IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: MAKAME, J.A., CROSS, J.A., and RAMADHANI, J.A.)

CRIMINAL APPEAL NO. 5 OF 1994

BETWEEN

AMIRI MOHAMED. . . . . APPELLANT

AND

THE REPUBLIC. . . . . RESPONDENT

(Appeal from the conviction and sentence of the High Court of Tanzania at Tanga)

(Kiloo - PRI/Ext. Jurisdiction)

dated the 3rd day of December, 1992

in

Criminal Sessions Case No. 15 of 1992

JUDGMENT OF THE COURT

MAKAME, J.A.:

The appellant AMIRI MOHAMED was condemned to death by Mrs. Kiloo, PRI, Extended Jurisdiction, after being found guilty of murdering a woman, variously described as a widow or divorcee, ASHA MIRAJI, at Kilole Village, Korogwe District on 15th February 1991. He is advocated for by Mr. Kavuta, learned Counsel, while Mr. Bilaro, learned Senior State Attorney appeared for the respondent Republic and urged us to sustain the finding that the appellant is guilty.

The deceased was stabbed to death some fifty paces from the house of PW.4 VICENT MICHAEL and his wife PW.2 MARIAMU MKOMA who, like PW.3 DANIEL KOMA, said the appellant was one of the people who went visiting at that house that evening. The appellant owned as much, so that was common ground.

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According to PW.4, PW.2 and PW.3, the appellant uttered some threats to the deceased who was also at the house where PW.2 was sick. The appellant threatened to get even with the deceased because of some undisclosed uncivil treatment he had been subjected to by the deceased previously. PW.4 did not like the commotion in his house so he asked all the visitors to leave. PW.4 testified to leaving the house with the deceased, with the appellant behind them. Outside there the appellant resumed the quarrel which the deceased said she did not like, whereupon the appellant seized the deceased by her dress and hit her with something the appellant fished out from his pocket. The deceased cried out that she had been stabbed with a knife while the appellant ran away.

On behalf of his client Mr. Kavuta argued four grounds. First he submitted that PW.3's testimony ought not to have been believed and relied on by the trial Court because it differed from Exh. D1, the statement the witness made to the Police one day after the event, in particular about the sequence of events. Going by the statement there was a time when PW.3 went away from the deceased, and less than five minutes later is when PW.3 heard the deceased's cries.

Learned Counsel for the appellant also urged that the alleged threats by the appellant inside the house were sheer lies: There were no such threats made and that was why the renderings by the three witness were so varient.

The appellant's advocate's other ground of complaint was that the learned trial magistrate erred in finding that the appellant used the bush-knife (Exh.P3) to kill the deceased by making use of the evidence of the appellant's daughter PW.5 FATUMA AMIRI and that of PW.6 D/Sgt. MATAL.

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Counsel's last ground is that it was wrong on the part of the trial Court to disbelieve the reasonable and likely version by the appellant. Counsel also submitted that the trial magistrate made up her mind that the appellant was a liar so that even when she came to consider the appellant's disappearance after the killing she made conclusions without properly analysing the appellant's story.

The appellant's version was that although he did go to the house of PW.4 and there found the deceased who left with PW.3 ahead of him, there was no trouble at all. He left the place normally but did not go home. He spent the night at Mamundu in his uncle's house and the following day he went on to Mgombezi to look for a job. We wish to pause here and observe two things: One that the uncle was not called and two that according to the appellant himself he had an uncompleted masonry assignment which he left to be completed by other fundis. Regarding the panga said to be the murder weapon, the appellant said he did tell his daughter to throw the panga into a latrine or the river but this was because it had hurt him.

Mr. Bilaro, learned Attorney for the Republic supported the conviction. He conceded that PW.3's statement to the Police differed from what she later told the Court but he urged us to accept her explanation that at the Police Station she held back somewhat as she was scared and she had been roughed up. Mr. Bilaro also submitted that PW.3's identification of the appellant at the scene was worthy of belief. If, however, we thought that that piece of evidence needed corroboration such corroboration was available from three aspects. These were the threats the appellant uttered to the deceased at the house, the appellant's disappearance for

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some days, and the discovery of the murder weapon. Learned State Attorney also pointed out that the evidence of the appellant's daughter was discarded and not used. The learned trial magistrate relied rather on the appellant's own evidence and that of PW.6. Mr. Bilaro also submitted that the reason the appellant gave for wanting to dispose of the panga was flimsy. Lastly, on Ground 4 learned State Attorney said it was only a matter of style: The truth is that the learned trial magistrate considered the evidence of both the Prosecution and the Defence before arriving at her decision.

