

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

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

CRIMINAL APPEAL NO. 19 OF 1985

MOHAMED MFAUME ALLY. APPELLANT

VERSUS

THE REPUBLIC. RESPONDENT

(Appeal from the conviction of the High
Court of Tanzania at Mtwara) (Msumi, J.)
dated the 11th day of June, 1984

in

Criminal Sessions Case No. 45 of 1982

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The deceased had lived with the appellant as his wife for sometime and a child was born to them. There was a quarrel between them one night, and P.W.6, who lived with them, heard the quarrel. The appellant demanded the return of the bridewealth he had paid, and it seemed that the deceased returned a part of it and was prepared to get the balance to pay back the appellant. They left together that night for the deceased to collect the balance from her brother.

During the same night the appellant returned to the village and awakened P.W.2. The appellant was carrying the child. The appellant told P.W.2 that he, the appellant had killed the deceased by strangling her at a place called Chota. P.W.2 refused to collect the child from the appellant and informed the cell leader P.W.3. He also called another cell leader P.W.4. The appellant repeated to P.W.3 and P.W.4 that he had killed the deceased by strangling her. And the appellant also confessed to P.W.5, a militiaman that he had strangled the deceased.

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The witnesses went to the place, Chota, and discovered the dead body of the deceased. A doctor carried out a post mortem examination and gave the cause of death as "strangulation at the neck with pieces of cloth". ^{The report} / stated that the dead body had started to putrify. There were pieces of cloth tightly tied at the neck. The atio-atlanto joint was dislocated causing severing of the spinal cord and asphyxic lungs were seen.

The appellant in an unsworn statement denied that he had confessed to killing the deceased to P.W.2, P.W.3, P.W.4 and P.W.5. He stated that he had left the deceased outside the village boundary as he wanted to return home. He then realised that the key was with the deceased. He returned to the deceased and he found that the deceased had hanged herself on a tree at a place called Chota. He cut her down and she was still alive. There was a noose round her neck and he loosened the noose and then the deceased died.

The trial judge and the assessors believed the evidence of P.W.2, P.W.3, P.W.4 and P.W.5. He disbelieved the unsworn statement made by the appellant and he convicted the appellant of murder as charged.

Miss Mjasiri appeared for the appellant before us. She submitted that the appellant had retracted his confession and therefore corroboration of such confession was needed. The trial judge did not consider the issue of a retracted confession as that submission was not made to him.

However we think that there was sufficient corroboration in this case. According to P.W.2, P.W.3, P.W.4 and P.W.5 the appellant told

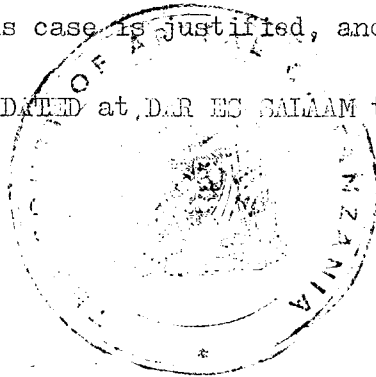
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them that he had strangled the deceased to death. The post mortem report by the doctor showed that death was caused by strangulation. It also showed that the pieces of cloth were still tightly tied around the neck of the deceased. Despite Miss Mjasiri's attempt to challenge the correctness of the doctor's opinion given in the post mortem report, we are satisfied that the opinion was properly accepted by the trial court as showing the cause of death. In our view the strangulation element in the post mortem report would be sufficient corroboration of the confession in this case.

There was a general submission that the evidence as a whole was insufficient to sustain the conviction. That is completely without merit.

We are satisfied that the conviction of the appellant of murder in this case is justified, and we dismiss the appeal.

DATED at DAR ES SALAAM this 7th day of October, 1986.



A. MUSTAFA
JUSTICE OF APPEAL

R. H. KISANGA
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