IN THE COURT OF APPEAL OF TANZANIA
AT SHINYANGA

(CORAM: MWARIJA, J.A., KEREFU, J.A., And KENTE, J.A.)

CRIMINAL APPEAL NO. 560 OF 2019

C. 6533 D/SSGT HAMIS IBRAHIM ..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Shinyanga)

(Ebrahim, J.)

dated the 25th day of September, 2019
in
Criminal Session Case No. 88 of 2016

JUDGMENT OF THE COURT

7th & 15th November, 2022

KENTE, J.A.:

The appellant Detective Station Sargent Hamis Ibrahim is an ex-Police Officer and ex-convict. On 25th September, 2019, he was sentenced to five years imprisonment by the High Court of Tanzania (sitting at Shinyanga), after being convicted of manslaughter contrary to section 195 of the Penal Code, Chapter 16 of the Laws of Tanzania. The particulars of the offence alleged that, on 26th May, 2013, the

appellant together with his fellow Police officer one Police constable Frank who was tried along with him but acquitted for lack of sufficient evidence, unlawfully killed a person called Juma Mussa. The unlawful killing incident was said to have occurred at the Police Post near the Old Bus Stand within the Municipality of Shinyanga.

From the proceedings in the High Court, it is apparent that throughout the trial, the appellant was determined to disassociate himself from the deceased's death. It is however common ground that, on the fateful day, the late Juma Mussa together with his friend one Emanuel (Nonga (PW1) went to the Police post at the Old Bus Stand area where the appellant was posted as the Officer Incharge of Station popularly known as the OCS. They were going to ask for TZS.10,000.00 which was an outstanding balance in return for renovating the appellant's toilet at his business place. However, what transpired at the said Police Post was a subject of a serious contention before the High court as it is before this Court.

Whereas it was alleged and subsequently accepted as true by the learned trial judge of the High Court that, following a disagreement

between him and the deceased because of his inordinate delay to clear the debt, the appellant attacked the deceased and broke his leg using a piece of timber thereby causing him a serious wound from which he eventually died a few days later, the appellant's version of events was that, having arrived at the Police Post, the deceased and his friend PW1 were engaged in a fight. It was the appellant's further contention that, the said fight caused the deceased to sustain some more wounds in addition to those which he had sustained in a recent motorcycle accident. All the appellant finally said was that, if the deceased succumbed to the said wounds as alleged by the prosecution witnesses a fact which he himself denied, they must be the wounds which he had sustained as a result of a motorcycle accident and the fight with PW1.

After analysing the evidence before her, the learned trial judge was satisfied that the appellant had attacked the deceased causing him a wound which developed some complications as to result into his death. She therefore came to the conclusion that the charge against the appellant had been proved beyond reasonable doubt and she accordingly convicted him as charged.

Dissatisfied with his conviction and sentence, the appellant has appealed to this Court canvassing three points of complaint. In the first ground, the appellant is complaining that the amended information which was filed in the trial court on 10th September, 2019 was neither read over to him nor pleaded to, contrary to law. In the second ground, the appellant is challenging the evidence adduced by the prosecution witnesses for allegedly being at variance with the material contents of the information. Finally, as is the norm in many criminal appeals, the appellant is generally challenging the prosecution for allegedly the failure to prove the offence beyond reasonable doubt.

On behalf of the appellant it was submitted by Mr. Audax Constantine learned counsel that, the amended information which was lodged in court on 10th September, 2019 was not read over and explained to the appellant and as a result, the appellant's plea to the amended information was not taken throughout the trial. Relying on our decisions in **Ngalaba Luguga @ Ndalawa v. Republic,** Criminal Appeal No. 66 of 2019 and **Ramadhani Hussein Rashid @ Babu Rama and Another v. Republic,** Criminal Appeal No. 220 of 2018

(both unreported), Mr. Costantine was firm that, the omission to read over to the appellant the substitute information rendered the subsequent proceedings and judgment a nullity as in essence, the appellant was not accorded a fair trial. In the circumstances, the learned counsel urged us to nullify the proceedings before the trial court and to quash and set aside the appellant's conviction and sentence. As to the way forward, Mr. Constantine submitted that, an order for retiral would not be appropriate in the circumstances because of the prosecution case which he said, was based on shaky evidence. Citing some few examples, the learned counsel contended that, there was no evidence to establish the date of death of the deceased, the cause of death, and the place where it occurred.

Regarding the cause of death, Mr. Constantine submitted that going by the postmortem examination report, it is possible to draw two inferences. **One**, that death was due to septic shock and **two** that, it was due to alcohol withdrawal. On the scene of the crime, the learned counsel submitted that, it was not proved beyond reasonable doubt whether the death occurred at the Police Post or at the Old Bus Stand.

All in all, the learned counsel was of the view that, the evidence led in support of the prosecution case would not be sufficient to ground a conviction if an order for retrial were to be made.

