

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

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

CRIMINAL APPEAL NO. 37 OF 1986

MWAJUMA ABDALLAH LIWAUSA. APPELLANT

AND

THE REPUBLIC. RESPONDENT

(Appeal from the conviction of the High
Court of Tanzania at Mtwara) (Samatta, J.)
dated the 11th day of November, 1983

in

Criminal Sessions Case No. 13 of 1982

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant and the deceased knew each other. In April, 1980 the appellant was living at the house of P.W.1, Omari. The deceased visited P.W.1, and accused the appellant of having stolen 2 pairs of khangas. The appellant denied the theft and alleged that she was given the khangas by her half sister. The appellant and the deceased went to the half sister, and then it transpired that in fact the appellant had stolen the deceased's khangas. The appellant promised to return the khangas to the deceased.

From the half sister's house the appellant and the deceased began to return home. They were alone. On the way the deceased was killed. When the deceased body was later exhumed for examination it was discovered that it was badly decomposed and the doctor could not give the cause of death. However P.W.7 had seen the deceased alive on 27.4.80 and then saw the dead body of the deceased on 28.4.80, with a serious injury on the neck. P.W.8 also saw the dead body of the deceased on 28.4.80 with a fresh wound on the neck and blood

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all over the dead body. There was thus sufficient evidence that the deceased had died from a cut wound on her neck probably inflicted by a sharp instrument. The appellant was convicted of murder and she is appealing.

The case rests primarily on the confession made by the appellant to P.W.15, a justice of the Peace. It was a full confession to the murder of the deceased. The appellant stated in her confession, inter alia "I took the bill hook with the intention of attacking the deceased.....and when we reached at that place it was there that I decided to attack her to death..."

The confession was believed by the trial judge to be a true and correct account of what had occurred.

In support of that the appellant had told P.W.12, a police officer, that she had killed and indicated to P.W.12 and to P.W.13, a Ward Secretary, the various locations where the killing took place. The appellant had said she had cut the deceased on her neck from the back.

The injuries seen by P.W.7 and P.W.8 would confirm that the deceased was injured on her neck from an attack from the back.

In her unsworn statement to the court the appellant alleged that she was travelling with the deceased when the deceased pulled off one khanga from the appellant. In the process the baby the appellant was carrying fell down, and the appellant got angry and then cut the deceased with a bill hook. The appellant also claimed that she had taken the bill hook with her in order to cut firewood.

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The trial judge did not believe that the appellant's baby fell down when the khanga was pulled off the appellant by the deceased because the appellant did not mention this in her confession to the Justice of the Peace or in her statement to the Police Officer P.W.12. He also did not believe that the appellant had picked up the bill hook for fire wood cutting purposes. These assertions were only made in her unsworn statement in court, and were not mentioned in her statements to the Justice of the Peace or to the Police. In fact the assertion about fire wood cutting contradicted the confession to the Justice of the Peace which the judge accepted as true.

We believe that the trial judge was justified in relying on the confession by the appellant to the Justice of the Peace and her statement to P.W.12 the Police Officer. It was clear that the appellant had deliberately killed the deceased when they were travelling together; the appellant having armed herself with a bill hook for that purpose. There was no evidence of provocation, even if the deceased had pulled off a khanga from the appellant, as the khanga was the property of the deceased and was stolen by the appellant. There was clear evidence of malice aforethought in the attack itself.

Mr. Ngalo for the appellant has urged before us that there was either provocation or absence of malice. But these submissions are entirely without merit in the face of the evidence accepted by the trial judge.

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The appeal is without merit and it is hereby dismissed.

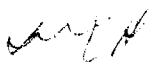
DATED at DAR ES SALAAM this 7th day of October, 1986.

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