

TANZANIA / JUDGMENT

# republic vs elvans so cyprian luvundu 2005 tzhc 171 15 april 2005

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TZHCDECIDED  
15 April 2005

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM ORIGINAL JURISDICTION CRIMINAL SESSIONS CASE NO.48 OF 192003 RE PUBLIC VERSUS ELYAN S/O CYPRIAN LUVINDU PROCEEDINGS 15/4/2005 CORAM: N.P.KIMARO, J. For the Republic - Miss Choma - State Attorney. For the Defence - Mr. Kariwa. Accused - Present under custody. CC: Julius. Miss Choma: The case was coming for trial. The Republic has four witnesses and we are ready to proceed with the trial. Mr. Kariwa: The defence is ready to enter a plea of guilty to a lesser offence of manslaughter c/s 195 of the Penal Code. Miss Choma: The Republic is ready to accept a plea of manslaughter. Court: Information of manslaughter c/s 195 of the Penal Code is read over to the accused and explained and he is asked to plead thereto. Accused: It is true I killed accidentally. Court: Entered Plea of Guilty. 1 N.P.KIMARO, JUDGE 15/04/2005 Facts by State Attorney: Your Ladyship the accused is charged with manslaughter c/s 195 of the Penal Code. The accused unlawfully killed one Paulina Peters Beatus on 16/04/2001 at Mbagala which is at Temeke District, Dar es Salaam Region. The accused and the deceased were lovers and they were cohabiting together. On the date of the incident (16/04/2001) the accused and the deceased left their house together at the evening. At about 9.00 p.m. they returned together drunk. The accused was seen kicking the deceased and the deceased fell down. The neighbours and other tenants - among them being Elizabeth Kanika and Juliana Daudi Mrope requested the accused not to beat the deceased. The accused obeyed and stopped beating the deceased. The neighbours carried the deceased to her room where she was living with the accused. They slept her on the floor and left her in the company of the accused. On the next day 17/04/2001 in the morning hours the accused left his room and went to inform the other tenants - among them being Yovina Daudi @ Mrope that he tried to wake up the deceased, 2 but the deceased was not responding. The neighbours went with the accused to his room and found the deceased on the bed and she was motionless. After seeing the situation, relatives of the deceased were Unformed. The police was also informed on that very day. The accused was arrested and taken to a police station. The body of the deceased was taken to hospital for examination. The Post Mortem Report showed that the cause of death was suffocation due to strangulation. The Post Mortem Examination Report has already been admitted in court as exhibit PI. The Sketch Plan was also made. I tender the same as exhibit. Court: Sketch Plan exhibit P2. The accused was then charged for the unlawful killing. Accused: The facts are correct. Court: The accused is

convicted on his own plea of guilty and admission of the fact leading to the commission of the offence. N.P.KIMARO, JUDGE 15/04/2005 State Attorney: No previous record. Mitigation by Mr. Kariwa: 3 1 I pray for leniency because he is a first offender. The accused is a young person and he was involved in the commission of the offence because of drunkenness. He has pleaded guilty and so he has saved the court's time and costs. The accused has been in remand for more than four years. He has already served part of his sentence. He has dependants. I pray to the court to take into consideration all the above factors and exercise leniency on the accused. Sentence: While I accept that under normal circumstances the factors given by the Defence Council are good mitigating factors, in this case the accused deserves a severe punishment. This is because the offence was committed in the course of domestic violence. The deceased is one of those women who have lost their lives because of domestic violence. The Constitution of the United Republic of Tanzania safeguards the right to life. No one is allowed to take away the life of another person without a lawful cause. Domestic violence is not a lawful course. Besides, the Convention on the Elimination of All Forms of Violence against Women (CEDAW) requires that violence against women should be eradicated. Tanzania is a party to the convention. There has been a lot of public outcry to stop domestic violence. In this case apart from the accused kicking the deceased, he strangled her. This court cannot accept the excuse of drunkenness because the accused was once warned not to kick the deceased and he stopped. Later on he strangled the deceased to death. Considering 4 this fact that the offence was committed in the course of domestic violence, I sentence the accused to an imprisonment for twenty years. N.P.KIMARO, JUDGE 15/04/2005 Right of Appeal is explained. N.P.KIMARO, JUDGE 15/04/2005 5

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