

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

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

CRIMINAL APPEAL NO. 11 OF 1986

BAKARI MSHABAHA. APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the High Court of Tanzania at Arusha) (Munuo, PFM) dated the 9th day of January, 1986

in

Criminal Sessions Case No. 32 of 1985

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The deceased, a woman, died from ~~External~~ ^{internal} haemorrhage caused by a number of cut wounds to her thigh shoulder and skull. The appellant admittedly had caused her death. The appellant had pleaded that he was provoked into killing the deceased. The trial court held that there was no provocation and convicted the appellant of murder. The appellant is appealing, alleging that there was provocation.

It would seem that there was an undercurrent of belief by the appellant that the deceased had caused the death of his two young children, in the course of a few days or of a few weeks. The appellant alleged that when the first child had died, the deceased had told him "you will bury more". The appellant was of the belief that his first child had died because of the deceased.

When his second child was ill, the child was admitted to hospital. However the appellant removed the said sick child. The appellant then hid the child in a room. The appellant had the child killed. /2.1 to killing the child.

child from hospital against medical advice and took the child back to his home. According to the appellant he invited or allowed the deceased to treat this sick child. That seemed incredible, in view of what the appellant had believed about the activities of the deceased. The appellant testified and stated that after the deceased had administered medicine to the sick child, the child became worse. The appellant alleged that at night he took the sick child to the deceased. The deceased allegedly told him "Did I not tell you that you will bury more?" Thereupon the appellant became provoked and incensed and picked up a panga and cut the deceased to death. That version of events was apparently rejected by the trial court.

P.W.1 testified and stated that he stayed in the same house with the deceased, though in separate rooms. On the material night as he was asleep, he heard a big knock at the door of the deceased. It was the appellant calling out that the deceased had killed his two children and that he would bury the deceased that night. P.W.1 raised an alarm. The deceased tried to run away, but was chased by the appellant, his wife and son all armed. Later he found the dead body of the deceased a short distance away. P.W.1 himself was attacked and injured by the appellant's wife and son. P.W.5, the wife of P.W.1, substantially testified to the same effect as P.W.1.

Neither P.W.1 or P.W.5 was questioned or cross-examined by the appellant about the appellant calling on the deceased on that material night, and of the allegation that the appellant spoke to the deceased, and the threat or taunt uttered by the deceased. It was only when the appellant testified that the alleged incident was revealed.

The trial court, and the assessors, believed the evidence of P.W.1 and P.W.5, and the trial court was of the view that the appellant had killed the deceased on the assumption that the deceased was a witch and had

by witchcraft killed his children. There was no question of provocation at all, as alleged by the appellant.

We think that the testimony of P.W.1 and P.W.5 was true and credible. The testimony of these two witnesses established that the killing must have been deliberate, as the appellant and his family members, duly armed, had mounted an assault on the deceased with threats to bury her. The trial court rightly held that in those circumstances no provocation at all was given by the deceased which could have reduced the killing to manslaughter.

We find no merit in the appeal which is dismissed.

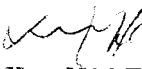
DATED at ARUSHA this 24th day of July, 1986.

A. MUSTAFA
JUSTICE OF APPEAL

L. M. MAKAME
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

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


(J. H. MSOFFE)
DEPUTY REGISTRAR.