

IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

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

CRIMINAL APPEAL NO. 98 OF 1986

JOSEAS JILAONEKA GIDA AND ANOTHER APPELLANTS

Versus

THE REPUBLIC RESPONDENT

(Appeal from the Conviction and Sentence of The
High Court of Tanzania at Mbeya)(A.C. Mrema, PRM)
dated 11th November, 1986

in

Criminal Sessions Case No. 64 of 1984

JUDGMENT OF THE COURT

MUSTAFA, AG. C.J.

The deceased who was brutally stabbed to death was the brother of the two appellants, A1 and A2. A1 and A2, together with their father who died while in custody, were charged with and convicted of the murder of the deceased and they are appealing against their conviction.

The deceased was at the house of his sister in the evening, where PW1, another sister of the deceased was staying. At about 8 or 9 o'clock that night A1 and A2, together with their late father, arrived there. A1 and A2 were armed with a knife and stick, and A1 allegedly told the deceased that he and his companions were looking for the deceased. Then A2 suddenly stabbed the deceased with a knife, and repeated such blows. A1 struck the deceased with a stick and then stabbed the deceased with a knife on his right leg and chest. PW1 saw all this and raised an alarm. PW1 stated that she reckoned the deceased was stabbed and cut about 7 times. The deceased fell down, and A1 and A2, together with their late father, ran away.

PW1 alleged that this happened in the veranda of the house, and that there was moonlight and visibility was good.

In answer to the alarm PW3, the village Chairman came. Later the same night the **three** assailants returned to the house and after repeated interrogations by PW3 admitted that they had killed the deceased. PW1 also heard the confession, including that by A1.

PW2, another sister of the deceased and the appellants, in whose house the deceased was when he was stabbed and killed, returned home when she heard the alarm sounded while she was in a neighbour's house. While there she stated that she saw A2 returning to pick up the knife he had apparently used. A2 allegedly told her that he and AI and their late father had been looking out for the deceased and that on that day they had got him. PW2 also heard all the three, i.e. AI, A2 and her father confess to having killed the deceased before PW3, the village Chairman. However PW2 stated that it was a dark night, although one could see.

PW3 the village Chairman questioned AI and A2 the same night and eventually both AI and A2 stated that they had been sent by their late father to get and kill the deceased because the deceased was a thief and had stolen their and their father's cattle and property.

According to the medical evidence the cause of death of the deceased was severe haemorrhage. The deceased had cut wounds on the back, the front, and the abdomen and his pericardium had blood and the pericardial sac and heart were cut through and his aorta severed.

AI made an extra judicial statement in which he stated that he and A2 met the deceased in their sister's house and that he took away a knife from A2. He stated that as the deceased jumped up apparently to attack A2, somehow he saw that the deceased's stomach was pierced with a knife.

Both AI and A2 denied that they had confessed to have killed the deceased.

AI testified and stated that he was not at all involved in the killing of the deceased. He also alleged that he was drunk that night. A2 also testified and stated that he was in no way involved with the killing of the deceased. He and AI had been drinking from 7.00 p.m. to 9.00 p.m. on the material night, but A2 was not drunk.

Mr. Mwakasungula appeared for both AI and A2. As regards AI he submitted that as the incident took place at night PW1 could have been mistaken as to the identity of the attackers. He pointed out that PW2 contradicted PW1 about that night being bright; PW2 had said it was dark.

However according to AI in his extra judicial statement, which he never repudiated or challenged, he was with A2 on the night when the incident with the deceased took place. That in itself would confirm the correctness of PW1's identification of AI. As regards A2, apart from the evidence of PW1, the evidence of PW2 clearly established that A2 returned to the house for the knife. There was also the evidence of what A2 said to PW2. PW2's evidence would confirm that PW1 had correctly identified A2 as one of the attackers of the deceased. And since AI himself had said in his extra judicial statement that he was with A2 when they confronted the deceased, that lends further assurance to PW1's identification of AI as one of the attackers.

We are satisfied that the retracted confessions of AI and A2 to PW3 have been corroborated by the evidence of PW1 and PW2. In fact we are satisfied that the evidence of PW1, which we accept as substantially true, by itself was enough to convict the two appellants AI and A2 of the murder of the deceased.

Mr. Mwakasungula, in a last desperate effort for AI, submitted that as AI had said that he was drunk on that night, the Court should have found that AI was too drunk to have been able to form any specific intent. The trial Court dealt with and rejected a defence of drunkenness. For our part we think there was not the slightest evidence that AI was so drunk as to be incapable of forming an intent.

Mr. Mwakasungula also submitted that the killing could have arisen from a fight between the deceased and AI and A2. The evidence pointed clearly to a deliberately planned attack on the deceased by AI and A2 and this submission is totally devoid of merit.

We dismiss the appeal of both AI and A2.

DATED at MBeya this 29th day of April, 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