

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CCRAM: MUSTAFA, J.A.; MAKAME, J.A. And KISANGA, J.A.)

CRIMINAL APPEAL NO. 20 OF 1984

BETWEEN

SAMWEL HAMISI. . . . . APPELLANT

AND

THE REPUBLIC. . . . . RESPONDENT

(Appeal from the conviction of the High Court of Tanzania at Moshi)  
(J. C. D'Souza, J.) dated the 30th day of April, 1984

in

Criminal Sessions Case No. 18 of 1984

JUDGEMENT OF THE COURT

MUSTAFA, J.A.:

Six persons were charged in the High Court for the murder of the deceased Mundanduni Hamisi. Five of the accused persons were acquitted of the charge, and the appellant Samwel Hamisi was convicted as charged and he is appealing from his conviction of murder.

There was one eye-witness to the offence. P.W.2 Paulo alleged that on the material night he heard an alarm emanating from the house of the deceased. He went towards it and stayed in a bush about 35 feet from the house. He saw a small oil lamp, a kibatali, lit by one of the co-accused, and by its light he saw all the six accused persons attacking the deceased. He saw the appellant cut off the right arm of the deceased and saw another person hit the mouth of the deceased with a hammer. The attackers were demanding money from the deceased. The deceased was a brother of the appellant. P.W.2 was there for sometime and when he left he saw the deceased had been killed.

P.W.2 reported the matter the following day to the Village Chairman Elias. P.W.2 stated he was advised to report to the Police. He went to the <sup>Moshi</sup> Police Station and was sent to Sanya Juu Police Station. Sanya Police Station promised <sup>t</sup> but did not turn up and then P.W.2 went to KIA Police Station which sent a policeman P.W.6 Sulu to investigate.

The deceased body was eventually discovered in a trench about 11 feet from the deceased's house. The body was decomposed, one arm was missing and two front teeth knocked off. The doctor carried <sup>out</sup> a post-mortem examination and stated that the cause of death was due to an assault. The skull, presumably ~~the~~ the head, was severed from the body.

P.W.2 was positive he identified all the six accused persons, as they were all fellow villagers. However it appeared that P.W.2 made his police statement on 11.3.80, whereas the deceased body was discovered on 14.2.80. The Village Chairman Elias was not called to corroborate P.W.2's allegation that he reported the matter to Elias the day following the incident, nor was one Simbo, with whom P.W.2 alleged he went to report to Moshi Police Station called to corroborate P.W.2 on that point. Mr. Musei contended that that one good reason to disbelieve P.W.2 would be the delay which occurred before P.W.2 reported the incident to the authorities. Mr. Musei contended that P.W.2 must have lied when he said that he had reported to Chairman Elias and that he then, as directed, reported to the Moshi Police Station, as neither Elias nor Simbo had come forward to confirm those allegations. It is quite true that the Republic ought to have called these two witnesses, or offered them for cross-examination to the defence. However, after a consideration of all the circumstances, we do not think that the failure to call Elias and Simbo in any serious way impairs the evidence of P.W.2 as to what he did after having witnessed the incident. We believe P.W.2 did hear the alarm and went to enquire and saw what happened that material night. P.W.3, another neighbour of P.W.2, also heard alarms emanating from the deceased's house that same night.

The trial judge was fully aware of the danger of convicting on the evidence of a sole witness, although he was satisfied that P.W.2 was truthful and not mistaken.

The judge was prepared to convict only if P.W.2 was corroborated. There was no corroboration of P.W.2 as against the other 5 co-accused, and they were acquitted. In the case of the appellant, the judge found corroboration in the appellant's own statement. The appellant, in an unsworn statement, adopted an extra judicial statement ~~he~~ had <sup>made</sup> to a justice of the peace. In that statement the appellant said that the deceased was killed in his presence by certain people whom he named, on the material night. He further stated that he was threatened by one of those who had killed to remain silent and was advised to leave which he did and he stayed away for 6 months.

The judge found that was corroboration of P.W.2's evidence as far as the appellant was concerned and convicted the appellant accordingly. We have duly considered the arguments put forward by Mr. Musei on behalf of the appellant. We are satisfied that the judge was justified in convicting the appellant on the evidence of the charge of murder.

We dismiss the appeal.

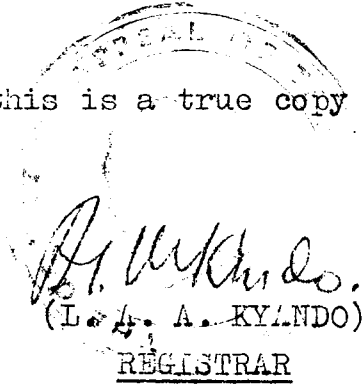
DATED at ARUSHA this 22nd day of July, 1985.

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

  
*L. A. Kyando*  
(L. A. KYANDO)  
REGISTRAR