

TANZANIA / JUDGMENT

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/ IN THE HIGH COURT OF TANZANIA AT SINGIDA. ORIGINAL JURISDICTION

- "t. (DOMWREGISTRY) . CRIMINAL SESSIONS CASE NO 47 OF 1974 THE REPUBLIC .
VERSUS UHOTILS/O NTLDU CHARGE: Murder. c/s 1.96 of the Penal Code. JUDGE
&PIGANO O J The accused UXHOTIA SIO NTJTUDU stands charged, in this
- i...j.p5t an with laughter, contrary,, to section 195 of the Penal Code, namely that, on or
about March 1, 1973, at Guru .ir. Nanyoni district he unlawfully caused the death of dne.
Mwanbura d/o Kitiku :..... ,'. 'The Republic has brought eight witnesses, in its endeavour
to prove the charge, and it is obvious that its case will stand or collapse on the evidence of
D42 Sita d/o Kiafa the wife of the accused. It is therefore necessary to view and assess
- . her evidence: co . thoroughly. . But before I proceed to it, that it is more convenient to
point out several salient
- . facts. which are: not in controversy. • First, it is common ground that a woman called
Iwambura d/o Kitiku is definitely dead. She died in Kilimanjaro Hospital on or about the 16th
'day of March,' 1973. She had been in- 'disposed.. bad-ridden for a number of days before she
was admitted in hospital. The lay-man's opinion is that she had been stricken with hook
worm. Be that as it may, a post- mortem examination was carried out on her
body on 16/3/73 by PW.8 Dr. and this brings me to the next point. The doctor observed that
she had a bruise behind the ear. He also 'observed' internally, a haematoma on the lower
abdomen. on the right an enlarged liver, adjacent to the haematoma, which had ruptured
the body of the liver. Internal bleeding. The doctor observed that the haematoma and
the rupture of the liver were consistent with a blunt weapon. He said that the enlargement
of the liver had nothing to do with the rupture. It was his view that the cause of death was
the haemorrhagic shock following the administration of that blow. By and large, the
findings and opinions of the doctor were not challenged and on my part, I can see no good
ground for questioning those expert's observations and views. Let it, therefore, be accepted
that Mwanbura did not die of any natural disease, let alone hook- worm, but of an assault by
an inanimate object. Thirdly, it is not in dispute that Mwanbura found her way to the hospital from
the house of the accused. She was a married woman but her husband was then serving a
term of imprisonment for a certain offence. She had arrived at the house of the accused four
or five days prior to her, being taken to the hospital. One of the questions which, on the

evidence, still begs. an answer is why she went to the house of the accused. Not that the answer to that question would have any material value as regards the outcome of this case. Now, as I have pointed out herein above, the only evidence which implicates the accused in this matter is that of his wife PW2. She related how Mwanbura came to their house. She said that Mwanbura was sickly and that most of the time Mwanbura was bed-ridden. She said that her piece of ghee disappeared and that when the accused learned about it he loudly suspected Mwanbura. She said that the accused called Mwanbura and made her about the ghee and that Mwanbura professed ignorance. About that, she said the accused picked up a stick and repeatedly struck Mwanbura with it on the thigh and stomach. She said she saw and heard the beating as she stood at the door of her house. She said that later on in the night, Mwanbura's condition deteriorated. She observed that she had vomited and bled from the nose. She went on to say that she escorted Mwanbura to a herbalist and thence to W. Shabani Nughanga who advised that Mwanbura should be taken to the hospital. She said that Nughanga's advice was accepted and Mwanbura was sent to the hospital where she died about one week later. It would seem that Mwanbura was reputed to have an itching palm. Net, assuming that the testimony of PW2 is true, that the accused made an excuse or licence to whip her for the ghostly chastisement. It would also appear that never, until she died, did she mention that the accused had threatened her. However, the fact remains that by the time she was hospitalized, she had sustained injuries on and inside the abdomen which in the course of time mortified her life. The accused denied, on affirmation, that he assaulted the deceased. That has throughout been his case. His explanation or his excuse as to why PW2 has been his wife since he was in her teens could have been induced to implicate him in this serious matter is, to say the least, startling. It is that their son, apparently in or approaching his twenties, happened to disappear in very mysterious circumstances. He said that he believed and still believes that it was PW2 who had, for her own evil purposes hidden the body. He said that he pointedly took her to task for that and that ever since there has been a serious discord between them. His persistent accusation that she was wickedly responsible for their son's disappearance, he claimed, was possible - the motive of her faking up this case. Needless to say, the idea of a mother hiding her own son for some evil does strike a strange note. No wonder that every one in court, including the learned counsel for the accused, turned to the accused in disbelief. Unfortunately, PW2 was denied the opportunity of saying any word about this allegation, though the accused raised the point for the first time when he was in the witness box. It is hard to say that the allegation was not part of the alleged story to his counsel. But the two assessors who sat with me appear to have favourably entertained this story. In like manner they have also entertained his contention that she was a woman who could be glad to see her husband land in grave trouble. They are entitled to their views, but I would, with due respect, differ with them. It seems to me that the story of the accused about his wife is too incredible to be accorded any credibility. What is more, I find that the doctor's evidence affords the evidence of PW2 some corroboration. He identified some injuries in the region of the deceased's body on which PW2 said the deceased was beaten by the accused. True it is that the deceased's reticence as regards her having been recently beaten up is quite striking. It

may be, as the learned counsel for the Republic has ventured to suggest, that she simply did not see the point of embarrassing herself by disclosing that she had receive'iating in connection th stolen ghee. Whatever the case, it is patently obvious that she had been beaten up and it is my consi cored opinion tl:.at she received the boating from the accused person I have no doubt that it is 4

- 4 that partithiar assault which brought about her doäth. If the accused honestly bolievoc that it was th. deceased who had 1 stolen the ghoo, tht bolie,was, in the clrQunstances, unreasonable.. But n allowing, that it wareaonablo, the accused was not permitted, in law, to punish her as he did. What he did was clearly unlawful In consequence, I find him guilty of manslaughter and convict him for that Pronounced in court'Y D. P. Napigano Judge Mr. Alirawiko: Accused is first of fender.' Deceased was a sick person. Accuse knew tha t. Accuf,od had no respect for'human life. Deterrent sentence call c(I for, Mr. Mbezi Purpose of accused lawful. Only thb means were unlawful., First offender. Jas family to look after.. Submit that accusecl'D deserves loniency, SENTENCE: One (1) year imprisonment. D. P. Mapiganc 6tho August, 1976. JUD G E Cer;tifiod true copy of tho Original. 17 DISTRICT REGISTRAR

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