

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: OMAR, J.A., MFALILA, Ag. J.A., And MAPIGANO, Ag. J.A.)

CRIMINAL APPEAL NO. 95 OF 1986

BAKARI SALIMU. APPELLANT

VERSUS

THE REPUBLIC. RESPONDENT

(Appeal from the conviction of the
High Court of Tanzania at Tanga)
(Sisya, J.) dated the 21st day of
November, 1986

in

Criminal Sessions Case No. 23 of 1985

JUDGMENT OF THE COURT

OMAR, J.A.:

The appellant was charged with murder of Salehe Amashi and was convicted and sentenced to death. He is now appealing.

P.W.1 Rashidi Amashi the brother of the deceased stated that on 25.2.81 he was on his way to Lukozi Village when he stopped at a place called Mkotoni in Lushoto District, there at 6 p.m. he saw P.W.2 Omari Kilua, Lukindo Hussein and the appellant/^{Bakari}Salimu @ Mdoe Salimu, together with the deceased walking towards deceased home where P.W.1 was also living. After a while when P.W.1 was uphill he heard an alarm and responded to it when he reached the place he found people had gathered and his brother was lying on the ground bleeding profusely from the chest. After he died. The appellant was not among the crowd that had gathered round the deceased.

P.W.2 Omari Kilua who was with the deceased and the other two people stated that as they were walking together they came to a road junction when he and Lukindo (who did not give evidence) took the road which went down hill to the house of Lukindo whereas Salehe Amashi the deceased and the appellant took the route that went to the hill. The two routes lead down to the valley. P.W.2 stated that he went in search of his tin and after retrieving it in the house of Lukindo he went on his way and on reaching the valley where the roads meet he saw the deceased whom he had left a moment ago with appellant lying on the road and bleeding. He talked to him and deceased told him that he had been stabbed by the appellant Mdoe Salimu. Both P.W.1 and P.W.2 pointed at the accused in the dock when giving evidence, in the High Court as the person they referred to as Salimu Mdoe.

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P.W.3 Abdallah Shafi the relative of the appellant stated that appellant is his nephew. He said the appellant stayed in his house for one week and on 26/2/81 he left in the morning and said he was going to squeeze juice from the sugar cane at the sugar cane plantation the appellant was never seen again by him till the day P.W.3 gave evidence in court. P.W.3 stated that on all previous occasions when appellant stayed with him in his house he used to bid him farewell when he left his house to his (appellants) home in another village. This time he did not do so. On the same day in the evening he P.W.3 in an answer to the alarm went and saw the deceased lying on the ground in a pool of blood, already dead.

Appellant in his defence said that the last time he was in Kifunga Village where deceased met his death was on 16/2/81 and he left this village to go to his home in Shume Village on 17/2/81. On 27/2/81 he heard from his mother in their village that his uncle Salehe Anashi had died. He denied being in this village on 26/2/81 as alleged by his other uncle P.W.3 Abdallah Shafi. He said all three witnesses P.W.1, P.W.2 and P.W.3 had lied when they stated that he was in their village and in their company on 26/2/81. He was arrested on 29/11/83 not because of this murder but because he had disobeyed quarantine regulations. He denied being in the company of the appellant shortly before his death. Though deceased was his uncle, he the appellant and his mother never attended the funeral because of the quarantine that was imposed in the whole Mhadani Village.

We cannot but agree with learned trial judge that P.W.2 who was the first to see the deceased lying on the ground was a truthful witness and it was he who took steps to summon people by raising alarm and when the first person, Singano, appeared, he went with him to the relatives and neighbours of deceased and summoned them to the scene. This is the man who is dubbed by the defence counsel as an accomplice. We do not agree with this assessment of the witness. On the contrary we agree with the learned judge that P.W.2 was a truthful witness. Once the evidence of this witness is accepted the guilt of the appellant is put beyond controversy. What is more the conduct of the appellant leaving his uncle's house in the morning without a word to any one strengthens P.W.2 allegations against him. We would certainly agree with the learned trial judge that appellant was in the said village on the fateful day and was the last person seen walking with him after the other two companions took a different route.

In the result we find the circumstances detailed herein are incompatible with the innocence of the appellant and point to the guilt of the appellant and himself alone.

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We accordingly uphold the conviction of the appellant and dismiss the appeal.


DATED at TANGA this 9th day of October, 1987.

A. M. A. OMAR
JUSTICE OF APPEAL

L. M. MEALILA
Ag. JUSTICE OF APPEAL

D. P. MAPIGANO
Ag. JUSTICE OF APPEAL

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


(J. H. MSOFFE)
DEPUTY REGISTRAR.