

**IN THE HIGH COURT OF TANZANIA
AT SONGEA**

**(SONGEA REGISTRY)
CRIMINAL SESSIONS CASE NO.16/2006**

THE REPUBLIC

VERSUS:

DICKSON RAMADHANI GINGO

9/2/2007 -HEARING CONCLUDED

9/2/2007 – JUDGMENT DELIVERED

J U D G M E N T

L.M.K. UZIA, J.

The accused person in this case, Dickson Ramadhani Gingo, stands charged with the offence of murder contrary to section 196 of the Penal Code.

The Prosecution had alleged that on 17th/10/2004 at or about 17.30 hrs in Ruhuwiko Suburb within the Urban District of Songea in Ruvuma Region did murder Anamaria d/o Fronto Kapinga. The accused pleaded not guilty to the charge. The prosecution side brought four witnesses to prove the charge of murder.

Fronto Kapinga (PW1) was informed that her daughter was killed by unknown person and the body was lying beside the road. He was further informed by PW.2 in that material night of 17th/10/2004 that she saw the deceased person in the company of the accused person. On 18th/10/2004, search was conducted by policemen and the location chairperson in the room of the accused person. Some of clothes of the accused were blood stained, those were Tshirt, hat, and a pair of trouser.

The second prosecution witness one Rahel Mahundi (PW2) informed the court that she once saw the accused person

quarrelling with the deceased over money some days before the incident. She also saw the accused person in that fateful night walking with the deceased going home; She further informed the court that, upon seeing the deceased in the company of the accused person, the deceased made a short conversation with PW.2, at that time the accused person kept on looking on the ground. When she returned back from the place where was sent by his father, she saw a body of human being lying beside the road, she was shocked and ran home. She reported the matter to his father. A short while after, the son of PW.1 one David arrived at her and home asked her the whereabouts of the deceased. She told him that, the last time she saw the deceased was in the Company of the accused person. She further advised David to go to see a body lying beside the road, it was later discovered that the body was human remains of Anamaria Mkinga (deceased)

The prosecution side fielded another witness, one Doroth Gabriel Ndomba (PW3). The witness was a location Chairperson, being a leader, was called upon by the police to witness the search which was conducted in the accused room. On 17th/10/2004 and 18th/10/2004. She told the court in her testimony that, nothing was found in the night of 17/10/2004 because there was poor light. On 18th/10/2004 however, policemen saw clothes of the accused person with stain of blood. The prosecution side failed to summon the policemen who conducted the search and clothes alleged to have blood stains as Exhibit in Court.

The accused person was also sent to the Justice of Peace to give his statement. According to (PW4) who happened to take the accused statement, said that, the rules concerning taking Extra Judicial Statement were observed. He warned the accused person verbally that his statement would be used in future. According to PW.4 there was no threat from the policemen because the

policemen stayed far from his office. The accused person, confessed to have killed the deceased. The statement was read in court and accepted as Exhibit PI.

At a close of the prosecution case the court ruled out that the accused person had a case to answer on a charge of murder contrary to section 196 of the Penal Code.

The accused person elected to defend himself, did not call any witness. He informed the court that, the deceased requested him to accompany her at home. The accused person granted her request. On their way, however, the deceased met her friend one Rahel Mahundi (PW2), the accused did not bother about the conversation between them, they later continued with their walk. When they reached at a junction, everyone took his or her own way home.

He was surprised to hear that the deceased was killed and the body was lying beside the road. He went to see the body of the deceased

beside the road. Suddenly he heard his name being mentioned, “Dickson” shortly thereafter Policemen arrested him. They connected him with the murder of the deceased. Policemen searched his room in the night of 17th/10/2004 without success, that is to say nothing incriminating was found inside. On 18th/10/2004, search was conducted and some clothes were found, he denied to have seen stains of blood.

On 19th/10/2004, was ordered to go to their senior officer to give a statement. He was promised that if he would confess to have killed, he would be released. According to him, one policeman entered in the office of the senior officer before he went in. He stated that he killed the deceased, although that was not true in real sense. He went further to say that PW2 was not a truthful witness, she was a liar, she did not see him quarrelling with a deceased.

