

TANZANIA / JUDGMENT

na TZHC Mbeya 4

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TZHCDECIDED
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0 IN THR HIGH C(URT CF TNZII T MBLiYll ORIGINAL JURISDICTION (DODONL R1D-IS1RL) CRIMINLL ESSIS SE NC. 116 Ci 1972 THk RiPUBLI' Versus CEEPL KJLLNGALI U D G V1 __ 1\ T MNZVS, J. The accused, Chepe s/a ialangali stands charged with manslaughter c/s 195 of the Penal Code. It is- the Republic's case that the accused on or ak-cut the 26/12/71 at Chosi village in the dictrict and Region of Mbeya, unlawfully killed one, Edward S/a Chse, his son. The ascused pleaded net guilty to the Charge. The deceased who was, a -coring to the evidence, betwe.:n 1- and 2 years old, disappeared from his parehts on the night of 26/12/71. search w .s mounted and the dacoased was found lying in a river alread dead on 28/12/71. - It is the prosecutions argument that it was due to the accused's gross negligence that the deceased strayed from him to the river where he met his death.

- The defence, on the other hand, argued that the deceased was with his mother when he strayed to the river where he was found dead.
- In support of the Hepublios cace seven main prosecution witnesses gave evidencp as to how the deceased disappeared and how hisbody was found in a river two days later. Insyile Kapande, (P,w,2) the wife of the accused end mother of the deceased chose to give evidence notwithstanding the fact that she not a compellable witness. She testified to the court that on: vning hr husband, the arcused, came back from his walk.s anc :F'ound her inside their house feeding the deceased. .ccording to her evidence the accused, soon after
 - entering the house, picked up a stool and hit her with it on her head. She ran out of the house carrying the deceased with her but that the acused pulled the deceased from her. She left the child with the accused and ran to ore, Ihibu who is accused's uncle and reported to him that the accused hd assaulted her and taken the child from her, This witness further related to the court that as the child was still being breast—fed the accused's uncle sent his wife to collect the child from the accused and bring it to the witness. bibu's wi-fe went to the accused's house accompa- nied by one, Jfyusisye who, is elder brother of the accused, and one, Maulid. ocøding to her evidence soon afte they returned and reported that the a'-used had refused to surrender thc child to them. The court was further told that Abibu sent one, Jeremiah, to call

- the accused The ar'cusad came to bibus house and that Abibu asked him about the child.
- 4 —2- The accused is reported to have replied that the child was at his house sleeping and added that his wife could go and collect it. She went to collect the child, but, according to her testimony, she found the door to the house locked. She returned and reported to bibu that the door was locked. When she returned she did not find the accused at Abibuls house although, according to her evidence, she had left him there. She decided to report to their cell—leader one, iVsunguru. Msunuru, the witness Abibu and other people went to the accused's house. according to this witness they found the accused in his house. On interrogation as to where the child was, the accused is reported to have replied that he did not know the whereabouts of the child. The people at this juncture decided to tie the accused with ropes and sent him to their ward executive officer by the name of Emmanuel. (P.w. 9). From Emmanuel's house the party returned to accused's house. There the accused was subjected to a long interrogation regarding the disappearance of the deceased and, according to Insyile's evidence the accused eventually replied: "... I will show you where the child is". Thereupon the accused is reported to have led the searching party to a river where the deceased's body was found. On being asked as to how the deceased's body came to lie in the river, the accused is reported to have replied that he did not know. This witness also told the court that the deceased's fingers and toes were removed and that parts of the tongue and ears were also missing. These mutilations appeared to her as if they were done for witchcraft purpose. Abibu s/c Mwambesi (p.v. 4) related to the court that one day at about 1 p.m. the wife of the accused (P.w. 2) reported to him that she had quarreled with the accused. According to his evidence as she was reporting to him the accused arrived. The witness asked the accused he had quarreled with his wife and that the accused replied that he quarreled with his wife because she was not at home when he arrived. The wife was interrogated and admitted that she was not at home. She said she had gone to look for food for their dog. Abibu warned the accused not to quarrel with his wife on trivial matters. After this warning the accused and his left bibu's house to their home. bibu further told the court that on the same day at about 7 p.m. the accused's wife came to him again. This time she reported that she had been assaulted by the accused and that the accused had taken her child from her. Like Insyile (P.w. 2) Abibu told the court that he sent his wife, Insyile, and Imaulid to go to accused's house to bring the child to his mother. They went but soon after they returned and reported that the accused had refused to surrender the child to them. according to abibu the accused's wife spent the night at his house without her child. The witness also told the court it rained heavily that night and that the rain continued till 1 p.m. next day. after the rain had stopped he sent one, Jeremiah to call the accused. Chepe was called and came to Abibuls house without the child. Abibu asked the accused about the child and the accused is reported to have replied that he had left the child at his house. The accused's wife went to the house for the child but found the door locked. She returned and reported to Abibu who asked the accused about the key to the house. The accused gave the key to Abibu who handed it to accused's wife. According to Abibu, the same day in the evening the accused's wife came to him accompanied by a cell—leader, one Msunuru.

