

IN THE HIGH COURT OF TANZANIA

AT SONGEA

(ORIGINAL JURISDICTION)

(SONGEA REGISTRY)

CRIMINAL SESSIONS CASE NO. 24 OF 2020

THE REPUBLIC

VERSUS

SUED MARIDADI @ JUMA

JUDGMENT

Date of Last Order: 19/11/2021.

Date of Judgment: 26/11/2021.

BEFORE: S.C. MOSHI, J.

Sued Maridadi @ Juma herein referred to as the accused is charged with murder contrary to sections 196 and 197 of the Penal Code, Cap.16 R.E 2019. The particulars of the offence are that, Sued Maridadi @ Juma on 19th day of July, 2019 at Tanga village within Tunduru district in Ruvuma region, murdered one Fatuma Laika, herein referred to as the deceased. He was arraigned before this court but he denied the charge facing him; hence the case proceeded to a full trial.

During hearing of the case, the prosecution was represented by Mr. Hamimu Nkoleye, Senior State Attorney and Mr. Emmanuel Barigila, State Attorney whereas the accused was represented by Mr. Vicent Kasale, advocate. The trial was with the aid of three assessors; lady assessor Johari Kasongoro, lady assessor Bahati Mbando and gentleman assessor Hamisi Mkilima.

The prosecution's evidence was briefly to the following effect: PW1, Ashura Kassimu testified on affirmation among other things that, she resides at Tanga village, Tinginya ward, Tunduru district, Ruvuma region. She was living with her mother (The deceased), her mother's name was Fatu Laika @ Fatuma Laika Yusuph.

On 19/07/2019 at 6.00 pm she went to fetch some water from the river. Before that she was at home, when she left for the river, the deceased was at home alive. She came back home from the river at 6.30 pm. When she got home, she found the door ajar and the accused was in the deceased's house, he was sitting on deceased's bed.

Her house was near deceased's house. The distance from her house to deceased's house, is about five (5) paces away. Sued Maridadi was on deceased's bed. The deceased was lying on the floor at a corner, her legs

were facing up. The deceased's house was one roomed house, it had no sitting room, it had only one room. Sued Maridadi was naked, he was sitting on the bed. She took a piece of cloth (*'ng'ata'*) to cover the deceased's body.

The accused, Maridadi bragged to have killed the deceased, he said "*nimemuua, nimemuua basi mama yako*" (I have killed your mother). Thereafter she made a phone call to her brothers; Naonga and Rashid Kassim Naonga. After uttering the words, the accused decided to leave. When calling her brothers, the accused was still on the bed but he later decided to leave. She couldn't detain him because she was alone and she was confused; She identified Sued Maridadi to be the accused person in the dock. The accused is also her neighbor as they both live at Tanga village.

The time was 6.30 pm. She identified him because the house faces the western side. There was a small light which passed through the door. It was at sun set (magharibi). Later her brothers came home to witness the incident.

On 20/7/2019 in the afternoon; the Village Executive Officer (VEO), doctor and police came to the scene of crime. The doctor examined the

deceased's body. The deceased's body was ultimately handed to them for burial.

During cross - examination by Mr. Vicent Kasale she *inter alia* said that, the house was a single roomed house. The bed was on western side of the room, on the left side when you enter the room. While the accused was uttering the words that he had killed her mother he was sitting on the bed. The accused left the crime scene after uttering the words. When she was making a phone call the accused had already left.

The accused person was naked. The accused took his clothes, put them on and left. She saw him while he was dressing up. She saw the clothes which the accused was wearing. The door could be closed, locked; if the accused wanted to lock it, he could have locked it.

The accused knew that she was living with the deceased. There are other neighbors apart from the accused, Salum Bahari, her father Kassim Hamis and Kumebu; these neighbors are a bit far from the scene. She checked time on her phone hand set. In the circumstances of confusion, she just guessed the time.

PW2, Hamis Kassimu Nahonga, testified on affirmation inter alia that, he is a resident of at Tanga village, Chiwele area, Tinginya ward, Tunduru district and Ruvuma region. On 19/7/2019 in the late evening he was at his home. While there, he received information of his biological mother's death from his sister Ashura Kassim Nahonga (PW1) through a phone. The deceased was living at her sister's place at Njenga within Tanga village, in Tunduru district. He reported the matter to the Village Executive Officer (VEO). He thereafter went to the crime scene.

At the crime scene he saw his mother, she was dead, he then went to Tanga village executive officer. He again went to the crime scene with the VEO. Then the VEO ordered a militiaman to arrest the suspect, the suspect was Maridadi. His sister told him that the culprit was Maridadi, he also told the VEO the offence was committed by Maridadi (the accused).

The militiaman went to look for the culprit while he remained at the crime scene. Later the suspect was arrested, and he was detained at Tanga village office which is at Tinginya ward office. On 20th he was informed that the accused had broken the office and escaped.

The police and the doctor came in the afternoon. The doctor examined the deceased's body. Later the body was handed to them for burial.

He was told that the offence was committed by Maridadi who is their step mother's daughter husband.

PW3, Ally Bakari Mnandi is the VEO of Tanga village. He stated that, he lives at Tanga village, Tinginya ward, Tunduru district and Ruvuma region. On 19/7/2019 at 7.00 pm while working in his office, Hamis Nahonga came, and he informed him that his (Ally Bakari Mnandi's) biological mother, Fatuma was killed. He didn't know how the death had occurred. Hamis Naonga said that they suspected that the death was not natural. The deceased died at Njenga farms at Tanga village.

He and Hamis Naonga, went to the crime scene. At the crime scene; he saw that the door was open. The door was facing in the west side. The door was completely removed. It is one room house. It has no bedroom. He saw the deceased lying on her back at a corner of the house. He knew her as a villager in his village. At the crime scene, he saw Hami's sister and other people who were about ten of them.

At the crime scene he interrogated PW1 who told him that she had gone to the well to fetch some water. That, when she came back home, she found the door removed from its place and thrown down on the ground while at the time when she was leaving for the well she had left it partly closed. She said that she saw the accused sitting on the bed and he was naked. She also saw the deceased lying on the floor, she was lying on her back at a corner with her legs up. She said that the deceased also was naked and he was saying that "*nimemaliza kazi*" (I have finished the job).

After that, he first phoned Nakapanya police. He informed them of the incident. The police directed him to order a militiaman to arrest the culprit. The militiaman, Joseph Chozi looked for the suspect, arrested him and detained him at Tinginya, village office. He returned home. At 12.00 mid night the militiaman called him and told him that the suspect had broken the office and escaped.

On 20th July, 2019 in the afternoon, at around 1 pm he went to the crime scene together with the police and a doctor. The doctor examined the body in his presence and in the presence of Zuberi and the deceased's relatives. They identified the body, then the doctor did the examination.

He then assisted to give directions to the police officer, one Rashid during map drawing. The police officer drew a sketch map of a crime scene. The murder suspect was the accused person.

During cross examination by Mr. Kasale he among other things said that, the accused was arrested at his home. The militiaman Joseph @ Chozi did not escape as he is still at Tanga village.

PW4, Joseph Maurus Ng'ombo, is a doctor and he is working in Tunduru District Council at Nakasale Health Center. In 2019 he was stationed at Nakapanya Health center.

On 20th July, 2019 at around 8.10 am he was on duty at Nakapanya Health center. The Police Officer in Command of the station (OCS) of Nakapanya called him through a phone. The OCS informed him that death had occurred at Tinginya Tanga and he asked him to go and do a post mortem examination. Two policemen, Dionis and Rashid were assigned to go with him. They together went to Tinginya office. The leaders led them to Tanga Njenga area, to the crime scene.

