IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: LILA, J.A., KOROSSO, J.A. And MWANDAMBO, J.A.)

CRIMINAL APPEAL NO. 352 OF 2020

LIDUMULA S/O LUHUSA @ KASUGA .....APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania, at Dodoma

(Siyani, J.)

dated the 11th day of March, 2020
in
Criminal Sessions Case No. 125 of 2016

.....

JUDGMENT OF THE COURT

9th & 26th August, 2021

LILA, J.A.:

To say the least, this case presents some very unfortunate scenarios. We shall demonstrate that later in this judgment. In short and relevant for now, however, is that Lidumula Luhusa @ Kasuga, the appellant in this case was charged before the High Court of Tanzania (Dodoma Registry) with the offence of murder contrary to section 196 and 197 of the Penal Code, Cap. 16 R.E. 2002 [Now R.E 2019]. The accusation was that, on the 22nd day of February 2014 at Igandu village within Chamwino District in Dodoma Region, he murdered one Malima s/o

Lichelewa. He was convicted as charged and was sentenced to suffer death by hanging. The present appeal to the Court is a manifestation of his dissatisfaction with the conviction and sentence meted on him by the High Court (Siyani, J.)

The background of this sad story which led to the death of Malima Lichelewa (the deceased) and his spouse is simple and unambiguous. It is as follows. Malima s/o Lichelewa and one Pili Kasuga lived under the same roof. They were husband and wife. For reasons that were not apparent, Pili Kasuga, the wife, was first to lose her life on the fateful night. Many people gathered at the spouses' matrimonial house. It was said that it was normal, at night time, for people to carry with them various weapons. That night was no exception as those who turned up to the scene of crime carried with them various weapons. Malima s/o Lichelewa was the prime suspect of the murder of his wife, Pili Kasuga. He was, for his safety, locked in the house where the dead body of Pili Kasuga lied. Among the lot was Allex Bure (PW1). According to him, Lidumula s/o Luhusa @ Kasuga, the appellant, who was Pili's brother, also arrived there on a motorcycle with its lights on. The information that his sister was killed angered him and he attempted to break the door but in vain. Instead, the door was broken open by his son. Malima s/o Lichelewa attempted to flee but was unsuccessful. Assisted by light from

the motorcycle and torch flash light carried by other people, PW1 claimed that he was able to see and identify the appellant and his son as being the ones who cut Malima s/o Lichelewa with a sword on the hand and head followed by multiple attacks on different parts of his body, respectively, by the appellant's son and the appellant. Malima Lichelewa died instantly. We shall be referring him as the deceased. Similar evidence was given by Nelson Mangúnda (PW2), a young brother to Pili's husband. An autopsy was conducted by Mary Chitunda, a medical doctor, who was of the opinion that the deceased was cut with a sharp object on his head and left hand. The post - mortem report was admitted as exhibit P1. A Police Officer one No. G 8216 DC Malele (PW4) drew a sketch map of the scene of crime which was admitted as exhibit P2 while A/Insp. Getrude Omary Byejwe (PW5) investigated the case and recorded the appellant's statement. He testified that the appellant escaped after the event and was arrested a year later on 24/1/2016 and was charged with the offence of murder.

Despite admitting being present at the crime scene, the appellant vehemently denied committing the offence. He contended that his presence thereat was a response to the information that had reached him at night that his sister one Pili had been killed. He told the trial court that he walked on foot for two hours from his place to Igandu where his sister

lived where he found many people had responded. Upon arrival, he was told by one Janeth that her sister was killed by Malima who had also been killed. He remained there till morning and was one of those who participated in burying her sister on 23/2/2015. He denied escaping from the village where he was arrested on 24/1/2016 which was Sunday night.

On the evidence, at the close of trial, the learned trial judge was satisfied that the prosecution had established its case beyond reasonable doubt against the appellant, found him guilty of murder and condemned him to suffer death by hanging.

