

IN THE HIGH COURT OF TANZANIA
AT GEITA
ORIGINAL JURISDICTION
CRIMINAL SESSIONS CASE NO. 63 OF 2016
THE REPUBLIC
VERSUS
MASWI S/O NCHAMA @ MWITA..... ACCUSED

JUDGMENT

09 & 25/03/2021

RUMANYIKA, J.:

Maswi Nchama @ Mwita (the accused) stood charged for an offence murder C/s 196 of the Penal Code Cap 16 RE. 2019 (the code) according to the particulars of the offence that on 29/1/2014, during night at Nyantimba village, in the district of Chato, Geita region, the accused murdered Mashinga Omnumbwa (the deceased).

Messrs Janeth Kisibo and Otieno learned state attorney and learned counsel appeared for the Republic and accused respectively.

Ms. Anna Mussa and Mr. Martine William lady and gentleman assessors they sat with me.

Pw1 Matalis Kalugila (41) stated that he was a veterinary officer also since 2013 the local acting VEO – Isambala – Biharamulo district, therefore

justice of the peace and, as on 30/01/2014, just as the accused passed by ride a motor bike Reg. No. T.820 CHQ make SUNLG red coloured (the bike), but it overturned say 80 metres away, they approached the suspicious/ doubtful bike, much as also initially, the accused had offered them bribe of shs. 500,000/= in order to be released but the bike belonged to one Yemuga who shortly was found brutally murdered and the body just abandoned in a pit. That eventually he handed over the bike and accused to police. That is it.

Pw2 Issa Tosha (46) a resident of Nyantimba stated that since 2011 he was the production manager – Kazi Gold Mine and having had learnt that the accused had been found in possession of the bike on 30/01/2014 afternoon but missing, shortly the dead body was reported found abandoned in the pit in bushes. That also he saw and identified the brutally murdered deceased.

Pw3 E.7986 D/Cpl. Ilanga (52) of Nyamirembe police post Chato he stated that as on or by the material time he worked at Buziku police post as OCS at work on 30/01/2014, having been informed about the incident and now the dead body now discovered, having been duly assigned by the

OC-CID really he found the dead body abandoned in a pit then he drew a sketch map plan thereof (Exhibit "P1").

Pw4 Dr. Eustadius Kweyamba (52) of Chato district hospital he stated that following the incident, with the police order now at Nyantimba village, also with respect to the adult male body he conducted autopsy on 30/01/2014 and he noticed a big fresh cut wound in the neck in left the dead body having been duly identified by some relatives and policemen (copy of the post mortem report on examination – Exhibit "P2").

Pw5 Mashaka Kwileka (44) a resident and petty businessman of Nyantimba village he stated that having purchased it brand new in 2013 for shs. 1,850,000/= but now he sold the bike to the deceased for shs. 1.40 million, on 30/01/2014 he learnt about the incident the accused reported having been found in possession of it and he (pw5) duly identified the bike at Nyantimba village government offices.

Pw6 D.7494 Ssgt Sylvanus (54) of Chato police station he stated that among other duties he kept exhibits thereat. That that as he was on 30/01/2014 at work and on duty on 30/01/2014, from E.980 Cpl Abdul of

CRO he received the bike and registered it as No. 9 of 2014 (Bwanga IR 63/2014) the portion of the copy of the Exhibit Register - Exhibit "P3".

Pw7 F.1251 D/Sgt. Majani (46) of Masumbwe police station he stated that as he was stationed, and at the time he worked at Chato, following the incident, and duly assigned by the local OC-CID one ASP. Makama, together with 5 fellows they rushed to the scene of crime Nyantimba mines where really they found the dead body abandoned in the pit much as at Bwanga police post already the accused was reported arrested in possession of the bike. That initially, as the latter could not talk but only communicated through writing, he denied the charges. In that regard also, he (pw7) recorded a statement of Cpl Jackson (under Section 34B of the evidence Act – Exhibit "P5"). That is all.

The accused (Dw) (28) denied the charges and he stated that as a guard employed by Lampad Security Company around, too he knew the deceased as a friend and, in terms of work places neighbours that the latter was a **bodaboda** rider who, just a day before having had parked it around they met at a bar and drank from 10.00 am – 03.00 pm, only sadly later to learn about the friend's mysterious death. That as he had, with him employer's 4 torches for recharging and on that ground in morning hours

he rode the company's motor bike (Reg. No. forgotten) to Katoro, but the motor bike overturned at Isambala centre, pw1 and some others came around and they put him under arrest because they suspected the motor bike and, on that basis having been handed over to police, just later on at Bwanga police post the deceased's bike (Exhibit "P4") was shown to him and was just like that arraigned in court. That is all.

Two of the lady and gentlemen assessors unanimously opined against the accused.

At least in this case there were two pieces of the prosecution evidence; **(1)** the accused's repudiated cautioned statement **(2)** with regard to the deceased's material motorbike which recently the accused was found in possession of (Exhibit "P4") sufficed the circumstantial evidence.

I am aware of the legal requirement that unless the statement was but true, a repudiated confession can only ground a conviction where it is corroborated (case of **Abbakari Issa Mnyambo v.R**, Criminal Appeal No. 34 of 2010 (CA) Unreported). With regard to Exhibit "P4" the accused may have had not led one to discovery and seizure of any exhibits yes, but for

the herein after explained circumstantial evidence forming the true part of it. I will shortly come back to the point.

At least according to the accused's testimony, the two having had drunk some beer until say 15:00 hours, and all the time the deceased had the motorbike with him parked there, the accused was the last person to be with the deceased under the circumstances therefore responsible for murder (see the case of **Mathayo Mwalimu and Another v. R**, Criminal Appeal No. 147 of 2008 (CA) unreported much as also, according to Pw1 shortly thereafter the accused was found in possession of the bike and, on that one the latter gave no sufficient explanation. Now that therefore the peace of evidence irresistibly pointed to no hypothesis other than the accused's guilty, the accused therefore not only he was, with regard to the motorbike the thief, but also the latter was the responsible murderer (Case of **Simon Musoke v.R**, (1958) 1 E.A 715) quoted with approval in the case of **Gody Katende @ Godfrey Katende v.R**, Criminal Appeal No. 399 of 2018 (CA) unreported suffices the above explained circumstantial evidence to corroborate the accused's repudiated confession. The combination of the two pieces of the evidence therefore would tell that the confession was but true (see the case of **Tuwamoi v.**

Uganda (1967) EA 84 This one reminds me of the long ago established legal principle that the best witness he is an accused who voluntarily confesses the guilty (see the case of **Paul Maduka & 4 Others v. R**, Criminal Appeal No.110 of 2007 (CA) unreported.

In the fine the accused is convicted as charged for murder C/s 196 of the code.


S.M. RUMANYIKA

JUDGE

21/03/2021

The accused is sentenced to death by hanging (Section 197 of the Code). The motorbike Registration T. 820 CHQ Make SUNLG be restored immediately to survivor of the deceased.

Right of appeal explained.




S.M. RUMANYIKA

JUDGE

25/03/2021

The judgment is delivered under my hand and seal of the court in court this 25/3/2021 in the presence of Mr. Kato state attorney and Mr. Otieno defence counsel.




S.M. RUMANYIKA

JUDGE
25/03/2021