Upon getting at the crime scene, he did a post mortem examination and prepared a report (Exhibit P.1). The deceased's first name was

Fatuma. According to his observation cause of death was asphyxiation (suddenly missing of adequate O₂).

PW5, No. F. 9012 D/CPL Deusdedit, is a police investigator stationed at Mangaka, Nanyumbu, Mtwara. He among other things testified that, on 29/7/2019 in the evening at around 5. 00 pm to 6.00 while on duty at charging room office, one militiaman whose name is Omary Ally Omary from Likokona village came to his office , the militiaman had apprehended a suspect. The suspect was suspected of committing murder at Tinginya ward in Tunduru, at Njenga hamlet, Tanga village. He reported the matter to the OCS, the OCS asked him to communicate with Tunduru. He called G. 1866 D/CPL Dionis, who was working at Nakapanya police station, Tunduru, a station near the crime scene. D/CPL Dionis said that it was true, they were looking for Sued Maridadi as he had killed an elderly woman, one Fatuma Laika. The accused was detained and locked up and they did arrangements for taking him back to Tunduru.

The militiaman who brought the accused is now dead. The accused stayed in lock – up to 30th July, 2019 when he was handed to D/CPL Deonis.

PW6, G. 1899 D/CPL Deonis is a Police Officer working at Tunduru Nakapanya police station (post). He is working with criminal investigation department.

On 19/7/2019 at night while on duty the OCS Lamosai informed him that murder had been committed at Tanga village, Tinginya ward, Tunduru district. It was night so he directed him to go to the crime scene on 20th. On 20/7/2019 he was accompanied by Doctor Ng'ombo and G. 8743 PC Rashid, they together went to a crime scene at Tanga village. They got at the crime scene at 2.00 pm. At the crime scene they met the VEO one Mnandi, the chairman of the village government and some relatives of the deceased.

While at the crime scene he asked Ashura who is daughter of the deceased how the incident happened. Ashura briefly told him that she had gone to the well. She had left her mother inside her home. When she was coming from the well, she met the accused, Sued Maridadi at the door of the house where the crime was committed. She passed him at the door, the accused was going out while she was entering in. Ashura asked the accused why was he coming out of their house, what was happening? The accused said '*nimemaliza kazi*' (I have finished the job). The accused went

away. When she entered inside, she saw her mother, lying on the floor on her back, she was naked and she was lying on the right side corner of the house unconscious. Having seen that, she informed her relatives and the VEO.

Ashura told him that the deceased was Fatuma Laika. He entered in the house with the doctor, two relatives and his fellow policeman so the doctor could do post – mortem examination. He saw deceased's body, lying on its back, naked at the right corner of the house. There were also bruises on the deceased's neck showing that the deceased was strangled. The doctor examined the body while he drew a sketch map of the crime scene, exhibit P.2.

After that he asked the VEO, the whereabouts of the suspect. The VEO said that he had arrested the suspect and kept him in village lock – up but at night the suspect had escaped while under custody and the militiaman who was keeping watch over him had escaped. Thereafter, they returned to the police station and continued with investigation.

On 29th July, 2019 at night, he was at his home when Deusdedit, a policeman of Mangaka police station called him and told him that the accused had been arrested and that he was detained at Mangaka police

station. He informed the OCS, in the same night. The OSC ordered him to go to Mangaka on 30/7/2019 to take the accused. He went to Mangaka on 30th July, 2019 as ordered and took the accused to Tunduru police station.

On cross examination by Mr. Kasale, he said that, he interrogated Ashura Kassim at the crime scene, Ashura Kassim told him that he passed the accused at the door, when she was entering the house while the accused was getting out. At the crime scene there was one house. Ashura asked the accused, what was going on, the accused said 'nimemaliza kazi'. Rashid, VEO and the doctor and some relatives heard what Ashura said.