On behalf of the respondent Republic, Ms. Ajuaye Bilishanga Zegeli, learned Principal State Attorney who appeared along with Ms. Caroline Mushi learned State Attorney, informed the Court right from the outset that, she supported the appellant's conviction and sentence by the trial court. She went on conceding that indeed, the substitute information was not read over to the appellant but she was quick to submit that, the said omission was not fatal as to have prejudiced the appellant. However, upon reflection and on a careful reading of the applicable law, the learned Principal State Attorney had to change tack she submitted correctly so in our view that, as opposed to section 234(a) of the Criminal Procedure Act Chapter 20 of the Laws (the CPA) which provides for the procedure in respect of trials before the subordinate courts, the applicable law in the circumstances of the instant case was section 276(3) of the CPA.

Whereas section 234(2) of the CPA provides clearly that:-

"(2) Subject to subsection (1) where a charge is altered under that subsection

(a) The Court shall thereupon call upon the accused person to plead to the altered charge."

there is no similar provision under Part VII of the CPA which deals with the Procedure in respect of trials before the High Court. Instead, section 276 (3) provides that:

"276 (1) . . . NA

(2) . . . NA

(3) Where an information is amended a note of the order for amendment shall be endorsed on the information and the information shall be treated for the purposes of all proceedings in connection therewith as having been filed in the amended form"

Going by the immediately quoted provision of the CPA, it should be obvious that, as a matter of law, during the trial before the High Court, upon amendment of the information, there is no mandatory

requirement for the court to call upon the accused person to plead to the amended information as erroneously contended by Mr. Constantine. The only requirement which was duly observed by the trial judge after the prayer to amend the information was made in terms of section 276 of the CPA, was to endorse on the information a note of the order for amendment and to declare that for purposes of the proceedings the crime scene would read *"Police-Post stand, at stand ya zamani"* and not *Ibinzamata Bus Stand*. But perhaps for purposes of completeness, the learned trial judge went further and made it clear that, the substituted information would be read over to the appellant and his co-accused.

While we are mindful of our previous decisions, including the cases of **Ngalaba Luguga** (supra) and **Omari Juma Rwambo v. Republic,** Criminal Appeal No. 59 of 2019 (unreported) to which we were respectively referred by Mr. Constantine and Ms. Zegeli, in which we took the position that, it is mandatory for a plea to a new or altered charge to be taken from an accused person, as otherwise the trial becomes a nullity, it would appear that the said decisions were made in view of the provisions of section 234(2) of the CPA which specifically

deals with the procedure in the trials before the subordinate courts. As we have amply demonstrated, the procedure before the High Court is slightly different. In terms of section 276(3) of the CPA, taking a plea of the accused person to an amended or altered information is not a requirement.

It follows therefore that, the complaint being that the amended information was not read over to the appellant and as we have shown, the law not being strictly on the appellant's side, it is clear to us that the first ground of appeal has no basis both in law and in fact. We therefore dismiss it.

Concerning sufficiency or otherwise of the evidence adduced by the prosecution witnesses, we are convinced that the sequence of events culminating in the deceased's death were as true as told by PW1. Like the learned trial Judge, we are satisfied that the appellant's defence version about the deceased fighting with his friend PW1 was a trumped up story. As did the trial court, we, accept as true the testimony of PW1 who accompanied the deceased to the appellant's workplace to ask for their payment but only to be branded rude and

incendiaries and subsequently subjected to very severe battering. Given PW1's testimony which remained unshaken, we cannot accept the appellant's version of the events on that day including the submission by Mr. Constantine that the scene of crime and the cause of death were not established. We also regard the contention by Mr. Constantine that, it was not proved whether the incident occurred at the Police Post or at the Old Bus Stand area as an attempt to split hairs with the administration of justice.

Moreover, we do not agree that the cause of death was not established because the oral testimony of Dr. Said Kanenda (PW3), a doctor who examined the body of the deceased, together with the finding which he posted on the post mortem report (Exh.P1) were unequivocal that the deceased's death was due to septic shock after the wound on the leg indicated a bad infection. Alcohol withdrawal which Mr. Constantine sought to pick on was mentioned as a cause which seemed to PW3 to be too remote. On the totality of the evidence, we are unable to hold that the deceased was attacked by

PW1 who was his friend and that the cause of his death was not established.

All said and done, we respectfully agree with the learned Principal State Attorney that the appellant was rightly convicted of manslaughter and subsequently sentenced. We accordingly dismiss the appeal entirely.

DATED at **SHINYANGA** this 11th day of November, 2022.

A. G. MWARIJA
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

The Judgment delivered this 15th day of November, 2022 in the presence of Mr. Audax Constantine, learned Counsel for the Appellant and Ms. Edith Tuka, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.

G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL