

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: Mustafa, Ag.C.J., Mwakasendo, J.A. and Makame, J.A.)

CRIMINAL APPEAL NO. 14 OF 1980

B E T W E E N

GODFREY MSENGI . . . . . APPELLANT

A N D

THE REPUBLIC . . . . . RESPONDENT

(Appeal from the conviction of the  
High Court of Tanzania at Singida)  
(Lugakingira, J.) dated the 10th  
day of March, 1980,

- in -

CRIMINAL SESSIONS CASE NO. 48 OF 1978

JUDGMENT OF THE COURT

MUSTAFA, Ag.C.J.:

The villagers of Konkilange village decided to chase out some reputed cattle thieves. The deceased was supposed to be one of them. On the 22nd December, 1977, the villagers collected the deceased and two or three of the other reputed cattle thieves and escorted them out of the village. In the course of the journey the deceased panicked and ran off. A number of villagers chased him, caught up with and beat him mercilessly with sticks. He was battered to death, his head was a mass of broken bone and flesh and blood, and his stomach split open. He died of haemorrhage and shock.

Twelve villagers were charged with the offence of murder. The Republic entered nolle prosequi for five, and the trial judge at the trial held that three of the accused had no case to answer. That left four accused, being Accused 2, Accused 3, Accused 4 and Accused 5, as they were so described at the trial court. Accused 2 was acquitted after the trial, Accused 3 and Accused 4 were convicted of assault and discharged since they had been in custody for over one year. Accused 5, is the appellant in this appeal. He was convicted of murder and sentenced to death.

The only evidence against him is his extra-judicial statement to a Justice of the Peace, which he has not challenged at the trial. He remained silent and made no defence after the prosecution case ended.

The relevant parts of his statement read:

"We eight people were selected to chase away the deceased because he was a cattle thief ... The deceased ... took to his heels. We decided to pursue him. We were all angry and we all beat him. I hit the deceased on the head with a stick once. Having been beaten the deceased died. We then returned home. ... we reported that we had killed the deceased."

As we said earlier, the body of the deceased was a mass of battered flesh and bone.

The trial judge held that the extra-judicial statement amounted to a confession of murder. We have examined the circumstances and we agree with the trial judge on this matter. We are satisfied that the appellant was rightly convicted of murder and we find no merit in the appeal which is dismissed.


DATED at DODOMA this 27th day of May, 1980.

A. MUSTAFA  
ACTING CHIEF JUSTICE

Y. M. M. MWAKASENDO  
JUSTICE OF APPEAL

L. M. MAKAME  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

  
( L. A. A. KYANDO )  
DEPUTY REGISTRAR