

**IN THE HIGH COURT OF TANZANIA**  
**SHINYANGA DISTRICT REGISTRY**  
**AT SHINYANGA**  
**CRIMINAL SESSION CASE NO. 130 OF 2012**  
**REPUBLIC**  
**VERSUS**  
**LIMI LIMBU**  
**JUDGMENT**

*2<sup>nd</sup> & 23<sup>rd</sup> September, 2022.*

**S.M. KULITA, J.**

The accused person, one Limi d/o Limbu stands charged with the offence of Murder contrary to Sections 196 and 197 of the Penal Code [Cap 16 RE 2002].

It is alleged by the prosecution that, on the 25<sup>th</sup> day of August, 2011 at Mwamabu Village, within Bariadi District, in Simiyu Region, the accused person murdered one Tabu d/o Maimath.

The facts presented by the prosecution, which gave rise to this trial are that; the accused is the mother of the deceased who was at the age of one year and eight months at the time of her death. That the accused had left Ukerewe in Mwanza Region for Bariadi in Simiyu Region, with the deceased after she had separated with one Maimath,

father of the deceased. Following that separation, the accused person got another man, at Mwamabu Village within Bariadi District, in Simiyu Region, namely Kijiji Nyamabu who promised to marry her only if she agrees to kill her child.

After their agreement, the duo put their evil mission into execution. On 25<sup>th</sup> August, 2011 they strangled the deceased to death and threw the body to the hill cave. That, before the death of the victim on that 25<sup>th</sup> August, 2011 the Accused person waived his relatives that on she was about to leave for Ukerewe to take the child back to his father. After noticing the Accused still being in the village, on 26<sup>th</sup> August, 2011 and she had no child, the villagers including somebody Yunge who is the wife for the Accused's uncle, Sayi Majebele (PW1) asked the accused where the deceased was. Following that situation, Kijiji Nyamabu absconded himself.

As it was expected, the accused person failed to stand villagers need, she decided to reveal what happened. She then led the villagers to where they killed the child and hide the deceased's body. As thus, she was arrested and handed over to the police and arraigned for murdering Tabu d/o Maimath.

When the information of murder was read over to the accused person during the Plea taking and Preliminary hearing, the Accused



pleaded not guilty to the information. Further on the 1<sup>st</sup> day of September, 2022, when the case came up for trial, as well the accused pleaded not guilty when the said information was reminded to her.

In discharging the duty of proving the charge against the accused, the prosecution summoned five witnesses and tendered four exhibits while the defense case consists the testimony of one person, the Accused herself with no exhibit to tender.

The evidence of the prosecution and defense side can be summarized as follows;

Sayi Majebele who testified as PW1, his testimony was to the effect that, he had been living with the Accused and her daughter (deceased) at Mwamabu village in Dutwa ward, Bariadi District. He testified that, on 25<sup>th</sup> August, 2011 at about 0700 hours the accused person told him that, she was going to send back the deceased to her father who lives at Ukerewe. PW1 said that, he allowed the accused to leave and gave her Tshs 5000 to cover some expenses on her way. PW1 stated that, as soon as the accused was allowed, she left with the deceased.

The witness continued stating that, on 26<sup>th</sup> August, 2011, he left Mwamabu for Igebu village. He continued narrating that, while he was there, at about 1100 hours he received a phone call from his wife, one

Yunge. Through that phone, he was informed that, the accused was seen at the residence of Kwandu Nyamabu with no child. As the accused had asked for a permission to go to Ukerewe one day before, her being there, frightened PW1 who ordered his wife to make thorough inquiry on the accused.

PW1 stated that, the inquiry was successful. He gave the reason being, firstly, the accused confessed to have strangled the child in corporation with Kijiji Nyamabu and secondly, the accused led the villagers to the scene of crime where the deceased body was recovered.