From the foregoing evidence, there is no dispute that a girl known as Anamaria d/o Fronto Kapinga is dead, what is in dispute is who killed her.

The Defence Counsel submitted in court that the prosecution has failed to prove the offence beyond reasonable doubt. There is no ample evidence to convict the accused of the offence murder. The statement made by the accused before the Justice of Peace was not read in Court during committal proceedings therefore, under section 289 (2) of Criminal Procedure Act 1985 the Statement could not be received as Exhibit in Court unless it was read during committal proceedings in the lower court. In the case of Hamisi Maure vs Republic 1993 TLR 213 the court of Appeal held “The learned trial Judge erred in Law in allowing evidence of Justice of Peace to be given at a trial when his statement had not been read at committal proceedings and no notice had been given to the

appellant or his advocate and therefore the Extra Judicial Statement was wrongly admitted.”

The defence Counsel submitted further that, If the Court would not accept the Extra Judicial Statement as Exhibit in Court then, the prosecution case would not get a leg to stand on because PW.2 evidence is weak, she did not see the actual killing, therefore the court cannot rely on her evidence.

The defence counsel, cited the case of **Hemed Abdallah Vs: Republic** 1995 TLR 172 and the case of **Tuwamoi V Uganda** 1964 EA 84, he said, in Hemed’s case, The Court of Appeal held, “ Generally it is dangerous to act upon a repudiated or retracted confession unless it is corroborated in material particular or unless the Court, after full consideration of the circumstances, is satisfied that the confession must be true.” According to him PW.4 evidence

needed corroboration, therefore it cannot corroborate the Extra Judicial Statement.

All Assessors were of the opinion that, the prosecution side, failed to bring clothes and a panga which was alleged to have blood stains. It was further submitted that, the alleged confession before a Justice of Peace was not obtained freely, the accused was under threats.

On the basis of the foregoing evaluation of evidence from both sides, with the opinion of the Gentlemen assessors and lady assessor, I now start with the evidence of PW.2, and before I do that. I would like to point out the purpose of cross-examination – Sarkar on Evidence, neatly described the purpose of cross-examination. as follows, on pages 1272-1273.

“The object of cross-examination is two fold, to weaken, quality, or destroy the case of the opponent; and establish the

party's own case by means of his opponents witnesses. The objects one to impeach the accuracy, credibility and general value of the evidence given in-chief to sift the facts already stated by witness, to detect and expose discrepancies, or to elicit suppressed facts which will support the case of the cross-examining party. (12th Edition)"

Those being purposes of cross-examination, this court would like to examine the evidence adduced by PW2 and the cross-examination done by the defence counsel in the light of the foregoing description by Sarkar.

This aim of the defence counsel was to impeach the accuracy and credibility of PW.2 evidence, I observed the demeanor of that witness, I come to the conclusion that, the witness looked stable, she answered the questions from the

defence counsel firmly, therefore did not change the sequence of events. She informed the court clearly that there was a quarrel between the deceased and the accused before the incident she went further to explain to the court posture of the accused person in the fateful night when she met the accused person in the company of the deceased, that he was looking down when listening conversation between her and the deceased. Almost two years have already elapsed, but PW.2 recalled every event which took place in that fateful night. I am also of the view that, the quarrel on the question of money between the accused and the deceased made the accused person to nurse a grudge, therefore lured the deceased in that fateful night eventually killed her.

When the State Attorney in cross-examination tested the credibility of the accused person evidence, the accused person appeared to be evasive, he was avoiding some questions, kept on changing, for example he informed the court about the distance

from his house to the place where the body was found lying, he in the first place said that it was 7 to 10 minutes walk later changed that was long distance.

The first assessor asked him a question concerning blood stained clothes, the accused informed the court that policemen ordered him to carry the body of the deceased and put it in the police vehicle that's why his clothes were blood stained, while In examination in chief the accused did not admit to have seen blood stains on his clothes. The reply on the question put to him by the first assessor looked to be an after thought.