At the village, he was told that the accused was in village lock – up. That he was under the guard of a militiaman but he did not ask the name of the militiaman. He did not know why the militiaman escaped and he didn't follow up to know the whereabouts of the militia man. He never met the militiaman who escaped. He did not know if he is available. He did not communicate with Ally Bakari Mandi. He did not ask Ashura how the accused condition was when they passed each other at that door but the VEO told him that the accused was arrested at his home. He did not know if the accused, on that fateful day was drinking alcoholic drinks.

For defense, the accused testified as DW1, he among other things stated as follows; before his arrest he was living and farming at Chiwele, Tinginya village. He knew Fatuma Laika. Fatuma Laika (deceased) was his neighbor. He also had married Fatuma Laika's step daughter, one Mwanahawa who is still his wife. They were blessed with three children, two of them had passed away.

On 19/7/2019 he was at his home, he then went to Mashlanga's home to visit him. At Mashlanga's he met many other people who were drinking pombe (local brew). He also joined them, and started to drink, he did not recall the exact time that he went to Mashlanga, it was around 4.00 pm. While there he also saw one militiaman, whose name is Chozi who was also drinking local beer.

Nothing happened there, he left Mashlanga's place at 8.00 pm, he went back home. While home, the militiaman who was at Mashlanga's house came and informed him that the VEO had ordered him to take him to the village office, the VEO said that he was being arrested because whenever he drinks he becomes stubborn.

The militiaman searched his pocket, and took away T.shs.73,000/=, he then locked him in the office. He left him there and went to his home.

Later, the militiaman came back, he told the militiaman that he wanted to go to Mangaka to buy sardine for selling as he used to do petty business. The militiaman opened the office and let him go. He went back home. He slept and, in the morning, at 10.00 am he went to the village bus stop. He boarded a vehicle bound for Mangaka; he went to Mangaka to take Sardine (dagaa). He was surprised as when he was at Mangaka he was arrested, and he was taken to the police station. At the police station he was told that he had committed murder, they did not tell him the person whom he had murdered.

He knows nothing about this charge. He doesn't know if he had killed. Ashura Kassim said that she saw him inside her home, on the bed while Dionis said that Ashura told him that she saw him coming out of the house. That these are two versions.

During cross examination he admitted that he knew the deceased, and that the deceased was his lover but he did not know that she was dead until when he was arraigned for this charge.

That was the evidence of both sides. Always the prosecution has a duty of proving the case beyond a reasonable doubt, see section 3 (2) of the Evidence Act, cap. 6 R.E 2019. Therefore, the main issue to be

determined is whether the prosecution has proved its case against the accused beyond any reasonable doubt?

There is no dispute that Fatuma Laika is dead. This was confirmed through the Doctor's testimony. The doctor's observations in the report on post-mortem examination (Exhibit P. 1) indicated that, the cause of death was, "*suddenly missing of adequate O_2* " which is asphyxiation. The doctor's report also shows that he noted some finger marks around the deceased's neck and vaginal excessive wetness.

However, there is no direct evidence connecting the accused person with the offence; the present evidence is essentially circumstantial. It has been held invariably that for circumstantial evidence to find a conviction, the court must find that the exculpatory facts are inconsistent with the innocence of the accused person and incapable of explanation upon any other reasonable hypothesis than that of guilty; see the case of **John Magula Ndogo V. The Republic**, Criminal Appeal No. 18 of 2004, Court of Appeal of Tanzania.

The evidence which implicates the accused person is a piece of evidence which places him at the crime scene, the evidence was adduced by PW1. PW1 said that she had gone to fetch water from the river, when

she got back home, at her mother's (deceased's) house at 6.30 pm, she found deceased's one roomed house's door ajar. She also saw the deceased lying on the floor, and she was naked. She learned that her mother was dead. She also saw the accused sitting on the bed, and he was naked, she heard the accused boasting that, he had killed her mother. She said that she was able to identify the accused and see what was in the house because there was a small amount of light which was penetrating through as the house was facing in the western side.