PW1 continued stating that, he decided to go back to Mwamabu and went to the scene of crime where he met with many other villagers who had put the accused under arrest. He told the court that, he saw the deceased's body laying dead. He added that, he decided to go to report the matter at Dutwa Police station. He stated further that, the police went to the scene with the Doctor who conducted post-mortem.

One Nyahende Majebele, testified as PW2. His testimony is to the effect that, in 2011 he was a Police Officer at Dutwa Police Station. He testified that, while at the police station, PW1 went to report that his young brother's daughter had strangled her child to death. With that information, PW2 stated that, he went with PW1 to the scene of crime where he met many other villagers. PW2 told the court that, he



interrogated the accused who admitted to have killed the victim in corporation with her lover namely Kijiji and showed where they had put the body. From there, PW2 decided to take the accused to the police station where the case file was opened. PW2 stated further that, he passed information to the officials at the District Police Station who after some hours went to the scene with the Doctor who conducted a post-mortem. Lastly, PW2 successfully identified the accused at the doc.

D/Sgt Dominic testified as PW3. His testimony is to the effect that, in 2011 he was working at Bariadi Police station. He added that, on 26<sup>th</sup> August, 2011 during the evening hours, he was ordered to attend the scene of crime at Mwamagu village in Dutwa. He stated that, he together with other Police Officers went and met with many villagers at the scene. He stated further that, they went with a Doctor who conducted a post-mortem. He also stated that, they managed to draw a sketch map of the scene of crime. At last, without objection, PW3 tendered the Post-mortem Report and the Sketch Map which were admitted as P1 and P2 respectively.

Liberata Mhagama (PW4) testified that in 2011 she was a Primary Court Magistrate at Somanda Primary Court. She added that, among the duties she had was to record extra judicial statements of the accused persons who wish to do so after admitting to have committed the

offence. PW4 went further stating that, on 29<sup>th</sup> August, 2011 during the morning hours, she recorded the extra judicial statement of the accused Limi Limbu who confessed to have killed one Tabu Maimath in corporation with one Kijiji Nyamabu. Lastly, with no objection, PW4 tendered the Extra judicial statement to court which was admitted as P3.

Somebody Fulgence Nicas testified as PW5. His testimony was to the effect that, in 2011 he was a Police Officer at Bariadi Police Station. He stated further that on 26<sup>th</sup> August, 2011 at about 2300 hours he was assigned to interrogate the accused, Limi Limbu. PW5 added that, in her statements, the accused confessed to have killed the victim in corporation with one Kijiji Nyamabu. He added that, the accused confessed to have strangled the victim's neck while Kijiji had clamped the victim by using his legs. PW5 tendered the accused person's caution statement and the same was admitted as Exhibit P4.

On these five witnesses as I said earlier, the prosecution case got closed. In terms of the provisions of section 293(2) of the Criminal Procedure Act [Cap. 20 RE 2019] the accused person was found to have a case to answer. After being addressed in terms of section 293(3) of the CPA the accused person opted to testify alone on oath.



Limi d/o Limbu who testified as DW1 stated that, the victim/deceased was her daughter. That she parted with her from Ukerewe to Dutwa after she had separated with the victim's father one Maimath. She further stated that she met with Kijiji at Mwamabu village, who promised to marry her. DW1 continued stating that, they both agreed to return the victim to her father at Ukerewe. Concerning the behaviour of Kijiji Nyamabu, the accused stated that, he was a drunkard. Further, DW1 admitted to have informed PW1 that, he was going to return the victim to Ukerewe. She added that, it was by force that Kijiji Nyamabu took the victim and promised to send her to Ukerewe alone.

DW1 stated that, Kijiji returned home while drunk and told her that he had killed the victim and left the body at the cave on the hill. She continued defending herself that, later on she was found by the wife of PW1 who inquired her about the whereabouts of the victim. She testified that, she denied to know where the victim was. She went ahead stating that, alarm was raised thereby Kijiji escaped.

