

IN THE HIGH COURT OF TANZANIA
AT MTWARA
CRIMINAL SESSION CASE NO. 7/2005

THE REPUBLIC
VERSUS
RAJABU MOHAMED @ NURUDINI

RULING

SHANGALI, J.

This is the most hopelessly investigated homicide case have never come across. Infact scanning the record it seems no particular police investigator was assigned to investigate this case at all. The statements of the witnesses were taken by different Police Officers at divers times and after a long lapse of time. In short the case was not seriously and diligently investigated by those responsible.

I have seriously directed my minds to the available prosecution evidence of PW1, PW2, PW3, PW4 and PW5 and I am convinced beyond doubt that the case has not been made out against the accused person sufficiently to require him make a defence. See R.T. BHATT Vs. R (1957) EACA. 332.

PW1s' evidence does not connect the accused with the alleged offence. Secondly the offence was committed on 4/4/2003 and her statement was recorded on 24/9/2003. Likewise, the evidence of PW2 is weak and far from connecting the accused with the serious offence of murder. She admitted before this Court that immediately after the commission of the offence she was directed by the Ward Executive Officer to arrest the accused and one Francis matayo because they were known habitual criminals within the area. Certainly, PW2, PW5 and others may have entertained strong suspicion against the accused as a person who robbed and killed the deceased, but it is a settled position of the law that suspicion no matter how grave cannot be the basis of a conviction in a criminal charge; and particularly in a serious charge

like the present one. There must be ample and direct cogent prosecution evidence to connect the accused with the charge laid against him.

Again, the evidence of PW3, PC Eliuta is nothing to go by. As a Charge Room Officer at Mangaka Police post, ^{he} received the accused and the alleged stolen items from PW2. He was not an investigating Officer and indeed he categorically denied to be the one. In the cross-examination by defence counsel he stated that he was not the one who questioned the witnesses or recorded their statements. Infact according to the Court record PW3 recorded his own statement on 12/3/2004.

PW4, D/CPL. Herbert attempted to produce the statement of one Bakari Hamisi Mwale, the husband of the deceased as exhibit but the defence counsel raised an objection which was upheld. The admission of that statement was refused because the statement was recorded by two Police Officers. The first portion was recorded by PW4 on 23/4/2003 while the second portion was recorded by D/Sgt Japhary on 24/4/2003. The typed copies in the Court record and that supplied to the defence counsel does not show the dates nor the name of the Police Officer who recorded that second portion. In addition it was revealed in Court that the said D/Sgt Japhary is the very Court orderly before the Court who was following the case silently. Moreover the Learned State Attorney and her witness failed to disclose as to why they were intending to produce the statement of Bakari Hamisi Mwale. In the result the application was refused and the evidence of PW4 was rendered useless.

PW5, like PW2 were moved by suspicion against the accused person. PW5's statement was surprisingly recorded on 4/6/2004 by Sgt. Mohamed, after more than a year from the date of incident. PW5 suspected the accused and handed him over to the authority in April 2003. Nevertheless, his evidence is deficient of any connection of the accused with the alleged offence.

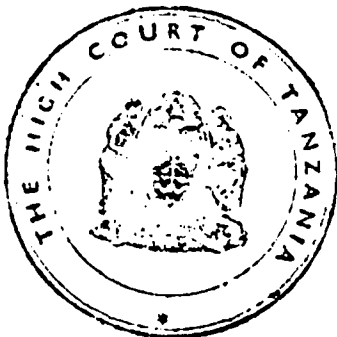
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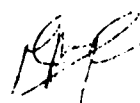
It is for the above reasons that I feel entitled to castigate all the persons who mishandled this case to the extent of causing the incarceration of the accused person in custody for more than three years without sufficient evidence against him. I dare say it is this kind of recklessness that makes the society lose confidence in the Police force and the Judiciary.

As responsible public Officers we should strive to avoid such incidents in the future. In my view in dealing with serious charges like murder, equal seriousness and diligence should be afforded. The handling of this case was just too facial.

Finally and having gone that far, I am satisfied that there is no sufficient prosecution evidence to require the accused person to make a defence. There is no case to answer against him and he is therefore found not guilty and acquitted. The accused Rajabu Mohamed Nurdin is to be released forthwith unless he is lawfully detained on another different matter.

It is so ordered.




M.S. Shangali

JUDGE

9/10/2006.