

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

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

CRIMINAL APPEAL NO.41 of 1981

BETWEEN

ALLY IKAKU APPELLANT

AND

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the High Court of
Tanzania at Singida, (Lugakingira, J.) dated the
21st day of October, 1981

in

Criminal Sessions Case No.78 of 1980

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JUDGEMENT OF THE COURT

MAKAME, J.A.:

In the morning of 19th March, 1979, at Unyampana in Singida District, a man was found in a ditch. He was unconscious, speechless, and profusely bleeding on the head. He was carried to Mtinko Market where some people recognized him as SHABAN MINJA, the deceased in this case. The evidence of PW.10, Dr. JOSEPH MSAMI, established that the deceased died of cerebral haemorrhage as a result of head injuries.

Three people gave evidence which implicated the appellant in this case with the death of the deceased. They testified to seeing the appellant either manhandling or chasing the deceased. These witnesses are PW.1 ISSA HANGU, a friend of the deceased; PW.2 SUZANA AMBROSE the deceased's paramour; and PW.3 HAWA NYUHA, Suzana's husband's sister. The learned trial judge was satisfied that Suzana was the deceased's lover and that PW.1 and PW.3 were also friends.

PW.1 told the trial court that in the evening of 18th March he and his friend, the deceased, went to visit the two women, PW.2 and PW.3. While PW.1 and PW.3 were standing outside the house, conversing, having left the deceased and PW.2 inside, he, PW.1, saw the deceased run past where they were, followed by the appellant who was chasing him.

PW.1 got scared and ran home and it was not until the following day that he saw the deceased again. This was at the market place and the deceased was in a critical condition.

PW.3's evidence corroborated that of PW.1 except that, for her part, she added that before she saw the appellant chasing the deceased, she had noticed the appellant pulling the deceased out of the house and shoving him about.

There was also the evidence of PW.2. According to her, the appellant had thrice made amorous advances to her and she had thrice spurned him. When the appellant arrived at the house he found her and the deceased conversing. The appellant complained that PW.2 was accepting the deceased while she had rejected him, the appellant, and he demanded to know why the deceased was visiting someone's wife. The appellant then violently pulled out the deceased and, obviously so as to avoid a scandal, PW.2 closed the door and did not try to find out what took place outside.

In his defence, the appellant put up an alibi. He said he was at home with his father and did not go out again after he had come home at 6 p.m. from grazing animals. The learned trial judge was satisfied that the alibi was untrue and that it had failed to raise doubt regarding the appellant's complicity. He observed also that the appellant had failed to call his father to support the alibi. With respect, we agree with the learned judge. We are satisfied, as he was, that the first three witnesses for the prosecution, Issa Hangu, and the two women, told the truth about the appellant being at the house and creating a commotion there. The two women are related to the appellant and they know him well. The appellant conceded that PW.1 too knew him, having been together in militia training for two months. There was also evidence that there was moonlight and that the appellant and the deceased ran past quite near to where PW.1 and PW.3 were. Inside the house, PW.2 could not have failed to recognize the appellant: There was a lamp on and the appellant spoke to her and the deceased. We are satisfied that it is true the appellant was at the scene and that the three witnesses told the truth regarding what transpired there.

Mrs. Mneney, learned Counsel for the appellant, conceded that the appellant was seen chasing the deceased. However, she urged us to hold that because of the time factor - the deceased was discovered some twelve hours from the time he was seen being chased by the appellant - the deceased could have fallen into the foul hands of some other person or persons. Mr. Kalunga, learned Principal State Attorney, expressed the view that, because of the time gap, it would be speculative to say that it was the appellant who assaulted the deceased. Mr. Kalunga also expressed the view, the medical basis for which he was unable to furnish us with, that the deceased could not have lived for so long, till the following afternoon, if he had been assaulted by the appellant in the evening as alleged. We are **respectfully unable** to agree with both learned Counsel on this. We are of the view that the possibility that the deceased's assailant was other than the appellant would be a fanciful one, not at all a reasonable one, in the circumstances. The distance from the house to where the appellant was found the following day is a short one - about a hundred paces only, according to PW.4. We have no reason to doubt that it was the appellant who attacked the deceased after chasing him. As the learned trial judge observed, malice aforethought is rightly inferred in the particular circumstances, **including** the nature of the injuries inflicted. Like the learned judge observed, this would appear to be a case of unrequited love.

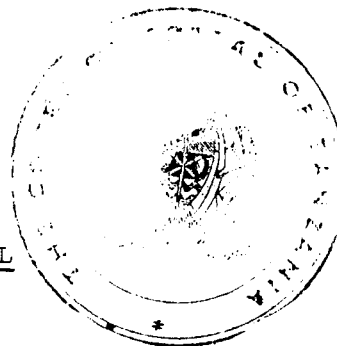
We are satisfied that the appellant's conviction is well founded and consequently, we dismiss the appeal.

DATED at DAR ES SALAAM this 15th day of October 1982.

(Y..M. Mwakasendo)
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.

[Signature]
(L.A.A. Kyando)
DEPUTY REGISTRAR