In his judgment, the learned judge having satisfied himself that it was undisputed that Malima died an unnatural death, properly addressed himself that the prosecution relied on the evidence of visual identification as presented by PW1 and PW2 to prove the charge. He apprised himself of the legal position in such cases citing the case of **Issa Ngava @ Shuka vs Republic**, Criminal Appeal No. 37 of 2005 and **Methew Stephen @ Lawrence vs Republic**, Criminal Appeal No. 16 of 2007 (both unreported) that in cases depending on visual identification or recognition clear evidence on source of light, intensity and which is free from any impediment and leaving no room for any possibilities of a mistaken identity is required upon which a conviction can be safely

rested. Accordingly, he gauged the testimonies by PW1 and PW2 and, in respect of the appellant's involvement, had this to say:-

> *"Despite the claim of familiarity, PW1 and PW2 testimonies indicate that they were assisted to see by flash lights and motorcycle lights. The intensity of lights illuminated by these two sources, were explained by both PW1 and PW2. While PW1 said the same could enable one to see up to 20 paces away, PW2 said the lights from the flashlight could reach up to 10 paces. I have no reason to doubt these two witnesses whose credibility was not shaken anyhow by the defence."*

In answering the question whether the killing was with malice aforethought, after citing the case of **Enock Kipeal vs Republic**, Criminal Appeal No. 150 of 1994 and **Daudi Papias @ Sabuni vs Republic**, Criminal Appeal No. 199 of 2020 (both unreported) which set out factors to be considered to determine malice, the learned judge was satisfied that the evidence by PW1, PW2, PW3 established that the appellant attacked the deceased on sensitive parts of the body using a dangerous weapon hence the killing was a calculated one.

In challenging the finding of the learned judge, the appellant lodged a four point memorandum of appeal to this Court. Mr. Leonard Mwanamoga Haule, learned advocate who represented the appellant

before us, filed a supplementary memorandum of appeal comprised of one ground which he sought leave of the Court to be a substitute of ground three (3) of the appellant's memorandum of appeal. It is also worth noting that, he all the same, opted to abandon it later during the hearing of the appeal. Accordingly, the remaining grounds of appeal were:-

1. *That, the charged offence of murder was not proved beyond all reasonable doubt against the appellant.*
2. *That, the evidence of visual identification was not absolutely water tight to ground a conviction.*
3. *That the appellant's defence was not considered.*

At the hearing of the appeal, as shown above, Mr. Haule represented the appellant who was also present in Court. Mr. Harry Mbogoro, learned Senior State Attorney, represented the respondent Republic.

Mr. Haule first assailed the findings of both courts below on the issue of visual identification relied on to ground the appellant's conviction. He contended that the evidence of visual identification did not pass the test of being water tight and did not meet the threshold set by the Court in the case of **Waziri Amani vs R** [1980] TLR 250 cited in the case of **Ally Miraji Mkumbi vs Republic**, Criminal Appeal No. 311 of 2018

(unreported) that in establishing whether the evidence of identification is impeccable, the trial court should consider the time the culprit was under observation, witness's proximity to the culprit when the observation was made, the duration the offence was committed, if the offence was committed in the night time, sufficiency of the lighting to facilitate positive identification and whether the witness knew the culprit before the incident and description of the culprit's peculiar features.

Gauging the prosecution evidence against each factor, and starting with the time of visibility, Mr. Haule argued that neither PW1 nor PW2 whose testimonies were relied on spoke of the duration of time they had the appellant under observation. He urged the Court to discount the allegation by PW1 at page 33 of the record of appeal that he tried to calm down the appellant on account of his failure to tell the distance between them as there were many people moving around at the place. Even PW1's claim at page 34 that he spoke to the appellant face to face did not suggest being closer and could not displace Mr. Haule's stance asserting that even those who are far from each other they talk face to face if they are able to see each other. As for PW2, who claimed at page 39 of the record that he was only three paces from where Malima was killed, he went further to argue, did not mean that he was closer to the appellant.

