

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: Nyalali, C.J., Mwakasendo, J.A. and Kisanga, J.A.)

CRIMINAL APPEAL NO. 58 OF 1979

B E T W E E N

HUSSEIN ABDALLAH APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the conviction and sentence
of the High Court of Tanzania at Arusha)
(Mwesimmo, J.) dated the 13th day of
September, 1979,

in

Criminal Sessions Case No. 34 of 1977

JUDGMENT OF THE COURT

KISANGA, J.A.:

this is an appeal against conviction for murder and the sentence of death imposed on the appellant Hussein Abdallah.

The conviction was based primarily on the evidence of Asumini Hussein (P.W.2) and Musa Ndaro (P.W.3). Asumini is the daughter of the appellant and the deceased, while Musa is the cell-leader of the appellant. Mr. Kapoor, who appeared for the appellant, strongly submitted that the credibility of these two witnesses was such that no conviction could be based on their evidence. Essentially, the evidence of Asumini, the appellant's daughter, was that in the evening of 12th December, 1976, she returned home and on being asked by the appellant she replied that she had come from the deceased, her mother, who was staying away at her uncle's home following a quarrel with her husband, the appellant. Whereupon the appellant picked up an axe and went away with it threatening to go and kill the deceased. On the following morning the deceased was found dead at the home of her uncle with the axe deeply embedded in her head.

The evidence of Musa, the cell-leader, was to the effect that two days following the discovery of the dead body of the deceased, the appellant went and confessed to him to have killed the deceased because he found her and the children missing from home. The witness added that the appellant and the deceased used to have matrimonial disputes and that some times such disputes had been referred to him for settlement.

Mr. Kapoor's attack on the credibility of these witnesses is based on a conflict in their testimonies relating to reporting by Asumini of the said threat to Musa. Asumini testified that she reported the said threat to Musa on the very evening the appellant uttered it, but Musa did not take any steps and he simply advised her to go to sleep. According to Musa, however, Asumini reported the threat to him only on the following morning. On a careful reappraisal of the evidence, we are satisfied that Asumini did report the appellant's threat to Musa on the very evening it was made, but Musa has denied it in order to avoid criticism for having failed or neglected to take steps on the day it was reported to him to avert the killing.

Next, Mr. Kapoor went on to submit that since Musa is shown to have told a lie, then the rest of his evidence should be disbelieved and therefore the alleged confession by the appellant to him ought to be discounted. Mr. Kapoor referred us to no authority for this proposition. We can find no good reason for rejecting Musa's evidence as to the appellant's confession to him simply because Musa has told a lie at some point in the course of testimony. The appellant's confession to Musa was corroborated by other evidence. For instance, in the said confession the appellant stated that he killed his wife using an axe. This is corroborated by the fact that the body of the deceased was found with an axe sticking into the head,

which are the trial judge found, rightly in our view, to be that which the appellant went away with from his home the previous evening. It is true that the trial judge failed to direct himself on the whole issue of corroboration. But we are satisfied that this error did not occasion a failure of justice. Had he properly directed himself on the issue he would have found the necessary corroboration as we have shown above.

Mr. Kapoor also complained that the prosecutor in his opening address referred to matters which were not proved by the evidence and that to that extent the assessors may have been misled into acting on such statements which were not proved. We find no merit at all in this complaint. It is very clear from the record that the assessors based their opinions on the evidence as adduced by the witnesses and not on the statements made by the prosecutor in his opening address.

We find no merit in this appeal which we accordingly dismiss.

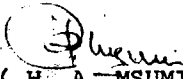
DATED at ~~PARUSHA~~ ARUSHA this 20th day of November, 1980.

F. L. NYALALI
CHIEF JUSTICE

Y.M.M. MWAKASENDO
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

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


(H. A. MSUMI)
SENIOR DEPUTY REGISTRAR