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13J Se pesn0o et1 •U2t .e PUXj ot 'ee xpue. Jo pTqO e st pese0ep etj, peep upr punoj qem TT qXqtTK o. pesno Jo Apo.sno et. woj paz.s peeeoep eT. Ct uOtCnlOuoO eTq2UOS91 i'Y qTfl. eOuep&e etq. uj U?tULTCtUnd Jo 9UT&aeSap .O,uOO puC eCs eTp. I.SuTe9e euitxo e oq j- UnowV, O. Se Bxepo Jo pu JTI UeUmtt 103 p1ee1stp tTOTlS KOTqS PUE tXOtCsuethuoO 30 14W gagm e puOieq O .CflW aoueteu stj (t) pucr •4 r;p o. enp cet tjop tj (itt) ' peo1d eq o. S2tt 9TTIP OT ClnTcj Tn (ii) ol c.np e pt peCrIOOC 9 tfl1 3tfl. pe&0Id eq rtw (i) :peA.old eq nw squetpei2ut OUTKOTTOJ et. pu uCO eoue -t -reu q 1TCICUCW 103 uototuoO eiojeq :t et (ddTI3 61) NTWJ!79 CA X99 JO 3SCO \$flOUICJ eq. ut u.top PTUT Ct eOuet -teu q 13.tC9UCUi JO 3.OAtI00 eq UCO peeflOOC Stfl. 4 iii stt. eiojeq e0uapt.e 3tfl uo 1eT.fl9tp St 19&910t 'uotsenb T'U. 9t '19t1 s ut peep ptxnoj eq o. 1e4.CI pue esnot 3tfl. W01J pBlCeddCStp et U3t4 pCSflOOC Ctfl. JO spu et. ut Sex peseoep eq. .Ctfl. p*çoo ws I eOueppe 9T41. tiQ irçqoasas 9tfl UJOIJ 2UTql.9WOg 3UTPTq Sex et t. pe.tots peseaoep eta. Jo snoqselet et. Utp1C91 TL/?I/Lz uo sxet.tsus AlooTpe1.uoo pus 1TtoM3t9q spesm0s etfl. poepu I!Ttt upC STT pnots e eut 1St0 9q. it uossefou St 91Ct •Sfl1 eq iew PTPW 0915 PUS nqq STT4 pus wTq ues.q pooq peq San 3l3fl. SOUC;Cp sp9st05 3I 1et0Jq Sltt pus wtq uoeeq i4.Tw9u9 Sex eIetfl. Telql. pe.twps uoT.floe9o1d Dq. iq psutwsxe-ssoio 9uTqq U0 pesn0s qTqj o9seo U0tfl0eS01d e pe1odcTns (9 Ic'•) D9tSflJt) 'Ietfl.olq uo spesnoos 9th. eiow ci qst pu pesnoora CT.fl. qCUT5s RaOl.9 2 C10C3nUCw pue 11t00 9tfl o. ewoo O. peptoep 3.st pnOt9 t!TuDg ISOOT iq uocied peoedcel 119m s pus 'ieipse

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