Duration of the incident was not told by the witnesses (PW1 and PW2), Mr. Haule contended. He asserted that the ten minutes referred to by PW1 at pages 34 and 119 was the time between the arrival of the appellant and the killing of Malima and not the time the killing took place.

On the sufficiency or intensity of the light, Mr. Haule was not far from the allegation by the prosecution that there were many people carrying torches but he asserted that there was no evidence that they all flashed to the place where the killing happened. For instance, he argued, the there was no evidence that light from the motorcycle was being beamed around. After all, he contended, the presence of many people moving around at the place made it difficult for the flash lights to illuminate one place. He discounted the claim by PW2 that flash light was able to illuminate up to twenty (20) paces contending that it, first, contradicted the claim by PW2 who said they could do so up to 10 paces and secondly, there was no evidence that they were all directed towards the place where the killing occurred. He added that PW1 and PW2 had no torches and bearing in mind that, in terms of the Court's decision in **Ally Miraji Mkumbi vs Republic** (supra) torches assist those holding them to see where they are directed not otherwise, they cannot claim that the torches held by other people assisted them to see those present at the crime scene. Turning back to PW2 who claimed to have recognized the

appellant by voice, Mr. Haule, argued that such mode of identification is highly unreliable. Much as the other factors were not met, Mr. Haule strongly argued that familiarity does not help in identification. He asserted that although it was not in dispute that the appellant, PW1 and PW2 resided in the same village, evidence on how he was positively recognized was required. In bolstering his assertion, he referred us to our decision in **Fransisco Daudi and Two Others vs Republic**, Criminal Appeal No. 430 of 2017 (unreported).

Mr. Haule burnt a lot of energy trying to convince us that on the evidence the charge against the appellant was not established to the required standard as complained in ground one (1) of appeal. He assailed the trial court's finding from various angles.

He began with the misapprehension of the evidence by the learned judge on the time taken in the incident of killing. Elaborating, he argued at page 115 of the record the learned trial judge stated that PW1 and PW2 said the incidence took approximately ten (10) minutes which fact is not borne out by the record. He asserted that the correct position is that the ten (10) minutes referred to by PW1 at pages 34 was the time taken between the arrival of the appellant and the deceased being killed. Such misapprehension, according to Mr. Haule suggested that PW1 and PW2

had ample time to observe the appellant commit the offence which is not true.

Another attack was directed at the uncertainty as to who actually killed the deceased. Mr. Haule stoutly argued that given the fact that it was night time and many people gathered at the crime scene and they usually respond to "mwano" at night time with weapons, the possibility that the killing was done by mob justice cannot be overruled. He added that as the identification evidence is wanting, the appellant's involvement was not proved.

In another angle, Mr. Haule contended that despite the appellant admitting that he was at the crime scene, PW1 and PW2 gave contradictory evidence on the kind of weapon the appellant held. Explaining, he said, while PW1 at page 33 said the appellant held a machete and his son (Juma) held a sword, at page 37, he said that the appellant and Juma held a panga, sword and iron bar. He was not specific and another weapon was added. This uncertainty created doubts which should benefit the appellant, he concluded.

The reliability of PW2 was also put to question by Mr. Haule who contended that the one killed (Malima) was his brother so he had personal interests to serve in that he would not have led evidence that

would let the appellant escape liability. He relied on the case of **Majaliwa Ihemo vs Republic**, Criminal Appeal No. 197 of 2020 (unreported) to cement his contention.

Variance between the oral evidence and post mortem report was taken as an issue by Mr. Haule. He argued that while PW1 and PW2 said the deceased's arm was cut off (chopped off), the postmortem showed that there was fracture only. Such a material departure, Mr. Haule pressed, created doubts in the prosecution case. He relied on **Majaliwa Ihemo's** case (supra).