I now turn to the extra-judicial statement, the defence counsel submitted in court that extra judicial statement which was not read in committal proceedings in the lower court could not be tendered as Exhibit in the High Court, he cited to the court section 289 (1)(2) of the Criminal Procedure Act. Having read that

section, I decided to reproduce here for clarity, the relevant section provides as follow:

“No witness whose statement or substance of evidence was not read at committal proceedings shall be called by the prosecution at the trial unless the prosecution has given a reasonable notice in writing to the accused person or his advocate of the intention to call such witness.

(2) The notice shall state the name and address of the witness and the substance of the evidence which he intends to give.

(3) The court shall determine what notice is reasonable regard being

had to the time when and the
circumstances under which the
prosecution became acquainted
with the nature of the witness's
evidence and determined to call
him as a witness; but no such
notice need be given if the
prosecution first became aware
of the evidence which the witness
would give on the date on which
he is called."

In the circumstances of that case, as I pointed earlier, that,
there was good reason for the prosecution side to tender as an
Exhibit; and the court admitted it as Exhibit in Court. The notice
in my view was given during Preliminary hearing where matters of
not in dispute were determined under section 192 (4) of the
Criminal Procedure Act, 1985. which provides;

"Any fact or document admitted

or agreed (whether such fact of document is mentioned in the summary of evidence or not) in a memorandum filed under this section shall be deemed to have been duly proved; save that if, during the course of the trial, the court is of the opinion that the interests of justice so demand, the court may direct that any fact or document admitted or agreed in a memorandum filed under section be formally proved.”

In this case, the preliminary hearing was held on 20th/11/2006, and the Judge who conducted Preliminary hearing (PH) upheld an objection from the defence counsel that extra judicial statement was supposed to be tendered by the author. The

author in this case is (PW.4), his name appeared in the list of witnesses also were to be called to adduce evidence during trial. There is no doubt that the extra judicial statement was put to the awareness of the defence counsel before this trial.

The only question left is whether the confession was voluntary. I have in mind the submission of the defence counsel who informed the court that, policemen threatened the accused person, and out of fear, the accused confessed. He also pointed out that, the accused person was promised to be released out of custody. This court finds the foregoing allegations baseless, because the accused person did not give his statement at the police station, but at the Justice of Peace, according to the evidence in court, PW.4 did not threaten or torture him, he informed him about his rights and was free to speak anything or elect to keep quite. The accused person opted to tell the truth, there were no traces of inducement either, because policemen who escorted him stayed far from the office of the Justice of Peace.

With due respect to the Defence Counsel and Gentlemen assessors and Lady assessor, I come to realize that the killing was done by the accused person. The detailed information in the extra Judicial statement tallied with PW.2 evidence, and the accused defence except for the incident of killing. No one would know all the details pertaining to the sequence of events leading to the death of the deceased if not the accused himself who committed the offence.

I have also warned myself of the dangers of acting upon a retracted confession before a Justice of Peace. In the case of Hemed Abdallah Vs Republic 1995 TLR 172, There is no a requirement of the law that the trial court have to give reasons for the trial Courts' finding that there is no danger in accepting a retracted confession. On the basis of the foregoing evaluation of the evidence and the applicable law, I am satisfied that the prosecution has proved its case against the accused, Dickson

Ramadhani Gingo, I accordingly find the said Dickson Ramadhani Gingo guilty of the offence of Murder contrary to section 196 of the Penal Code. I duly convict him forthwith.

L.M.K. UZIA,

JUDGE.

9/2/2007.

State Attorney: There is no previous convictions I also inform the court that, under section 196 of the Penal Code, the accused person is facing an offence of Murder which attracts death sentence and be hanged until he dies.

Defence Counsel I have nothing to add.

SENTENCE

The accused Dickson Ramadhani Gingo has been found guilty of Murder contrary to section 196 of the Penal Code. The penalty for the offence of Murder is provided under section 197 of the Penal Code which calls for death sentence, similarly section 322 (1) of CPA requires the Judge to pronounce to you, Dickson Ramadhani Gingo, that you shall suffer death by hanging.

I so pronounce.

Right of Appeal is explained.

L.M.K. UZIA,

JUDGE.

9/2/2007.