

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA AT IRINGA ORIGINAL JURISDICTION (DODOKA R11s1Y)
CRIMINAL SESSIONS CASE NO. 31 OF 1977 E REPUBLIC versus A1'DOLFJLYE D/O SAPULA CHARGE
Murder c/s 196 of the Penal Code IIJDGIVIENT SAMATTA, J., - The accused, MJDOLELYE D/O
SAPULA, stands charged with murder, contrary to section 196 of the Penal Code. It is alleged by
Republic that on or about the 26th day of September, 1976, in Iringa Region, the accused
murdered her daughter, one Grace d/o Lunochi. The accused has protested her innocence.
Happily, a number of facts in this case are not in dispute. 14 It is not in dispute that Grace d/o
Lunochi is dead and that she met her death on the 26th day of September, 1976. It is not in
dispute, too, that the girl met her death in the hands of the accused person. The main issue in
this case is: In what mental condition was the accused when she terminated the life of Grace
Lunochi? I hold and find as a fact that all the undisputed facts have been proved beyond
reasonable doubt. - . be The case for the prosecution may briefly be described as follows. On the 5th
day of December, 1971, the accused got married to one Yohane Lunochi, PW.2. Their marriage
was blessed with a number of children, including Grace Lunochi, the deceased in this case.
From the wedding day to sometime in 1975 the accused behaved as a normal person..4 According
to her husband, however, in 1976 she started behaving abnormally. She spoke very little and
sometimes she used to sing unnecessarily. ./2 -2-- According to the witness, later it became worse
than that. I At times the accused used to walk at night and talk unintelligible things without any
reason whatsoever. At times she used to harass passers—by without any reason whatsoever. She
used to pull some grass from the ground saying it was medicine. Yohane Lunochi found the
situation demanding some treatment; he therefore took the accused to her parents home. He left
her in the hands of her uncle who was also a traditional healer. A week later, however, the
accused returned to the matrimonial home. According to her husband, her condition was
considerably good. But early in September, 1976 her condition deteriorated and she started to
do abnormal things as she had been doing before. The husband went on to tell this court that on
the morning of 26th September, 1976, he left the matrimonial home for a walk. While he was still
having the walk, he got information that her daughter, Grace, was dead. He rushed to the river in
the village. There he saw many people, including the accused. He also saw the dead body of his
dear daughter, Grace. Later, at their matrimonial home, he asked the accused as to what had
happened to the deceased. The accused replied that it was she who had dropped the deceased in
the river. The accused added that she did that act when her mind was disturbed. Another witness
for the prosecution was an old man called Samwel Mwakyusa.. He told this court that one day in

September, 1976, he went to Wikichi village. After he had crossed Ichunilo river and after he had walked a distance of one mile from the river he heard an alarm originating from the river. He went there. There he saw the accused person., On the ground was lying a dead body of a child.. The accused told the witness that she had dropped the child in the river because her mind by then was disturbed. The she ' accused also said that it waTherself who had removd thochild 3-3- from the river. The dead body was conveyed to the Kibena Government Hospital where one Doctor Jvakajila performed post- mortem on it. The doctor's report was produced in this court under section 275 of the Criminal Procedure Code. According to that report, there were several minor wounds on the body and the skull was fractured. The cause of death of the deceased is given in the report as shock following head injury. On 29th September, 1976, the same doctor examined the accused. He found her to be mentally disturbed.. He accordingly recommended her to be further observed at the mental hospital. Following the order made by my learned brother Chipeta, the accused was sent to Isanga Institution for medical observation. The report made by the doctor who examined her there was produced in this court. In that report the doctor expressed the opinion that the accused most likely was of unsound mind at the time she committed the alleged offence. That briefly was the case for the prosecution., an - The accused maddunsworn staterent and called no witness. Her statement consists of three sentences. I can quote it without making this judgment unduly long. It reads as follows: "Vlhon I killed. I was mentally disturbed. I was insane. That is all." Upon evidence before me, I am satisfied that it was the accused person who caused the deth of Grace. I have come that conclusion after taking Into consideration the evidence before me and particularly the evidence of Saiel Mwakrusä, which I entirely accept. According to theevidence of that old man, the accused admitted to have dropped Grace who was then aged about two into the river. It is not oflitle significance that the accused confessed to have done so to her husband, whose evidence I accept. .14 r I I —4- Upon the evidence before this court, it is safe to conclude, in my opinion, that Grace Lunochu sustained the head injury when the accused dropped her in the river. It follows that the accused is the one who caused the death of Grace. Is the accused criminally responsible for that death? That is the question I proceed to answer. The lady and gentlemen assessors were of the unanimcus opinion that the accused person is not guilty because at the time she killed Grace she (The accused) was legally insane. I respectfully agree with that view. Not even a shadow of motive is given in this case why the accused should suddenly decide to kill her own daughter. The evidence before this court clearly shows, in my judgment, that the accused was legally insane at the time she killed her daughter. The evidence of the accused's husband, Lunochu Yohoie, establishes that from the beginning of 1976 the accused person was behaving ma very abnormal manners There are also the two reports from Dr # Mwakajila and the Isanga psychiatrist. Doctor Mwakajila found the accused to be insane. AccoiUng to the psychiatrist, the accused was most likely insane at the time she killed Grace I accept both reports. In my view the conduct of the accused prior- to the death of Grace shows nothing but that the accused was legally insane. I accept the accused assertion that she killed Grace when she was mentally disturbed. Like the Lady and Gentlemen Assessors, I find the accused not guilty of munler". I find that she killed Grace but she did so when she was legally insane.. . / I / Accordingly, I make a special finding to the effect that the accused did the act charged but by reason of insanity is not guilty of murder of Grace Iu.nochu. I order that a

certified copy of the proceedings of this, case be submitted to the Minister responsible for legal affairs In the meantime, the accused is to be kept in custody as a criminal lunatic. B. A. SMTTA JUG!. Right of appeal explained to the accused. The Lady and Gentle- men Assessors are thanked and discharged. B. A. SAIATTA JUDGE

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