According to the learned advocate, delayed arrest of the appellant had multiple effects on the prosecution case. Elaborating, Mr. Haule argued that neither PW1 nor PW2 who lived in the same village with the appellant told the trial court that the appellant escaped after the incident and the statement by PW5 that he escaped and was arrested a year later in the village could not displace what PW1 and PW2 had told the trial court. Even PW4 who visited the village and drew the sketch map did not say so. On this evidence, Mr. Haule contended, first, that the delayed arrest of the appellant casts doubt on the appellant's involvement in the commission of the offence. Secondly, he argued, it was only SGT Sylvester who investigated the case who could resolve the issue whether or not the appellant escaped from the village. Failure to call such a crucial

witness to testify was fatal and he urged the Court to draw an adverse inference on the prosecution case. He concluded by a statement of law that in the event we agree with him, the appellant's evidence that he did not escape and participated in burying his sister will remain uncontroverted hence true in terms of our decision in **Francisco Daudi's** case (supra).

Last to be argued by Mr. Haule was the complaint that the defence evidence was not considered. While making reference to pages 120 and 121 of the record which are pages 15 and 16 of the trial judge's judgment, he briefly argued that the learned judge simply summed up the defence but did not evaluate and analyze the same with the effect that the conviction is vitiated. He made reference to the case of **Emanuel Aloyce Daffa vs Republic**, Criminal Appeal No. 131 of 2021 (unreported) to support his contention.

Based on the above submission, Mr. Haule implored us to find the appellant not guilty of the offence, allow his appeal and ultimately set him free.

The respondent Republic on its part, through Mr. Harry Mbogoro, learned Senior State Attorney argued before us that the prosecution evidence was impeccable. He argued that the prosecution led cogent

evidence through PW1 and PW2 to prove that the appellant committed the offence. Like Mr. Haule, he stressed that the crucial issue in this appeal is whether the appellant was positively identified to be the one who killed the deceased. He took the stance that PW1 and PW2 knew the appellant before the incident hence the kind of identification under consideration is that of recognition. Furthermore, he argued, flash lights said by PW1 and PW2 to beam light, respectively, up to 20 and 10 paces and light from the motorcycle illuminated the crime scene sufficiently. He was however unable to show evidence that all the flash lights and the motorcycle light were directed to where the killing occurred.

Arguing further whether the appellant was positively identified, Mr. Mbogoro referred the Court to page 33 of the record where PW1 said that he talked with the appellant face to face which presupposed that they were close to each other. Further on this, he referred the Court to page 39 of the record where PW2 said that he stood 10 paces from where the deceased was killed and thus enabled him to see the appellant properly. Based on this evidence, the learned Senior State Attorney insisted that the area was lit with sufficient light hence PW1 and PW2 sufficiently identified the appellant. To buttress his proposition he referred the Court its decision in **Jumapili Msyete vs Republic**, Criminal Appeal No. 110 of 2014 (unreported).

Responding whether the prosecution proved the charge beyond doubt, Mr. Mbogoro stressed that the evidence of identification placed the appellant at the scene of crime and his involvement and that was sufficient to ground his conviction. He discounted the discrepancies brought to the fore by Mr. Haule as being minor and not going to the root of the case. He urged the Court to ignore them.

To the learned Senior State Attorney, the complaint that the defence was not considered by the trial court was baseless. He contended that the same was objectively evaluated by the trial judge at page 120 and 121 of the record of appeal and weighed against that of the prosecution and at the end the learned judge believed the prosecution evidence. Alternatively, Mr. Mbogoro argued that in the event the Court is to find otherwise, being the first appellate court, to step into the shoes of the trial court, evaluate the same and come up with own findings.

In all, he was of the view that the appeal is not meritorious and it should be dismissed in its entirety.

