

IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORAM: MNZAVAS, J.A., MFALILA, J.A., And LUEUVA, J.A.)

CRIMINAL APPEAL NO. 65 OF 1995

BETWEEN

1. WILLIAM MWAKATOBE @ MWAKAJE APPELLANTS
2. LENT AMBOKILE

AND

THE REPUBLIC. RESPONDENT

(Appeal from the Conviction and Sentence
of the High Court of Tanzania at Mbeya)

(Mwipopo, J.)

dated the 4th day of August, 1995

in

Criminal Sessions Case No. 90 of 1993

JUDGEMENT OF THE COURT

MNZAVAS, J.A.:

The appellants, William Mwakatobe and Lent Ambokile, were jointly charged with and convicted of murder c/s 196 of the Penal Code by the High Court (Mwipopo, J.) sitting in Mbeya and the mandatory sentence of death was handed down.

Dissatisfied by the finding of the High Court they have come to this Court.

The charge of murder alleged that the appellants on or about the 1st day of April 1993 at Kituli Village within the district of Rungwe Mbeya Region murdered one, Angongwisye Mwakaje.

After a full trial the learned trial judge was satisfied that the prosecution had proved the charge of murder against both appellants beyond reasonable doubt and, as already mentioned above, convicted them and imposed the death sentence.

Before us Mr. Mwangole, learned defence Counsel who appeared for the 1st appellant, William Mwakatobe, complained and argued that the learned trial judge erred in convicting the first appellant by relying on the first appellant's retracted confession which, it was

argued, was not corroborated.

In his second ground of appeal Mr. Mwangole submitted that the trial judge erred both in law and on points of fact in not holding that the prosecution had failed to prove their case against the 1st appellant beyond reasonable doubt.

Mr. Mlumbe, learned Counsel, advocated for the second appellant, Lent Ambokile. In his one ground of appeal the learned defence Counsel says "The second appellant was wrongly convicted on the basis of his retracted confession whose corroboration was extremely weak". The learned Counsel also echoed Mr. Mwangole's submission that the learned trial judge should have found that the prosecution had failed to prove the charge of murder against the appellants beyond reasonable doubt.

In rebuttal Mr. Mulokozi, learned State Attorney, supported the conviction. He argued that the learned trial judge was satisfied that the appellants' confessions were a true account of what happened and that having so found he had no alternative but to find the appellants guilty of the offence of murder as charged.

The issue before the Court of first instance was whether the confessions of the appellant before the justice of the peace could be relied upon; their retraction notwithstanding.

In answering this question the learned judge said inter alia on page 74 of the typed judgement ———

"Next day, 6/4/93 both accused were sent to the PCM acting as a justice of the peace — both accused did not complain as having been tortured the previous day by PW.6 —. Of course both accused allege that even PW.7 was believed by them to be another police officer —. If that was the case they still had another chance on 7/4/93 when both accused were sent to the doctor to be examined as to their mental and physical health. PW.5, (the doctor), testified that he examined them and talked to them. He found them without any ~~any~~ ~~tear~~ marks and the

13

accused themselves did not complain of any pains or tortures having been ~~---~~ inflicted upon them".

The learned trial judge continued and said —

"To my mind the accuseds' story of torture appear to be fanciful lies cooked up in the prisons during the long incarceration period of 2 years —. What PW.7, (the justice of peace) testified I believe is the truth that the accused willingly and voluntarily gave the extra-judicial statements to him".

We have painstakingly examined the evidence tendered in the High Court including the arguments by the learned defence Counsel that there was no corroboration of the appellants' retracted confessions. We agree with the learned defence Counsel that it is always desirable to look for corroboration in support of a confession which has been retracted before acting on such confession to the detriment of an accused person. But with even greater respect to the learned Counsel there is a long and unbroken chain of authorities that a court may convict on a retracted or repudiated confession even without corroboration.

In the case of R v GAE s/o Maimba and Another - (1945) 12 EACA 82 it was held that:

"There is no rule of law or practice making corroboration of retracted confession essential. Corroboration of a retracted confession is desirable but if the court is fully satisfied that the confession cannot but be true, there is no reason in law why it should not be acted upon it".

In another decision three years later the Eastern Africa Court of Appeal in R v LAPIERRE s/o MWAYA - 1948) 15 EACA 56 said:

"A court may convict on a retracted confession even without corroboration though such confession must be received with great caution and reserve".

And, to mention the celebrated decision in the case of TUWALOI v UGANDA (1967) EA 84 the Court had this to say inter alia:

"We would summarise the position thus: a trial Court should accept any confession which has been retracted or repudiated with caution, and must before founding a conviction on such a confession be fully satisfied in all the circumstances of the case that the confession is true. The same standard of proof is required in all cases and usually the Court will only act on the confession if corroborated in some material particulars by independent evidence accepted by the court. But ~~corrobo~~ration is not necessary in law and the Court may act on a confession alone if it is fully satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true".

In this case we are with respect to the learned trial judge fully satisfied that the appellants' confessions to the justice of peace (PW.7) were so detailed, elaborate and thorough that no other person would have known such personal details but the appellants. Appellants' retracted confessions which we have found to be true were, in our considered view clumsy attempts to evade the consequences of their criminal acts.

We are satisfied that the appellants were properly convicted of the offence of murder as charged. The sentence of death is mandatory.

In the event we order that the appeals be dismissed in their entirety.

DATED at MBETA this 28th day of October, 1996.

N.S. MNZAVAS
JUSTICE OF APPEAL

L.M. MFALILA
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

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


(M.S. SHINGALI)
DEPUTY REGISTRAR