She continued stating that, the villagers responded the alarm and they decided to go to the cave where Kijiji is said to have put the victim. She added that, it was at the cave where they found the victim laying

dead. She contended further that; it was Yunge Lugano, the wife of PW1 who showed the people where the victim was hidden dead. She denied to have killed the victim. She said that it is Kijiji Nyamabu who did so and later on escaped. Concerning the caution statement, he stated that, she gave her statement while threatened with a gun.

When cross examined, DW1 stated that, by the time she met with Yange Nogono, the victim had already passed away but she contended that, she had no knowledge of it. Further DW1 stated that, she never reported anywhere that Kijiji Nyamabu had taken away her child by force. She added that, Kijiji came back to her with no child on the same day.

That marked the end of both parties' evidence. In view of the above evidence, the following issues call for determination: -

1. Whether the victim was met with unnatural death (if yes),
2. Whether the accused person is responsible for the death of the victim (if yes),
3. Whether the accused person with intention (malice aforethought) killed the victim.



Concerning the first issue, from both sides' testimonies, it is not in dispute that Tabu Maimath is dead. According to the post mortem report which has been admitted in court as Exhibit P1, the cause of the death of the victim Tabu Maimath is the neck strangulation. This verifies that, the victim was met with unnatural death. As there is no evidence disapproving this fact, then I see no need of dwelling much on this issue.

Concerning the second issue as to whether the accused person is responsible for the killing of the victim, the prosecution side relies on several pieces of evidence. Firstly, prosecution relies on oral confession of the accused person as testified by PW2, secondly, the accused's recorded extra judicial statement taken down by PW4, thirdly, testimony that the accused led the villagers to where the victim's body was recovered, and lastly, the caution statement as taken down by PW5.

In determining this issue, I will deal with those evidences one after the other as I hereunder do.

Concerning the issue of oral confession, PW2 testified that, as a Police Officer he got a chance to interrogate the accused person at the scene of crime. He told the court that, the accused confessed to have killed the victim. She did so in accompany with one Kijiji Nyamabu on a

promise to be married with him. He stated further that, the accused confessed to have strangled the victim's neck while Kijiji Nyamabu clamped her with his legs.

I am alive with the principle of law concerning oral confession as stated in the case of **Boniface Mathew Malyango v. Republic, Criminal Appeal No. 358 of 2018, CAT at Dodoma** where the Court of Appeal referred its holding to the case of **Tumaini Daud Ikera V. R, Criminal Appeal No. 158 Of 2009** where it stated;

*"Oral confessions of guilt are admissible and can be acted upon, but we also emphasized that great caution is required before courts rely on oral confession to convict. Admissibility of oral confession does not automatically mean this genre of evidence carries sufficient weight to convict. Even where the court is satisfied that an accused person made an oral confession, the court must take an extra distance to determine whether the oral confession is voluntary"*

In connection with the above quoted position of the law, at this juncture, I pose and ask myself, was the said oral confession taken voluntarily from the accused person?



The answer is not far to fetch. PW3 who is a Justice of Peace, while testifying, told this court that, the same accused person confessed before her to have killed the victim. The proceedings transpire that, the recorded extra judicial statement was tendered to court, and following no objection from the defense side, it was received and admitted as exhibit P3.

As long as both confessions before the Justice of Peace (exhibit P3) and that which was made orally before PW2 are the same, then I am of settled mind that, the accused person's oral confession was also taken voluntarily. On that account, this alone can be the bases for conviction of an accused person.