In his brief rejoinder submission, Mr. Haule reiterated his earlier submission insisting that identification evidence was not watertight because the flashlights and the motorcycle light illuminated the area directed only, the contradictions are material, PW1 and PW2 had no flash

lights and the intensity of light at the crime scene was not disclosed, face to face does not mean being very close to each other and as the area was crowded it was difficult to make a proper identification. Arguing further, he said that PW2's statement at page 39 of the record that he stood 10 paces from where the deceased was killed did not mean the distance from where PW2 stood and the appellant.

Winding up, Mr. Haule contended that the appellant's evidence that he did not escape was not controverted by the prosecution hence it should be taken to be true and his unexplained delayed arrest casted doubt on the prosecution case.

Having carefully given thought to the evidence and the circumstances of this case, like the trial court, we have no hesitation whatsoever in accepting the prosecution evidence that the deceased died an unnatural death. It is also common ground that the offence was committed at night and PW1, PW2 and the appellant were among many people who gathered at the deceased home and, like other villagers, the appellant held a weapon. The crucial issue for our determination is whether or not the appellant is responsible for the death of the deceased. We find, like the learned trial judge, that the evidence relied on and on which the appellant's conviction was founded was that of visual identification by PW1 and PW2 who were the only eye-witnesses. And, as

it was not contested that the appellant was not a stranger to PW1 and PW2, the issue for our determination is whether the appellant was recognized as the person who cut the deceased to death. The law on this point is well settled that evidence of recognition is considered to be more reliable than identification of a stranger. Besides, the Court has occasionally warned that such evidence should not be taken wholesome and acted on for an obvious reason that possibilities of mistaken recognition of even close relatives and friends may sometimes be made. There is a plethora of cases decided on this point and we find it unnecessary for the purpose of this case to refer to all those authorities. We shall refer only to the case of **Shamir John vs Republic**, Criminal Appeal No. 166 of 2004 (unreported) where the Court observed that:-

> *"... Recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognize someone whom he knows, the court should always be aware that mistakes in recognition of close relatives and friends are sometimes made."*

On the authority of this case, it is clear that courts are enjoined to consider whether the conditions for a positive and unmistaken identification prevailed before believing a witness's assertion. The factors for consideration in cases of visual identification set out in **Waziri**

Amani's case (supra) become relevant here. As they were rightly outlined by Mr. Haule, the factors include the time the witness had the appellant under observation, the distance at which he made the observation, the time the offence was committed and in the event it was night time, if the lighting was sufficient for a positive identification and lastly, whether the witness knew or had seen the accused before the incident or not. We hasten to say that the same guidelines apply in cases of recognition.

The learned brains parted ways on whether or not the appellant was properly identified as the one who caused the death of the deceased. We also note that it was not contested that PW1 and PW2 were at the crime scene and we have no reason to doubt the trial court's finding on that fact. The burning issue here is whether their respective evidence met the threshold set in **Waziri Amani's** case (supra).

In deliberating the above issue, we shall start by considering the sufficiency of light. The essence of this is that a proper identification depends on the source and intensity of light at the crime scene. Where it is bright enough and without any obstruction, visibility is clear and identification is easy. The opposite is also the case. Cogent evidence by the identifying witness is crucial on the extent of light. On this we are guided by our observation in the case of **Juma Hamad vs. The**

Republic, Criminal Appeal No. 141 of 2014 (unreported) where it was held that:

> *"When it comes to the issue of light, clear evidence must be given by the prosecution to establish beyond reasonable doubt that the light relied on by the witnesses was reasonably bright to enable identifying witness to see and positively identify the accused persons. Bare assertions that "there was light" would not suffice."*

In the present case, PW1, PW2 were very clear that the incident took place at night. According to them, the area was well illuminated by torch lights the people held and light from the motorcycle. They attempted to tell the distance the torches' light could cover as being, respectively, twenty and ten paces. Much as we may agree with them that flash lights may cover such distances, the fact remains that there was no evidence showing how many torches were there and whether both the torches and the motorcycle light was directed to where the deceased was being assaulted after he fell down. To this weakness, Mr. Mbogoro readily conceded.

