

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: Mustafa, J.A., Mwakasendo, J.A. and Kisanga, J.A. )

CRIMINAL APPEAL NO. 46 OF 1979

B E T W E E N

MOFAT MOSES KAJANGE . . . . . APPELLANT

A N D

THE REPUBLIC . . . . . RESPONDENT

(Appeal from the Conviction of the  
High Court of Tanzania at Tukuyu)  
(Makame, J.) dated the 2nd day of  
May, 1979,

IN

CRIMINAL SESSIONS CASE NO. 38 OF 1978

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant was convicted of murder in the High Court at Mbeya. He was represented by counsel, Mr. Mwailunga. At the commencement of the appeal, but before the appeal got under way, the appellant asked to withdraw his counsel and his counsel retired. The appellant then argued his appeal in person.

The prosecution case is that the deceased was stabbed by the appellant which resulted in his death shortly afterwards. The appellant's defence is an alibi. He maintained that he was nowhere at the scene when the deceased was stabbed to death, but at the material time he was at his own shamba some miles away.

For the prosecution, there is a number of witnesses who testified to the effect that the appellant and the deceased were at a drinking group at Ushirika, Tukuyu, shortly before the deceased was stabbed to death.

P.W.1 Frank Swebe, a relative of the deceased, was at the drinking place when he saw the appellant and the deceased both leave and go outside. P.W.1 followed them as he did not want the deceased to drink any more. He saw the appellant and the deceased walking away

immediately thereafter he saw the appellant stab the deceased with a knife at his abdomen. He ran to the place where the deceased was and saw his intestines hanging out and the stomach split.

At that time another witness P.W.6 Tarampe Kilema, who was in no way related to the deceased, was walking towards the pombo club from a maize-mill. She saw the appellant strike the deceased as she walked past them and immediately thereafter she saw P.W.1 rushing past her and she helped P.W.1 in tying up the deceased who was badly injured and who was then taken in a vehicle to hospital.

Then there is P.W.5, Mishioni Kang'opo, who was also at the drinking group. He stated that he saw both the appellant and the deceased at the drinking place and saw both of them going out, and shortly afterwards he heard an alarm that the deceased had been stabbed.

Similarly, P.W.8 Bagonago Sambo said he was at the drinking place where he saw the appellant and the deceased at the material time.

P.W.7 Anna Mwanjabala, a resident of Ushirika, Tukuyu, met the appellant running away from where the drinking party was shortly before she heard that the deceased was stabbed.

Similarly, P.W.10, Hudson Mwanyalu, said he was at the drinking place and he saw the appellant and the deceased drinking there.

And then there is P.W.3, Sam Mwafula, who said that there was an incident about cigarettes between the appellant and the deceased at the drinking place shortly before the appellant and the deceased went out together.

On top of all this P.W.6, when she was helping to tie up the injured deceased, said that she heard the deceased complain that he had been stabbed by the appellant.

As against all this mass of evidence, the appellant simply stated that he was not there. He said all the prosecution witnesses had told lies against him. He went to the extent to allege that the Doctor (P.W.2), who gave formal evidence as to the cause of death, was also a liar.

He maintained that some witnesses told lies against him because of their being related to the deceased and some because of envy, and some had no reason to tell lies at all.

The trial judge was satisfied that the appellant was at the Club at Ushirika where there was drinking at the material time, and he believed the prosecution witnesses, and he particularly believed P.W.1 and P.W.6, and he was satisfied that it was the appellant who had stabbed the deceased to death. The assessors were also of the same view.

We have also assessed the evidence. We have carefully gone through all the proceedings and we find that we are also of the same view as the trial judge. We have no doubt that it was the appellant who had stabbed the deceased to death. The appeal is dismissed.

DATED at MBEYA this 8th day of September, 1980.

JUSTICE OF APPEAL

JUSTICE OF APPEAL

JUSTICE OF APPEAL

DEPUTY REGISTRAR