

IN THE HIGH COURT OF TANZANIA
AT GEITA
ORIGINAL JURISDICTION
CRIMINAL SESSIONS CASE NO. 221 OF 2015
THE REPUBLIC
VERSUS
MATONGO S/O MATHAYO @ MGORI AND ANOTHER

JUDGMENT

17 & 25/03/2021

RUMANYIKA, J.:

Matongo Mathayo @ Magori and Juma Msafiri @ Stephano (the 1st and 2nd accused) respectively they stood jointly and together charged for an offence of murder C/s 196 of the Penal Code Cap 16 RE. 2019 (the Code) according to the particulars of offence that on 21/3/2014 at about 20:00 hours at Luhuha village in the district and region of Geita the accused murdered Hadija Lwankunyango (the deceased).

Mr.J.Palangyo learned state attorney appeared for the Republic. Messrs Makene and Malecha learned counsel appeared for the 1st and 2nd accused respectively.

Ms. Hawa Swedi and Messrs Shija Malale and Jumanne Nkana and gentlemen assessors they sat with me.

It is also worth noted here that following the incident of 21/3/2014 and long at last the case took off on 17/9/2019, my sister Madeha, J therefore partly heard it up to the 4th prosecution witness, she was officially transferred to Dar es salaam then I took over on 16/3/2021 therefore the case changed the hands.

Pw1 Tabu Busagala (29) she stated that as they were, together with the accused on their way back home from Makondeko market (Nyakagonga ward), but some people having ambushed and attacked them, she sustained a knife stab wound, she fell down and fainted only when she came to her senses to find the pregnant deceased having been brutally murdered in the fracas (with fresh cut wounds in the neck and head). That is all.

Pw2 Assistant medical officer Venance Nganda (47) stated that as he was at his work place - Geita district hospital on 22/3/2014 at 9:00 hours, but following the incident and duly assigned by the local DMO, he conducted autopsy at the scene of crime (the dead body identified by Rehema Rubando and Samwel Malekela), he established that the cause of death was severe head cut injuries (Exhibit "P1").

Pw3 F. 3040 D/cpl Joseph (38) of the RCO office Geita he stated that as he was on 22/3/2014 at work place Katoro police post, and having been duly assigned the matter he rushed to the scene and drew the sketch map plan thereof (Exhibit "P2").

Pw4 D. 6944 Emmanuel (48) stated that with regard to the incident, now duly assigned by the OCCID, accordingly he interviewed and recorded cautioned statement of the accused who alleged having had been hired for shs.1.80m also, according to them having had tracked the deceased from the market up to the scene of crime (Exhibits "P3" & "P4") respectively.

Pw5 Wp 6760 PC Yosepha (31) stated that as she was recruited in 2008, between 2012 and 2015 she worked in the CID Geita – police station, that from the lock up on 22/3/2014 and 9/6/2014 she escorted the two accused to one Hamad Hussein, the local Kalangalala WEO (the JP) before whom they confessed the guilty (Exhibits "P5" and "P6") respectively. That is all.

Dw1 (the 1st accused) he stated that having had been arrested by the police at home Katoro Kilimahewa street on 7/6/2014, throughout he denied the charges until such time when he was promised a release had

he signed the statement whose contents he nevertheless could not know. That he therefore refused to sign but a police officer forcefully caused the illiterate accused thumb print it. That as he had through torture, therefore injuriously beaten by police, they took him to hospital for medication actually not to JP as alleged. I pray for acquittal because I was simply fixed by police. The 1st accused further contended.

Dw2 (the 2nd accused) stated that having had been arrested by policemen on 7/6/2014 at about 18:00 hours at home Katoro, from the police post but seriously beaten, later on at Geita police station he was informed of the charges of murder but all the time he denied it all that long at last and having been hit with a crab. In recognition of the previous severe tortures, even without being taken to JP as alleged he just signed the 4 pages statement. That is all.

The lady and gentlemen assessors unanimously opined for the accused in that as against the accused, the prosecution did not beyond reasonable doubts prove their case.

In fact the prosecution case only hinges on the accused's repudiated cautioned statements (Exhibits "P3" and "P4") much as admittedly there was neither visual identification by Pw1 nor any other kind of evidence.

It is trite law that unless the repudiated confession was corroborated or it was but true, such evidence cannot solely convict (cases of **Mkubwa Saidi Omary v. SMZ** (1992) TLR 365 (CA) and **Tuwamoi v. Uganda** (1967) EA 84.


It is common knowledge that just like socio-economic circumstances were never static, criminology and victimology are not in isolation much as in my considered opinion if courts shall not do what had never been said by the law, the development of jurisprudence shall stand still while the other forces shall in no way continue forging its way through.

It means therefore if a conviction was likely to base on repudiated or retracted but uncorroborated confession, the court shall always observe the following criteria; **(i)** at times human psychology was complex than human himself **(ii)** if the provisions of Section 27 (3) of the Evidence Act Cap 6 RE. 2019 were taken whole sale the purposes of the legislation would have been defeated because most likely even some genuine and freely confessed subjects would have always take the advantage. **(iii)** if, with all costs the police recording officer only intended to have the suspect's confession why all such detailed, lengthy and consistently logical stories? For whose interests! **(iv)** where, during trial with in trial the need

raised, justice of the peace shall, on balance of probabilities proved unless the latter was proven an agent of the policemen, and where the two co-existed, the accused's extrajudicial statement shall substantiate contents of the impugned cautioned statement **(v)** given its nature, the scope and effects, chances of the offence charged most likely falling under the category of organized and crime rackets **(vi)** chances of the innocents being convicted or criminals get out of the courts free. The categories not closed.

It is for these reasons that I would part a company with the lady and gentlemen assessors.

Now that the case has met the above stated test and threshold, the accused are convicted for murder C/s 196 of the Code as charged.


S.M. RUMANYIKA
JUDGE
22/03/2021

The accused are sentenced to death by hanging (Section 197 of the Code). 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, Mr. Makene and Mr. Malecha defence counsel.




S.M. RUMANYIKA

JUDGE

25/03/2021