

IN THE COURT OF APPEAL OF TANZANIA  
AT IRINGA

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

CRIMINAL APPEAL NO. 53 OF 1986

LEONARD JOSEPH CHOTA & ANOTHER .... APPELLANTS

Versus

THE REPUBLIC ..... RESPONDENT

(Appeal from the Conviction and Sentence of  
The High Court of Tanzania at Iringa)  
(Mwaikasu, J.) dated 13th August, 1986

in

Criminal Sessions Case No. 57 of 1983

JUDGMENT OF THE COURT

MAKAME, J.A.

The two appellants LEONARD JOSEPH CHOTA and CARLO JOSEPH CHOTA are brothers. They were alleged to have murdered a co-villager called DANIEL MWANGINGI. The High Court at Iringa, (Mwaikasu, J.), found them guilty of the offence charged and duly sentenced them to suffer death. They are appealing to this Court and are being represented by Mr. Mwakingwe, learned advocate. On behalf of the Republic Mr. Ndunguru supported the High Court decision.

The conviction of the two appellants was based on their confessions to the villagers, including their own mother, PW3 TAABU SEVATE. Mr. Mwakingwe's main ground of complaint was that the confessions were involuntary and also that as these were retracted they needed to be corroborated for them to be relied on, and there was no such corroboration.

Mr. Mwakingwe submitted that because the appellants were handcuffed when they made the alleged confessions the confessions were necessarily involuntary: The confessions were extracted under torture and undue influence. We think that that is too wide a proposition. People who are handcuffed can make voluntary confessions. It all depends on the evidence. We see no evidence to support the claim that the confessions were other than voluntary. Indeed, according to PW4 NASTONI SANGA, the Village Secretary, the first appellant specifically assured the villagers, when asked by them, that they had not been forced to confess to the killing.

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Further, there was the confession the two appellants made to their own mother, on a different occasion, and before their apprehension. This was in the absence of any other person. Mr. Mwakingwe submitted that that particular confession was suspect any way, because the mother was inside the house and only heard the appellants' voices. However, Mr. Mwakingwe gracefully abandoned that line when it was brought to his attention that, according to the evidence, at a certain stage on the same occasion the second appellant called her out of the house and repeated the confession.

Mr. Mwakingwe also submitted that the learned trial judge failed to explain to the gentlemen assessors that it is the practice to look for corroboration when a confession is retracted. With respect, Mr. Mwakingwe is right. This was a non-direction on the part of the learned trial judge. We are satisfied, however, that had the learned trial judge specifically directed the gentlemen assessors and himself on the issue, corroboration would have been found in the act of the appellants leading to the two different spots from where the deceased's sorry remains were retrieved. In fact the trial judge did refer to the fact that the two appellants had led the villagers to the remains of the deceased in his judgment when dealing with the truthfulness of the confessions. We note that even without such specific direction, the two gentlemen assessors themselves referred to the fact that the appellants had led the way to the remains of the deceased and considered that as a supporting or corroborative factor of the confessions.

We are satisfied that the two appellants were properly convicted. We therefore dismiss their appeals.

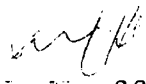
DATED at MBAYA this 29th day of April, 1987.

A. JUSUFA  
AG. CHIEF JUSTICE

L.M. MAKANE  
JUSTICE OF APPEAL

A.M.A. OMAR  
JUSTICE OF APPEAL

I certify that this is true copy of the original.

  
(J.H. Msoffo)  
DEPUTY REGISTRAR