

IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

CORAM: MUSTAFA, AG. C.J.; MAKAME, J.A. AND OMAR, J.A.

CRIMINAL APPEAL NO. 97 OF 1986

DAUDI MNOGOLICHUMA CHUSI APPELLANT

And

THE REPUBLIC RESPONDENT
(Appeal from the conviction and sentence of
The High Court of Tanzania at Iringa)
(A.C. Mrema, PRM) dated 10th November, 1986

in

Criminal Sessions Case No. 84 of 1984

JUDGEMENT OF THE COURT

OMAR, J.A.

Appellant was charged with the offence of murder and was convicted. He now appeals against conviction.

On the afternoon of 8/2/83 appellant who was living at Kihanga village in Mufindi District, went from his home to a house of a neighbour one Mwandikalumu who was entertaining neighbours to a local brew. Appellant stayed there and partook of the drink from 7 p.m. to 8 p.m. when he decided to go home. As he was on his way home he met the deceased Patson Vaginga who was also in the pombe party, walking ahead of him. When they got together deceased seized appellant and announced that he was Patson and that he was going to kill him. Deceased cut the appellant on the leg with an axe and a struggle ensued. Appellant who was carrying a panga managed to wrench the axe from the deceased and using his left hand cut the deceased on the head with the panga. This is the story of the appellant on the events of that evening, and no other person had witnessed their encounter or rather no other person had come forward to say that he witnessed it. Appellant went home after that and met his wife PWI Saidina who saw a blood stained panga in his hand. Appellant packed his clothes and bade goodbye to his wife and children saying he was going to look for employment and asked his wife to look after their seven children while he was away.

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Dissatisfied with appellant's conduct PWI went to the pombe party and inquired from appellant's brother Emily Chusi if anything untoward had happened there. She was told that appellant had left the place without quarrelling with anybody. PWI went to her ten cell leader and made a report of her husband's unusual behaviour. She was told to wait till morning. The following morning the body of the deceased was found 10 to 15 paces from Mwandikalamu's house where the pombe party was held the previous evening. According to the postmortem report deceased who was identified as Patson Vaginga had cut wounds on the head, his left shoulder and some fingers of the right hand partially cut and one finger completely cut off. The cause of death was established by the medical report as the cut wound on the head from which brain matter protruded.

Five days later appellant who was hiding in the bush gave himself up and was arrested and on 14/2/83 interrogated by PW3 Detective Sgt. Mfurus who stated in evidence that appellant told him that he killed the deceased because deceased started to assault him. The following day that is 15/2/83 appellant was sent to a Primary Court Magistrate where he made an extra judicial statement admitting that he had cut the deceased on the head and arm with a panga after he was insulted and cut on the leg by the latter with an axe. Appellant admitted that he went into hiding in the bush and could not give himself up till five days later because of pains in the leg.

This is substantially the evidence linking the appellant with the crime and it all came from his mouth. There is nothing to disprove it.

The relationship between appellant and deceased was given by PWI and the appellant himself. It is to the effect that the appellant and deceased had married two sisters and that there was once a quarrel between them over a borrowed kettle belonging to deceased and that the lid of a kettle was lost by the appellant, further, appellant had slandered deceased by saying that he, the deceased, was after a married woman in the village. Apart from this, we know of no other misunderstanding between them.

For murder is allowed and we substitute a conviction for manslaughter. Appellant is sentenced to 2 (two) years imprisonment to start from the date of original conviction i.e. 10th November, 1986.

In his defence appellant repeated his earlier story of self-defence which the trial magistrate rejected for reasons which he gave. We found the reasons given speculative. The trial magistrate for instance did not believe that deceased had cut the appellant with an axe because he said an axe was not found anywhere and so speculated that he, the appellant, could have suffered that wound from wandering in the forest while in hiding. The Justice of the Peace said she saw the fresh wound on the appellant's leg. The police witness said he saw the wound on the leg although it was not a fresh wound. The wife of the appellant stated that she did not notice any wound on appellant's body simply because she did not look closely as appellant did not stay long in their house before he left.

The trial magistrate also rejected the story of the fight as narrated by appellant as being very unlikely of appellant. The magistrate thought that appellant was thrown down by deceased and throttled then it was unlikely for him to have got up with the asthma appellant had said he was suffering from and attacked deceased on the head using his left hand. Blood stains from the scene of attack to the house of appellant were not seen; if appellant was injured they should have been there. These and other similar reasons were the basis for rejection of appellant's defence. We find and so hold that the evidence of self defence as given by the appellant is credible. The various injuries inflicted on the deceased showed that in the frenzy of self defence the appellant had used more force than was warranted.

We find therefore in terms of section 18(b) 3 of Penal Code that appellant had used excessive force to ward off the attack. We find him not guilty of murder but guilty of manslaughter and we so convict the appellant. Mr. Kapinga learned State Attorney for the Republic does not support the conviction for murder but is of the view that manslaughter has been proved.

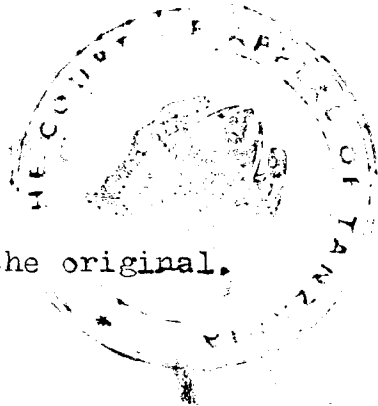
The appeal against conviction for murder is allowed and we substitute a conviction for manslaughter. Appellant is sentenced to 2 (two) years imprisonment to start from the date of original conviction i.e. 10th November, 1986.

DATED at MBEYA this 4th day of May, 1987.

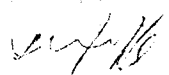
A. MUSTAFA
AG. CHIEF JUSTICE

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