However this piece of evidence was contradicted by the evidence of PW5 who said that, Ashura told him that she had gone to the well. She had left her mother inside her home. When she came back from the well she met the accused at the door of the house, where the crime was committed, she passed him at the door, the accused was going out while she was entering in. Ashura asked the accused why was he coming out of their house, what was happening? The accused said '*nimemaliza kazi*' (I have finished the job). The accused went away, when she entered inside, she saw her mother lying on the floor on her back, she was naked and she was lying on the right side corner of the house, and she was unconscious.

It is established that, where there is contradiction in evidence the court is duty bound to address them, see **Mohamed Said V. R [1995] TLR 03** where the Court of Appeal held *inter alia* that,

"where the testimonies by the witness contain inconsistencies and contradictions, the court had a duty to address the inconsistencies and try to resolve them where possible; else the court had to decide whether the inconsistencies and contradictions are only minor, or whether they go to the root of the matter".

Again, where it is found that the evidence is inconsistent or where it is contradicted it cannot be relied upon, see the cases of **Mohamed Said Matula VS R 1995 (TLR)3, Awadhi Ramadhani Waziri VS. R CR. APP 303/2014** at page 6. It is my considered conviction that these contradictions go to the root of the matter.

Furthermore, I find that the identification of the accused is wanting. The offence was committed in the evening, the exact time is unknown, during cross examination, PW1 said that at that time she was confused so she just guessed the time. She also in her testimony said that a small light which was passing through aided her to see what was happening inside,

however, it is doubtful how that small light enabled her to see, she did not explain. Again, she did not indicate the source of the light. Also, she did not describe accused's appearance such as the clothes which she saw the accused putting on. The issue of proper identification is crucial, the witness must identify the culprit properly, deciding on the issue of identification, in the case of **Waziri Amani V. R [1980] TLR 250**. It was insistently held that:

"No court should act on evidence of visual identification unless all possibilities of mistaken identity are eliminated and the court is fully satisfied that the evidence before it is absolutely watertight".

What I can gather from the prosecution's evidence as a whole, evidently there is an indication that it is based on suspicions in view of accused personal relationship with the deceased. The prosecution case showed that the accused was married to deceased's step daughter. During defense, on cross examination it was further revealed that the accused was also deceased's lover, but this fact was not brought in during prosecution's case. However, time and again it has been held that suspicions however strong cannot be a basis of conviction. The benefit of

doubt always goes to the accused person; see the case of **Abdallh Bin Wendo And Another V. Reginam** (1953)20 E.A.C.A.166,70, in this case the court held that:-

"Suspicion, however strong, cannot supply a basis for inferring guilt when proof of guilt cannot be safely inferred beyond reasonable doubt."

Similarly, in **Thobias Mbilinyi Ngasimula V. Republic** [1980] TLR 128 the court observed that, it was beyond the province of rational controversy that there was a grave suspicion against the appellant however suspicion could not be a basis of inferring accused's guilty. Upon making its decision the court was guided by the case of **Abdallah Bin Wendo (Supra)**.

Likewise, in **Aidan Mwamlenga V. R**, Criminal Appeal No. 207 of 2006, Court of Appeal of Tanzania, sitting at Dodoma. The court held among other things that,

"Indeed, the prosecution's evidence was mere suspicion. The prosecution has a duty to prove the charge against the accused beyond all reasonable doubt".

All in all, I am of the view that, prosecution's evidence leaves a lot to be desired, it does not prove the charged offence against the accused beyond a reasonable doubt, in **Christian s/o Kaale and Rwekiza s/o Bernard Vs R [1992] TLR 302**, the court held that an accused ought to be convicted on the strength of the prosecution case and not otherwise.

That said, I differ from two lady assessors, I concur with a gentleman assessor. I find the accused person not guilty of the offence of murder, he is hereby acquitted accordingly.

Right of appeal is explained.




S.C. MOSHI

JUDGE

26/11/2021