That stand is much cemented by the fact that, the accused person never objected the admission of the said extra judicial statement. Its impact is that, the accused cannot challenge that it was involuntarily taken. This was also stated in the case of **Vicent Ilomo v. The Republic, Criminal Appeal No. 337 of 2017, CAT at Iringa** (unreported) where the Court cited a passage from the case of **Emmanuel Lohay and Another v. The Republic, Criminal Case No. 278 of 2010** (unreported). In that case, the Court had this to say:

*"It is trite law that if an accused person intends to object to the admissibility of a statement/confession he must do so before it is admitted and not during cross-examination or during defense - **Shihoze Semi and Another v. Republic (1992) TLR 330**. In this case the appellants missed the boat by trying to disown the statements at the defense stage. That was already too late. Objections, if any, ought to have been taken before they were admitted in evidence".*

Further, concerning the same extra judicial statement, the law is clear that, conviction can safely be sustained basing on it alone. This position was also confirmed in the court of appeal case of **Mashimba Dotto @ Lukubanija v. The Republic, Criminal Appeal No. 317 of 2013, CAT at Mwanza** (unreported).

On that note, taking into consideration that the accused did not object during the admission of the extra judicial statement as P4, she did not cross examine on the killing of the victim, then it follows therefore that, this court may make conviction of the accused person basing on this extra judicial statement. See, **Maige Nkuba v.**



**Republic, Criminal Appeal No. 551 of 2016, CAT at Tabora**

(unreported).

Even when the defense side tried to disassociate the accused with the extra judicial statement yet the same was cured during re-examination when PW4 stated that, the accused in doc is the one who gave that statement before her.

The question is, if the prosecution side were to end up with the only above kind of evidence, would the accused person's defense exonerate her from conviction?

The accused person's defense is that, her lover, one Kijiji is the one who killed the victim who forcefully took the victim from her and pretended to send her to her father at Ukerewe. The accused who testified as DW1 stated that, she was only told by Kijiji on the same day ie. 25<sup>th</sup> August, 2011 that he taken the child into the cave on the hill. This defense, is calculated to take the accused away from the killing plan and the killing itself. Looking at this kind of defense alone, is it trustworthy?

I am of the settled mind that, this defense is untrustworthy. The reason behind is that, when the accused person was cross examined,

she stated that, she never reported anywhere about the killing or missing of her own child. This tells us that, she failed to report the killing because she was part to the killing of the victim.

Had the accused person being not a party to the killing of the victim, the accused could have not withstood the death of her own child, and her relatives would not have met the victim at the residence of the one who also participated in killing her daughter, she was expected to be at Ukerewe where she had promised to go one day before.

Even if we assume that the accused had got no chance to go to report the killing of the victim, still it can't make sense for the following reasons; **first**, there is no evidence that she was put under custody and **secondly**, as soon as the chance came when the accused saw her relatives, she could have disclosed the killing or missing of the child without much inquiry as testified by PW1.

With this stand, I am of considered view that, the accused person's defense, when taken into consideration with the above disclosed prosecution evidence, cannot exonerate the accused from the killing of the victim, Tabu Maimath. This issue is therefore answered in affirmative, that, the accused Limi Limbu did kill the victim, Tabu Maimath.



In respect to the third issue, as to whether the accused person killed the victim with malice aforethought, I have the following to say; Almost all the prosecution witnesses who saw the victim, testified that, the victim's body was strangled to death and hidden on the hill cave. The post mortem report also verifies the strangulation of the neck. Be it noted that a neck is among the vulnerable parts of the human body. Further, hiding of the deceased's body, shows intentional killing and concealing of the evidence. The fact that all these facts were not disputed by the defense side, it make my mind settled that, the accused person, on the material date, intended to strangle the victim to death and she actually executed it. On that account, this issue too is answered in affirmatively that, the accused person killed the victim with malice aforethought.

All said and done, with this evidence, and for want of evidence from the defense to create reasonable doubts, I am settled in mind that, the prosecution case has been proved beyond reasonable doubts as required by the law.

In view thereof, the Accused Person, Limi d/o Limbu is hereby found guilty of the offence of Murder, contrary to the provisions of

sections 196 and 197 of the Penal Code [Cap 16 RE 2002] as charged and she is accordingly convicted.



  
**S.M. KULITA**  
**JUDGE**  
**23/09/2022**