

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

CORAM: MUSTAFA, J.A.; MAKAME, J.A. And OMAR, J.A.

CRIMINAL APPEAL NO. 100 OF 1985

KESSY JOHN. APPELLANT

VERSUS

THE REPUBLIC. RESPONDENT

(Appeal from the conviction of the
High Court of Tanzania at Arusha)
(Mwakibete, J.) dated the 30th
day of November, 1984

in

Criminal Sessions Case No. 15 of 1984

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant was convicted of manslaughter in the High Court after a trial on a charge of murder and was sentenced to 12 years imprisonment. He is appealing against sentence only.

The appellant was convicted solely on the evidence based on the dying declaration of the deceased. The deceased had alleged in the declaration that during a drinking session in the appellant's house, the appellant had robbed or tried to rob the deceased of Shs. 30/- and in the course of it had attacked and injured the deceased. The deceased died several days later from the injuries received at the hand of the appellant, The cause of death, according to the post mortem report, was dislocation of the first thoracic vertebra and total transection of the spinal cord at that level.

The appellant was found by the trial judge to have been drunk at the material time and on that ground

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ground the judge had convicted the appellant of manslaughter instead of murder. The appellant had been in remand since 1980, and was convicted and sentenced in November, 1984. That would mean that the appellant had already been in custody for 5 years before he was sentenced to serve a term of 12 years imprisonment.

It seems that the trial judge had considered intoxication on the part of the appellant an aggravating circumstance in imposing the sentence. We do not think that is correct. We would have thought that intoxication in a criminal offence is more concerned with the formation of a specific mental element in the commission of an offence.

We appreciate that we do not lightly interfere with a sentence imposed by a trial court. However on a consideration of all the factors we are of the view that the sentence imposed is too severe.

We reduce the sentence imposed to 5 years imprisonment. The appeal succeeds.

DATED at ARUSHA this 23rd day of July, 1986.

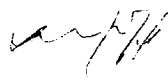
A. MUSTAFA
JUSTICE OF APPEAL

L. M. MAKAME
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

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



(J. H. MSOFFE)

DEPUTY REGISTRAR.