

IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: KISANGA, J.A., OMAR, J.A., And MNZAVAS, J

CRIMINAL APPEAL NO. 35 OF 1994

BETWEEN

MOSSES MICHAEL @ TALL APPELLANT

AND

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the
High Court of Tanzania at Geita)

(Chipeta, J.)

dated the 26th August, 1993

in

Criminal Appeal Sessions Case No. 22 of 1990

JUDGEMENT OF THE COURT

KISANGA, J.A.:

The appellant was charged with and convicted of murder contrary to section 196 of the Penal Code, and was sentenced to death by the High Court (Chipeta, J.) sitting at Mwanza. He has now appealed against both conviction and sentence.

The background to the case may be set out briefly as follows: At the material time, the appellant and the deceased were living together as husband and wife. According to the appellant the union had lasted for a fortnight only. On the material night, the couple had retired after a drinking session with friends; this was around 9 p.m.

It would appear that during their short cohabitation the appellant disliked certain aspects of the deceased's behaviour and had asked her to go away but she refused. After the drinking session that night then the appellant set upon her and assaulted her, using bare hands, for a long time. She cried out and neighbours responded but the appellant chased them away. The deceased died on the same

day following the attack. Her death was due to excessive internal bleeding resulting from a ruptured spleen.

The appellant vehemently denied assaulting the deceased. He claimed that the deceased poisoned herself to death by drinking thiodan. The trial court rejected such defence and, as already stated, convicted the appellant as charged.

In this appeal the appellant was represented by Mr. W. K. Butambala, learned advocate while Mr. Lyimo, Principal State Attorney, was for the respondent Republic.

In his memorandum of appeal, counsel for the appellant filed only one ground of appeal which alleged that malice aforethought was not established. The learned counsel elaborated on that ground at considerable length during his oral submissions before us.

However, we could find no merit in the contention. The medical opinion which the court accepted was that great force must have been used to cause the ruptured spleen which led to the death of the deceased. The law is settled that malice aforethought may be inferred from the amount of force which the offender employed in inflicting the fatal injury. In the instant case great force was used. That was a circumstance from which malice could properly be inferred.

The evidence of PW.1 and PW.2 which the court believed was to the effect that the appellant continued beating the deceased for a long period lasting between 9 p.m. and 2 a.m. The deceased was crying out but when PW.1 went to plead with the appellant to stop the beating the appellant chased him

away, and when more neighbours came there the appellant also chased them away. In our view such conduct was indicative of malice. To subject the deceased to persistent beating over a long period when she continued to cry in pain, and to prevent any intervention by persons who had come to the rescue of the suffering victim were acts which were intended to end the life of the deceased or at least to cause her grievous harm.

The appellant did not feel sorry at all for what he had done. At some stage after rendering the deceased helpless through the beatings, he went to call the neighbour (PW.1) and asked him to come and watch "free cinema". Upon PW.1 arriving there the appellant showed to him the deceased who was lying on the bed helpless and virtually naked; she only had an underskirt on and no underpants. The appellant then rolled bhang in a piece of paper "using the skin of the deceased as a pad and rolled the bhang from the vagina area up to her navel". The appellant showed complete disregard for human life and dignity. He turned human suffering, a situation which he himself had created, into a scene of entertainment. Had he not intended to kill or cause grievous harm to the deceased, he would have felt sorry and would have enlisted the assistance of the neighbours who called on him to take the deceased to hospital or dispensary. Instead he turned the neighbours away as if to say that the helpless victim should be left alone to die, which is exactly what happened. Such conduct was clearly consistent with malice aforethought.

Mr. Lyimo, the learned Principal State Attorney appearing for the Republic, opposed the appeal and for the reasons as set out above we agree that the appeal is

without substance. It is accordingly dismissed in its entirety.

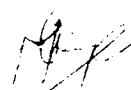
DATED at DAR ES SALAAM this 17th day of August, 1994.

R. H. KISANGA
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

N. S. MNZAVAS
JUSTICE OF APPEAL

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


(M. S. SHANGALI)
DEPUTY REGISTRAR