

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CRIMINAL APPEAL NO. 25 OF 1981

B E T W E E N

SIMON BABU . . . . . APPELLANT

A N D

THE REPUBLIC . . . . . RESPONDENT

(Appeal from the conviction and sentence  
of the High Court of Tanzania at Moshi)  
(Maganga, J.) dated the 24th day of  
March, 1981,

in

Criminal Sessions Case No. 11 of 1980

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

In the late afternoon, when Alotto had returned home from grazing his cattle, and was sitting with his wife P.W.1 Bertha and some of his children including P.W.2 Aishi just outside his house, the appellant, accompanied by several persons, came upon Alotto, and without uttering a word, attacked him with a pick-axe which the appellant was carrying, as a result of which Alotto died. The deceased was struck on the head with the pickaxe which resulted in a skull fracture causing vital damage and trumature of the brain, and that was the cause of death. P.W.1 saw the attack, so did P.W.2. P.W.5 Lelo, a neighbour of the deceased, in response to a report brought to him on the material day by a child of the deceased of the attack on the deceased, went towards the deceased's house with a hoe in his hand. He met the appellant on the way, coming from the direction of the deceased's house. The appellant's clothes had marks/<sup>and</sup> stains of blood on them. When P.W.5 asked the appellant about the blood stains, the appellant turned on P.W.5 and threatened to kill P.W.5.

There was a brief struggle between P.W.5 and the appellant, and then the appellant ran off to one direction, after verbally threatening to burn P.W.5's thatched house.

.It was in evidence that a few days before this incident the appellant had been brought before a court on a complaint from the deceased. The deceased had complained that the appellant had attacked the deceased's children while they were grazing. The appellant was convicted, and ordered to pay a fine of shs. 468/- or in default three months' imprisonment. The court order was made on 26th March, 1979, and the fatal attack on the deceased took place on 30th March, 1979.

The appellant made an unsworn statement and called no witnesses. He said on the material day as he was approaching his house on his bicycle he met the deceased who was carrying a sime. The deceased refused to give way to his bicycle. A quarrel ensued and the deceased cut him with a sime. The deceased's wife P.W.1 then joined the fray with a pickaxe. The appellant managed to snatch the pickaxe and struck the deceased with it.

The appellant produced a hospital treatment sheet. However, the said sheet mentioned some old wounds and did not at all support the appellant's allegation that he was cut by the deceased. P.W.5 in his testimony had also stated that on the material day he had seen the appellant passing by P.W.5's shamba with a pickaxe, shortly before the deceased's child came to report to him of the attack on the deceased. So the pickaxe was in the possession of the appellant before the incident; he did not snatch it from P.W.1. There is also the evidence of P.W.4 Bruno, a police officer. He visited the scene of the crime on the day following the fatal attack, and with the help of the appellant, drew a sketch plan of the scene. From the deceased's house to the appellant's house

was a distance of 190 yards. He noticed blood on the ground, about three paces from the deceased's house. That clearly showed that the deceased was attacked just outside his own house, not near the house of the appellant about 190 yards away.

The trial judge accepted the evidence given by the prosecution witnesses and rejected the account given by the appellant. We also think that the prosecution witnesses were truthful and reliable. We are satisfied that the attack on the deceased was unprovoked and deliberate. We find no merit in the appeal which is dismissed.

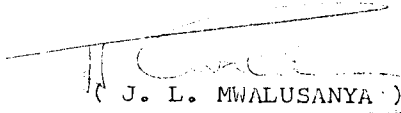
DATED at DAR ES SALAAM this 6th day of August, 1981.

A. MUSTAFA  
JUSTICE OF APPEAL

L. M. MAKAME  
JUSTICE OF APPEAL

R. H. KISANGA  
JUSTICE OF APPEAL

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

  
( J. L. MWALUSANYA )

SENIOR DEPUTY REGISTRAR