused was convicted of on his own plea of guilt.

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In his defence, the accused person maintained that he did not intend to kill the deceased person. The accused was represented by a defence attorney Ms Kerr Mra. She maintained that since her client has unequivocally admitted to have committed the alleged offence, she could only mitigated for her client to have the leniency of the court on four different aspects for consideration of this court; the fact that the accused has pleaded guilty, that the accused had not intended to commit the crime, that it really is his first offence, and that he is also depended upon by his parents who are old, as well as a young child that he was looking after.

She argued on the first aspect that the court should consider this on the basis of the fact that the accused has regretted what happened as he did not run away but rather he kept on to his own house. She also maintained that the fact the accused cooperated with the police and the authorities immediately after he was apprehended, went to the Justice of Peace, and confessed. This she reasoned is coupled by the fact that she had entered a

plea of guilty before the court, all of which shows that he is regretting what has happened and is showing remorse.

On the other hand, the prosecution argued through the learned State Attorney and implored the court to consider the aggravating factors namely; no weapon was used and taking into account the fact that the deceased was a good citizen who was just going by his normal matrimony life, but has acted aggressively showing anti social behaviour, which should earn the accused a not so severe sentence. Also the State Attorney conceded that the accused has no previous record and had been considerably remanded, and as such, he should be leniently sentenced.

I have given due considerations to the circumstances of the case, that the accused readily confessed the offence of unlawful killing when he was called on to plead before this court. I am inclined to agree that his act of promptly confessing the offence calls for lenient consideration as far as sentencing is concerned as he has demonstrated his contrition for his unlawful act. See the case of **Swalehe Ndugajilungu vs Republic (2005) TLR 94** and **Lubanga Senga vs Republic (1992) TLR 358**.

Frankly speaking, it cannot be a mitigating factor that the accused person neither desired nor contemplated the deceased's death; if the accused person had so contemplated, there would surely be culpability for murder.

Exh P1 shows that the deceased suffered a haemorrhage internally, which must have been the result of the fall after the fight. As a husband and a responsible adult, the accused should have been able to foresee the possible range of dangers he was suffering his wife for subjecting her to the beating.

In any case, the sentencing phase of a trial is the most difficult phase for any judicial officer. This case is no different, mainly because at this point, the focus shifts from the merits of the case to factors which are irrelevant to the merits, such as the motive for the crime, the personal circumstances of the accused, the impact of the crime on the victim and society's interest.

There is no universal formula that one would apply to each and every case that results in appropriate sentence under the circumstances of the offence.

While I am aware that I am called upon to decide an appropriate sentence, and that I am expected to have regard to the purpose of sentencing, which would be deterrent, reformatory and retributive. That is why the court's attention is called to have regard to the accused's personal circumstances and needs, the nature of the crime and the interests of society. None of

these factors must be over or under emphasised. An appropriate sentence is one which gives a balanced consideration to the offender, the crime and society. A value judgment has to be made taking into account the aims of punishment and to keep in mind the stated triad factors.

In considering the circumstance of the accused person, the case and mitigation, that the accused is a first-time offender and has a family depending on him, and since the accused was admitting to the offence from the beginning, the accused person, **Peter s/o Benedict @ Alphonse** is hereby sentenced to a term of **one (1)** year's imprisonment as a deterrence for those who are simply cruel and abusive while feeding their abusive tendencies through helpless victims such as their wives, considering the fact that these tendencies are rampant in our society.

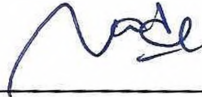
It is so ordered.

DATED at ARUSHA this 08th day of April 2024



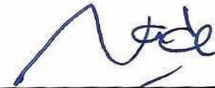
A. Z. Bade
Judge
08/04/2024

Judgment is delivered in the presence of the Accused Person and his Counsel, and State Attorney on the **08th** day of **April 2024**.



A. Z. BADE
JUDGE
08/04/2024

The Right of Appeal on the Sentence is explained.



A. Z. BADE
JUDGE
08/04/2024