We are obliged to both Counsel for their help. We propose to deal with the second ground first. With respect, we are not at all impressed by the appellant's advocate's submission that the disparity in the three reproductions of the reported threats by the appellant to the deceased are such that the trial Court ought reasonably to have doubted the veracity of PW.2, PW.3 and PW.4. All the three versions yield the same basic message: That the deceased had done something bad to the appellant for which the deceased would have to pay that day. The three witnesses should not have been expected to quote the appellant verbatim necessarily. Infact, in the circumstances, if each witness had used the same precise identical words one might start wondering. Like the trial Court, we are satisfied that the appellant did utter the threats to the appellant. We might jump here and add that this was indeed a circumstance to be taken into account in considering the guilt or otherwise of the appellant.

Regarding the bush knife which was Ground 3, we wish to say that one did not have to rely on the evidence of the girl PW.5 to find that it featured in the case. Further, it is true that

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it would indeed have been improper to make use of it because the evidence of a hostile witness has to be thrown out in toto. In the instant case, however, there was the evidence of the appellant himself that he did instruct PW.5 to throw away the weapon, into a latrine or into a river. People do not usually throw away weapons which happen to hurt them, as that would be quite unnatural. If you fear that a weapon would hurt you again why not fear for your daughter also, and why not think of members of the public who may have occasion to be in the river? We are satisfied that the appellant had something to fear about the panga and that was why he gave instructions for its disposal. We too think it would have been better workmanship to send the weapon to the Government Chemist, but in the particular circumstances of this case we do not think the unhappy omission was fatal.

Regarding Ground 4 we agree with what Mr. Bilaro said. Every magistrate or judge has got his or her own style of composing a judgement. Some judgements are more logically written, some are more neatly thoughtful, some are more compendious, and so on. What vitally matters is that the essences should be there, and these include critical analysis of both the Prosecution and the Defence. We are unable to say that the essential ingredients are lacking in the judgement we are considering.

We now wish to turn back to the issue of the reliability or otherwise of the witness DANIELA KOMA. One needs to be realistic. We cannot fail to agree with Mr. Bilaro that what we are satisfied did happen at the house of PW.2 and PW.4 is a circumstance legitimately to be taken into account. We are of course referring to the threats which, as we have indicated, we are satisfied the appellant did utter. Within minutes thereafter

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the deceased lies stabbed and dead. The trial magistrate and both her assessors specifically said they believed PW.3. We are respectfully of the view that what she said was true and we accept her explanation that she held back some information at the Police Station because she was scared and had been roughed up. That in our view explains the disparity pointed out.

There was also the behaviour of the appellant soon after the event. He disappeared from his abode and his story that he went off to look for a job, while he had another job uncompleted, and without saying goodbye to his family, convinces us that he went into hiding because he was responsible for the dastardly deed. If he innocently spent the night at the house of his uncle and innocently again travelled with him one would have expected him to call that uncle or at least explain why he did not do so.

The totality of the evidence satisfied us, beyond reasonable doubt, as it did the learned trial magistrate, that the appellant it was that murdered the deceased. The appellant knows why he did so. The motive is not discernible on the record but then, of course, motive does not have to be established to bring the charge home.

We dismiss the appeal as we are satisfied that the trial Court decision cannot justly be assailed.

We wish to associate ourselves with what Mrs. Kiloo said about the Police habit of confining a suspect's dear ones so as to lure the suspect from hiding. The practice may produce the desired results but it is certainly crude, mean, unjust, callous, and deplorable. It is hardly calculated to endear the Police Force to the public.

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DATED at [redacted] this 18th day of March, 1994.

L.H. [redacted]
JUSTICE OF [redacted]

A.M.A. OMAR
JUSTICE OF [redacted]

A.S.L. [redacted]
JUSTICE OF [redacted]

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

( H.S. [redacted] )
DEPUTY REGISTRAR