Besides, the light relied on came from the torches which it is common knowledge that they shed light on the area or person directed to only not otherwise. In the unreported case of **Michael Godwin and**

Another vs Republic, Criminal Appeal No. 66 of 2002, the Court stated that:-

> *"...Second what is more, it is inconceivable that PW1 or PW2 were able to identify the bandits when the bandits were flushing the torch light at them (PW1 and PW2).* ***It is common knowledge that it is easier for the one holding or flushing the torch to identify the person against whom the torch is flushed. In this case, it seems to us that with the torch light flushed at them, (PW1 and PW2), they were more likely dazzled by the light. They could therefore not identify the bandits properly.*** *In that case, as Mr. Mbago, correctly conceded, the possibility of mistaken identity could not be ruled out."* (emphasis added)

The above proposition is still sound. In the instant case the evidence by PW1 and PW2 is wanting on whether at any moment those who held the torches and the motorcycle turned around and flushed them onto the appellant. The Court has time and again insisted on the need to lead evidence establishing that the area was bright enough to allow positive identification. Just to mention one, in the case of **Juma Hamad vs. The Republic**, Criminal Appeal No. 141 of 2014 (unreported) where it was held that:

"When it comes to the issue of light, clear evidence must be given by the prosecution to establish beyond reasonable doubt that the light relied on by the witnesses was reasonably bright to enable identifying witness to see and positively identify the accused persons. Bare assertions that "there was light" would not suffice."

In the circumstances of this case, the prosecution evidence that the torches' lights and motorcycle light assisted PW1 and PW2 to positively recognize the appellant as the one who inflicted the cut wounds on the deceased thereby causing his death is inconceivable.

Linked to the above is the issue of proximity and whether the area was free from any obstruction. It is common knowledge that visibility may be marred by obstructions. The need for the trial court to satisfy itself that there was nothing obstructing vision or light at the scene of crime has been a concern of the Court and set out a caution where visual identification is at issue. For instance, in **Nyangera Karegea vs Republic**, Criminal Appeal No. 468 of 2015 (unreported) after reciting the factors set out in **Waziri Amani's** case (supra), the Court stated:-

"We may add one more aspect touching on obstruction between the suspect and the witness. The court will take into account the general conditions that have affected the sighting, for instance, whether it was an extremely

foggy day, or the sighting took place in a crowded area, or there was a large obstacle obstructing the view."

In the instant case, it was not controverted that many people gathered at the deceased's house. Mr. Haule raised issue that there was intermingling of people at the place such that the flash lights were obstructed hence disturbing visibility. He further contended that talking face to face does not necessarily infer that they spoke while close to each other and ten paces stated by PW2 was not the distance from where PW2 stood to where the appellant stood. Mr. Mbogoro countered that contention relying on the evidence by PW1 and PW2 who told the trial court that they, respectively, talked face to face with the appellant and stood ten paces from where the deceased (Malima) was killed which evidence suggest that the two witnesses were closer to the appellant hence they had no difficulties in identifying the appellant. Mr. Haule's contention is supported by the record hence he is right in both points. No evidence was led that the people were not mobile and the distance at which PW1 and PW2 stood when the deceased was being assaulted. In all, therefore, the distance at which PW1 and PW2 observed the appellant remained doubtful.

It was an established fact that PW1 and PW2 were familiar with the appellant. However, as was rightly conceded by the learned Senior State

Attorney, both witnesses were never forthcoming on the time the appellants were under their observation or rather how long the incident took place. We share the view with Mr. Haule that the ten (10) minutes referred to by PW1 at pages 34 of the record was the time taken between the arrival of the appellant and the deceased being killed not the time the incident took place.

