

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CRIMINAL SESSIONS CASE NO. 61 OF 2001

REPUBLIC PROSECUTOR

VERSUS

SIZA PEMBE MANENO ACCUSED

Othman Chande, J.

Judgement

Insanity of the accused, at the time of commission of the offence, is the basic plea urged in this case. The accused, Siza Pembe Maneno is charged with murder c/s 196 of the Penal Code. The prosecution alleges that on or about 15/8/1997 at Kiwangwa area, Bagamoyo district, Coast region, the accused murdered one Hamza s/o Maarufu.

Learned State Attorney, Mr Mwipopo represented the Republic. The accused was advocated by DR Twalib, Learned Defence Counsel.

At the preliminary hearing held on 10/11/02 the prosecution and the defence mutually agreed in the memorandum of matters not in dispute the following:

1. That Hamza Maarufu is dead.
2. That the cause of death was severe intra-cranial hemorrhage as a result of inflicted skull wounds as per the admitted post-mortem medical examination report (Exhibit-P1).
3. That the death of the deceased was caused by the accused using a panga.

These matters are deemed to have been proved (section 192(4) Criminal Procedure Act, 1985). Considering all the above, it is plain and I am fully satisfied that the victim, Hamza Maarufu is dead. He died an natural death caused by severe intra-cranial hemorrhage as a result of inflicted skull wounds.

The past mortem medical examination report estimates that the death of the deceased occurred around April-May 1997. I am also fully satisfied that the deceased was killed by the accused who had used a panga, a lethal instrument, to effect the act charged.

The principal question that arises in this case is whether the accused was insane at the time of the commission of the act within the terms set in section 13 of the Penal Code. This matter was first raised on 18/11/02 as the trialable issue. Under

section 220(1) of the Criminal procedure Act, 1985 the Court sought from the medical officer in charge of Isanga Institution, a mental health facility, the examination of the mental condition of the accused and an opinion whether at the time when the offence was committed he was insane so as not to be responsible for his actions. The report prepared by that institution was admitted as Exh.P2 on 9/11/05. Its contents and conclusions are undisputed by the parties. In fact, it was fully relied upon by both. This Court was urged to accept its findings and conclusions.

In essence, that Court commissioned report, dated 24/09/03, Reference No. 63871/2003 was made by Dr. J. Aligawesa, Consultant psychiatrist-in-charge, Isanga Institution. It provides an encompassing and comprehensive account of the medical examination conducted on the accused and offers opinions on the question posed by this Court.

The report is based on the statement of potential witnesses to this case, clinical interviews and medical examination of the accused, as well as his past medical history. The medical condition of the accused was diagnosed and found to be or had been in the following situation:-

(1) Behaviour disorders while at standard III;

- (2) Very aggressive and impulsive behaviour or conduct at a tender age;
- (3) Admission at Bagamoyo Hospital after cutting his testicals;
- (4) Mental sickness disorders which have been the accused's mental condition for many years;
- (5) State of delusion that rendered him out of touch with reality and which deprived him the ability to control his acts or conduct, in particular, the acts committed on the deceased;
- (6) Suffering from chronic mental illness, that is to say, paranoid schizophrenia;

Generally, it can be said that schizophrenia is a modern term for dementia praecox, i.e defect of mind existing from an early age (R.V. Rivell 34 CR. App. R. 87) (Shroud's Judicial Dictionary, 5 Ed. P. 2341). Knight, B in his accredited work Simpson's Forensic Medicine, 1991, P. 238 states: "The schizophrenic psychoses have the most relevance to violent criminal behavior Schizophrenia is often of a paranoid nature, the victim spending his life in suspicion analysis of every normal event around him aggravated by delusions of voices and whispering and pseudo-scientific fears of malign ways and electronic surveillance. The dangers are considerable as the sufferer lives in a hostile world of his own making and may use extreme violence in what he sees as self-defence."

This medical description of the chronic mental illness which the accused is said to suffer from at the time of the commission of the offence is fully echoed and reflected in the medical report of Dr. J. Aligawesa (Exh.- P2). The report's conclusion is that the accused being deceived and falsely perceiving torture inflicted by the deceased on his person, got out of touch with reality and in such a mental state attacked and killed the deceased. That the question of criminal responsibility and the impact his action had upon his victim was overwhelmed by the delusions, which in turn deprived him of the ability to conform his conduct to the law. The Constant Psychiatric opined that the accused was insane at the material time when he committed the alleged offence.

The general principle of criminal responsibility is that everyone is presumed sane unless the contrary is proved. This presumption is rebuttable. That apart, it is well established that the onus of establishing insanity is on the accused. Section 13 of the Penal Code recognises that any disease affecting the mind and the conditions or effects of which meet the full requirements laid out in that section is an exception to criminal responsibility. For case of reference on this applicable law Section 13 of the Penal Code provides:

"13(1) A person shall not be generally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind:-

- (a)incapable of understanding what he was doing,
- (b)incapable of appreciating that he ought not to do the act or,
- (c)does not have control of the act or omission.

2. A person may be criminally responsible for an act or omission although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects referred to in subsection (1) to that act or omission."

It is trite law that the critical and decisive point in time for ascertaining the state of mind of the accused is the time when the offence was committed and whether he was in a state of mind as to be entitled to the benefit of section 13 of the Penal Code. Insanity is a question of fact, which can be inferred from the circumstances of the case and the conduct of the person at the material time (Hilda Abel V.R (1993) TLR 246 (CA). The onus that rests upon the accused to make out his plea of insanity is not lighter than the burden which rests upon a party to civil proceedings, i.e on a balance of

probabilities (Philson on Evidence, 15th Ed 2000, para 4-43; Nyinge s/o Suwato VR [1959] EA 974, Mbeluke v.R [1971] EA 479).

Considering the totality of circumstances, the evidence on record and the expert medical opinion, I am fully satisfied that the defence of insanity is made out and entitles the accused to the benefit of section 13 of the Penal Code since at the time of doing the act alleged, he was through disease affecting the mind, that is, paranoid schizophrenia, on account of which he was incapable of understanding what was doing, incapable of appreciating that he ought not to do to act, and had no control over his acts. All the three Lady and Gentlemen Assesors were of the identical opinion that the accused was insane at the material time. As observed earlier, I also align myself with that view. On the basis of the material, I find that the accused had committed the acts consisting of a fatal attack on the deceased, which resulted in his death, and but for the case of the accused falling under the preview of section 13 of the Penal Code the said acts would have constituted the offence of murder under section 196 of the Penal Code. Significant is that the deceased's death is directly attributable to having been hit by a panga on a vulnerable part of his body, the head, by the accused.

Keeping in view section 219(2) of the Criminal Procedure Act, 1985, I hereby make a special finding that the accused did the act charged but by reason of his insanity is not guilty of the offence charged.

Accordingly, under section 219(3) (a) of the above Act, I order that the accused be transferred and kept in a mental hospital, that is, Isanga institution, as a criminal lunatic and that he be dealt with according to the law. The record of the proceeding and orders to be transmitted to the concerned authorities by the Registrar. It is so ordered.



Othman Chande

JUDGE

11/11/2005