IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: RAMADHANI, J.A., SAMATTA, J.A., And LUGAKINGIRA, J.A.)

CRIMINAL APPEAL NO. 69 OF 1994

BETWEEN

MAIKO MWAMBILE . . . . . APPELLANT

AND

THE REPUBLIC. . . . . RESPONDENT

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

(Mwipopo, J.)

dated the 17th day of March, 1994

in

Criminal Sessions Case No. 77 of 1991

JUDGMENT OF THE COURT

LUGAKINGIRA, J.A.:

The appellant Maiko Mwambile was on 17/3/94 convicted of murder by the High Court sitting at Iringa and sentenced to suffer death. The prosecution case was that on 9/8/90, at Igumbilo Village in Iringa district, the appellant murdered his wife, Rose Luyangi, and their four-months-old baby, Nazarena Mwambile, by severing their necks. At the hearing of the appeal the appellant was represented by learned advocate Mr. Mwangole while the Republic was represented by learned Principal State Attorney Mr. M.S. Sengwaji. The fact of the appellant being responsible for the deaths and the mode of their execution were not in dispute. The only ground of appeal was that the trial judge erred in holding that the appellant was not insane at the material time.

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Submitting on the above ground, Mr. Mwangole argued that the trial court should have found insanity established because the appellant had a fever on the material day and the deceased wife became rude and abusive to him when she returned from a drinking spree. The aspect of the deceased wife going to drink, leaving the appellant sick, and being rude on her return was one of the undisputed facts at the preliminary hearing. It was also agreed that as a result of this, the appellant pushed her down, sat on her and slaughtered her with a knife and then turned to the baby stabbed it. At the trial, however, the appellant claimed that he did not recall what happened and only came to his senses after medication at Isanga.

The appellant had no history of insanity. This was stated by his mother (PW.1), his 10-cell leader (PW.2), his brother-in-law (PW.3), and his nephew (PW.6). Besides, the arresting officer (PW.5) stated that upon his arrest on 4/9/90, the appellant admitted killing his wife and baby daughter and was in normal mental condition. The issue of his not being aware of what he had done was therefore out of the question. Similarly the justice of the peace (PW.7) before whom the appellant made a statement testified that he found him mentally fine and answered questions quite sensibly. The defence succeeded in having the statement excluded from evidence on controverted technical grounds, but that is not an issue in this appeal. Finally, the appellant was also taken to Isanga Institution at the request of the defence for psychistric examination. In the medical report (Exh. P.5) the appellant is reported to have told a pychistrist, Dr. Farahani, that he had never

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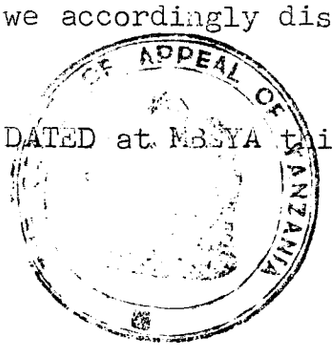
suffered from mental illness in the past. The doctor also stated that the appellant was normal throughout his stay at Isanga and was not given any antipsychotic medication. The doctor opined that the appellant had substantial capacity to know or appreciate the consequences of his conduct and that such conduct was wrong on 9/8/90. In view of all this evidence the trial judge and the first assessor were of the view that the appellant was not insane at the time of committing the murders. The second assessor opined that the appellant possibly had malaria which went to his brain. She said that the appellant got angry when the deceased wife became rude and that he could not have been in normal senses to kill his wife and the innocent baby with such brutality.

After carefully considering the evidence we agree with the learned trial judge and the first assessor. The burden of proving insanity was upon the defence but we find no evidence upon which to fault the finding of the judge and the first assessor. The conduct of the appellant after tne event was that of a rational person. He was sufficiently respectful to the dead that he covered their bodies with a bedsheet and, that done, he took flight and went into hiding in another village, which indicates that he appreciated what he had done and knew that it was wrong. We also agree with the trial judge the defence of provocation was not available to the appellant. It is not known in what manner and with which words the deceased wife became rude, and the baby, of course, said nothing to annoy him. The test for provocation is objective and it is whether a

reasonable member of the community would lose self-control when offered certain acts or words, but the law does not concern itself with individual predispositions to murderous temper at the slightest provocation.

In the final analysis we find no merit in this appeal which we accordingly dismiss.



DATED at MBEYA this 10th day of June, 1999.

A.S.L.RAMADHANI
JUSTICE OF APPEAL

B.A. SAMATTA
JUSTICE OF APPEAL

K.S.K.LUGAKINGIRA
JUSTICE OF APPEAL

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

(A.G. MWARIJA)
DEPUTY REGISTRAR