The foregoing, undoubtedly, leads to a finding that the evidence on record did not justify the conclusion that PW1 and PW2 impeccably recognized the appellant as the one who killed the deceased. The intensity of light at the scene that would have aided them to make an unmistaken identification of the appellant was not dutifully proved. We cannot, all the circumstances considered, avoid concluding that the prosecution of the appellant was founded on a mere suspicion rather than cogent evidence that, being the brother of Pili Lusuga who was killed by the deceased (Malima) and the fact that he was present at the crime scene, he must have been the one who killed the deceased in revenge. The case against him was based on suspicion. It is a principle of law that suspicion, however grave, is not a basis for a conviction in a criminal trial (See **MT. 60330 PTE Nassoro Mohamed Ally vs Republic**, Criminal Appeal No. 73 of 2002 (unreported). Mr. Haule is certainly right that although the appellant does not dispute being at the crime scene does

not necessarily mean that he participated in the killing of the deceased. Occasionally, there happens confusion between presence at the scene of crime and participation in the commission of the offence. Such confusion, if allowed to prevail, may lead to conviction of innocent persons. It is the stance of the law that it is participation which is punishable by the law. We have underscored that position in various decisions such as in **Damiano Petro and Jackson Abraham v R** [1980] TLR 260, where we categorically stated that mere presence at the scene of crime does not constitute one a party to an offence.

In most cases, identification of a culprit is linked with time lapse in apprehending him. In cases where he is properly identified, he is immediately named to those who turn up and to the arresting authorities which consequently leads to his immediate arrest. It is from this reason delayed arrest where the culprit was duly identified and named and does not flee from the scene of crime casts doubt on the prosecution case [See **Kadumu Gurube vs Republic**, Criminal Appeal No. 183 of 2015 and **Marwa Wangiti Mwita vs Republic**, Criminal Appeal No. 6 of 1995 (both unreported)]. In the circumstances of this case, the delayed arrest undermined the claims by PW1 and PW2 that they recognized the appellant and this renders their evidence doubtful.

As rightly argued by Mr. Haule and as the proceedings will bear testimony, neither PW1 nor PW2 were forthcoming on whether the appellant fled from the village and for how long. These were villagers who lived with the appellant in the same village whose words, on that fact, no doubt takes precedence. PW5's word was, apart from being not clear when the appellant returned back, not useful for it only talks of the time when the appellant was arrested.

The deficiencies in identification evidence are very basic and they render the evidence of recognition by PW1 and PW2 highly suspect, hence unreliable. The mere general assertion by PW1 and PW2 that there was enough light, they knew and identified the appellant was not enough. The evidence on the identification of the appellant cannot, in the circumstances, be said to be watertight. Given the fact that there were many people the possibility of a mistaken identity cannot be overruled. The appellant ought to have been given the benefit of doubt and acquitted.

The implication of the above finding is that the appellant is not well singled out of the group of people who turned up at the crime scene as being the one who inflicted cut wounds on the appellant thereby causing his death. His defence that, like other villagers, he turned up to the scene of crime, remained there till morning and participated in the burial ceremony turns out to be highly plausible. This finding is enough to

dispose of the appeal. Delving into consideration of the remaining grounds of appeal serves no useful purpose. We refrain from doing so.

We accordingly allow the appeal, quash the conviction and set aside the sentence. The appellant is to be released forthwith from prison unless he is otherwise lawfully held.

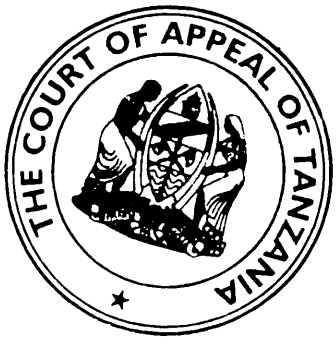
DATED at **DODOMA** this 25th day of August, 2021.

S. A. LILA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

The Judgment delivered this 26th day of August, 2021 in the presence of the Appellant in person and Mr. Matibu Salum, learned State Attorney for the Respondent is hereby certified as a true copy of the original.



S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL