

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
SITTING AT BARIADI
CRIMINAL SESSION CASE NO. 55 OF 2017

REPUBLIC
VERSUS
NGOKO S/O MANYANGU

JUDGMENT

23^d September & 10th October, 2022.

S.M. KULITA, J.

The accused person, Ngoko s/o Manyangu 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 18th day of May, 2016 at Mwangudo Village, within Meatu District, in Simiyu Region, the accused person murdered one Mwalu d/o Dalushi. Facts of the case as presented by the prosecution, which gave rise to this trial are that; the accused is the grandson of the deceased. That, on the diverse dates the accused person had been accusing the deceased for witchcraft practises. That, following the said allegation, on the 18th day of May, 2016 the Accused

person assaulted the victim/deceased to death by hitting her with a stick on several parts of her body including the head.

When the information of murder was read over to the accused person during the Plea taking and Preliminary hearing, the Accused pleaded not guilty. Further, on the 23rd day of November, 2021, when the case came up for trial, as well the accused pleaded not guilty when the said information was reminded to him. However, trial didn't proceed as the Accused appeared to be unsound mind, hence his mental state was to be examined.

However, according to the report from Isanga Mental Institution which examined the mental status of the Accused, dated 9th January, 2022 the Accused was sane while committing the offence and that throughout the period for his stay at the Institution for medical examination, he has never been given any medication but he was still very mentally stable. Regarding that report, on the 23rd day of September, 2022 the matter was to be heard on merit. Upon the information been reminded to him, the Accused pleaded Not Guilty.

In discharging the duty of proving the charge against the accused, the prosecution summoned three witnesses and tendered two exhibits while the defense case consists the testimony of one person, the Accused himself with

no exhibit to tender. While the Prosecution side is represented by Ms. Rachel Tuli, Mr. Paul Mwashitete and Mr. Godfrey Songoro, State Attorneys, Mr. Martine Sabini Advocate appeared for the Accused Person.

The 1st witness for the prosecution one Masaka d/o Nindi (PW1), the deceased's daughter testified to the effect that she was living with the deceased under the same roof and that the Accused person is the deceased's grandson living with his parents somewhere else but within the same village. The witness stated that on the material date, 18/05/2017 at about 18-1900 hours she was at their residential premise, Mangudo together with her mother, Mwalu d/o Dalushi (the deceased) preparing sweet potatoes for meal. While doing so, the Accused person arrived, and angrily asked Mwalu d/o Dalushi for the whereabouts of his grandfather namely Masanja Kija. PW1 stated that Mwalu d/o Dalushi never replied.

That led the Accused person hitting Mwalu d/o Dalushi by using a big stick that he had come with. To rescue herself Mwalu d/o Dalushi shouted for help and ran away but the accused chased her. While chasing the victim/deceased, the accused person hit her on her back by using the stick he had and the victim fall down. The witness further stated that having fallen down, the victim was further beaten by the Accused, on several parts of her

body including the stomach. PW1 said that in escaping the Accused, she was also running towards the same direction with the deceased. PW1 further stated that when she had fallen down and beaten by the Accused, the deceased never spoken anything until she was found dead.

PW1 averred that after that incident the Accused ran away towards his residential premise. Regarding the alarm (*mwano*) that she had raised, the villagers gathered at the scene. Some people went to the Accused's resident and arrested him. They took him to the deceased's resident where he was kept under custody until the next day, 19/05/2017 when he was handled to Police who visited the scene at about 10-1100 hours.

PW1 identified the Accused person at the dock by pointing him and stating that he is Ngoko Manyangu, the one who killed the deceased.

During cross-examination by the Defense Counsel, PW1 stated that the only word that the deceased had said to the Accused person when he alleged that she is the source for his (accused's) father to leave the premise that she (deceased) lives was that "*umetumwa na nani?*" which means that the deceased wanted to know from the Accused as to which person is behind

that speculation. She also said that the weapon that the Accused had is a stick which is used for driving cattle.

The 2nd witness for prosecution Dr. Charles Enos (PW2) of Meatu District Hospital testified that he has an experience of 15 years in medication. He stated that on 19/05/2016 at about 1100 hours he had gone to Mwangudo Village from Meatu District Hospital for autopsy regarding the instruction by the Medical Officer In-charge. He was together with the Police Officers in the said task.

PW2 testified that the autopsy involved a woman aged over 60 years old whose body was lied outside the house which was her residential premise. Her clothes had been blooded. He said that in his Post Mortem which was witnessed by two Police Officers and one of the deceased's relatives, he observed some wounds on the deceased's face while the left hand was broken. As for the head wounds, PW2 stated that the deceased lose blood through the nose, mouth and the wound she had sustained on the facial part of the skull which was broken, and that was the source of death.

The witness stated that after the autopsy he filled the Post-Mortem Report and handed it to the Police Officer who witnessed the autopsy.

The witness was shown the Post-Mortem Report that he had filled, he identified it. He then tendered the same to court in which it was admitted as Exhibit P1.

The 3rd and last witness for the Prosecution was WP 4579 D/Sgt Upendo (PW3), a Police Officer from Bariadi Police Station attached in the Criminal Investigation (CID) department. This witness testified to the effect that by 2016 she was working at Meatu Police Station. She said that on 19/05/2016 at the morning hours she was on duty at Meatu Police Station. While there she and her fellow Police Officers were called by the head of the Criminal Investigation (OC-CID) SP Bongole and instructed them to go to Mangudo Village with a Doctor from Meatu District Hospital to investigate the murder incident and for the Doctor to conduct post-mortem. They executed the order and went to Mangudo Village.

PW3 stated that having arrived at the scene located at Songambe Suburb in Mwangudo Village at about 1100 hours they found the citizens gathered thereat. The deceased's body was lying over there at her residential

premise. She said that the deceased's name is Mwalu d/o Dalushi. They inspected the scene drew the sketch map of the scene under the assistance of the deceased's daughter namely Masaga d/o Nindi and the village officials. They also interrogated some people and wrote the statements of the witnesses.

PW3 also stated that the Doctor conducted the autopsy and she (PW3) is among the persons who witnessed. She said that the Doctor filled the Post- Mortem Report after conducting the autopsy for the deceased's body. They completed the whole duties at about 1330 hours. Thereafter they left the deceased's body to the family members for burial while they took the Accused person for the Police Station. The witness stated that they arrived at Meatu Police Station at about 1600 hours. She said that while taken at the scene, till he arrived at the Police Station the Accused person was healthy and sober.

It is the further testimony of PW3 that thereat the Police Station she was ordered by the CC-CID, SP Bongole to note down the statements of the Accused person. She took the Accused person from the vehicle for the investigation room. The Accused confessed before PW3, and he was ready to produce his statements before her. Thus, the said PW3 noted down the

Accused's caution statements. She said that she gave him all his rights before and after she had recorded his statements. PW3 stated that she started to record the Accused's statement at 1600 hours and completed at 1710 hours. The witness further stated that the statements were noted down under the provisions of sections 57 and 58 of the Criminal Procedure Act [Cap 20 RE 2002]. She tendered the said caution statement to court as exhibit. It was received and admitted as exhibit P2. PW3 further stated that in the said caution statement, the Accused person confessed that he actually assaulted the deceased, Mwalu d/o Dalushi to death, the reason behind being that the deceased used to bewitch him and his relatives.

In the cross-examination by the defense counsel, PW3 stated that by the time he was making the statements at Meatu Police Station the Accused had not yet taken lunch. She also stated that the stick that had been inflicted to hit the accused is that used for driving cattle.

That was the end of prosecution case which comprises a total number of three witnesses and two exhibits. The Accused person was found to have a case to answer. He was therefore asked to defend his case.

In his defense the Accused person, Ngoko s/o Manyangu (DW1) testified that he lives with his parents at Songambe area, Mwangudo Village in Meatu District. As for the deceased person, Mwalu d/o Dalushi, DW1 said that he doesn't know that person and that she was not his relative. He just found her name mentioned by the "*mwano*" people that she has passed away, the act which was followed by his arrest and institution of this murder case against him. The Accused alleged that he is not the one who killed the deceased.

That was the end of defense case which comprises the testimony of the Accused person only. They had no other witness to call.

Before I analyze the available evidence, let me set in motion the ingredients of Murder as provided by the provision of **section 196 of the Penal Code [Cap 16 RE 2002]** which have to be proved beyond all reasonable doubts by the prosecution side. The said ingredients are the following;

1. Death of human being;
2. That the death was unlawful;
3. That the death was as a result of malice aforethought;

4. That the accused is the person who caused the death of the deceased.

From the above ingredients we can draw the issues to be determined, which are the following;

1. Whether the victim 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 Mwalu d/o Dalushi is dead. According to the Doctor who conducted the autopsy (PW2) and the Post-Mortem Report which was admitted to court as Exhibit P1, the cause of the death of the victim Mwalu d/o Dalushi is the lose blood (Haemorrhage) through the nose, mouth and the wound she sustained on the facial part of the skull which was broken. This verifies that, the victim met unnatural death. As there is no evidence disapproving this fact, I find no need of dwelling much on this issue.

Regarding 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. First, the prosecution relies on oral confession of the accused person as testified by PW3; secondly, that the accused person hit the deceased on several parts of her body including the head by using a stick which used for grazing cattle to as so testified by PW1; thirdly, the testimony that the accused fled to his home place after the incident but he was later arrested by the villagers as testified by PW1; and lastly, the Accused's caution statement as noted down by PW3. In determining this issue, I am going to deal with those evidence as hereunder;

Concerning the issue of oral confession and caution statement which are the 1st and 4th pieces of evidence that the prosecution relied upon, PW3 who is a Police Officer testified that upon been ordered by the OC-CID she interrogated the accused person, immediately after he had been taken at Meatu Police Station from the scene. She said that in the interrogation the accused confessed to have murdered the victim. The witness further told the court that, in his statements the accused person confessed to have assaulted the victim to death by hitting her with a stick on her head, back and hand, the reason being that she used to bewitch him and his relatives. As stated by PW3, in the said caution statement the Accused person confessed to have killed the deceased, Mwalu d/o Dalushi for the said reasons.

I am alive with the principle of law concerning oral confession that the same must be voluntarily made by the maker as it was so 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. Republic, Criminal Appeal No. 158 of 2009** in which 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 Police Officer, while testifying, told this court that, the same accused person confessed before her to have killed the victim. The proceedings transpire that, the recorded caution statement was tendered to court, and following no objection from the defense side, it was received and admitted as exhibit P2. As long as the confession was proved to be freely and voluntarily made by the Accused, I am of the settled mind that this alone can be the base for conviction of an accused person.

As for the issue that the accused person hit the deceased on several parts of her body including the head by using a stick which used for grazing cattle, as testified PW1 who is the eye witness of the incident, the said evidence has been corroborated with the testimony of PW2, the Doctor who conducted the autopsy and filled the Post-Mortem Report which reveals that the facial skull fracture and bleeding through the mouth and nose were inflicted by the hit of the blunt object on the victim's head. Therefore, the one who caused the said injuries to the deceased is the Accused.

Another issue that I find necessary to determine as to whether the accused person is responsible for the killing the victim is the testimony that the accused fled to his home place after the incident. It is the testimony of

PW1 that the accused fled to his home place immediately after the incident but he was arrested by the villagers and taken to the scene where he was put under custody till the next day, 19/05/2017 at about 1100 hours when he was handed to police upon arriving at the scene. The evidence of PW3 that they actually found the accused under custody of the citizen and that they picked him from them upon their arrival, corroborates the evidence of PW1 that the accused was arrested by the citizens in connection with the murder of Mwalu d/o Dalushi.

It has been satisfactorily proved that the Accused person killed the deceased, now the 3rd issue to be determined is whether the accused person had the intention (malice aforethought) to kill the victim. For the offence of Murder to stand, killing of a human being must have been done with malice aforethought. The term Malice Aforethought is defined under **section 200 of the Penal Code [Cap 16 RE 2002]** as follows;

"Malice aforethought shall be deemed to be established by evidence proving any one nor more of the following circumstances;

- (a) An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;*

- (b) *Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although that knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;*
- (c) *An intent to commit an offence punishable with a penalty which is graver than imprisonment for three years;*
- (d) *An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit an offence."*

Malice aforethought being a mental element of the offence of murder is difficult to prove by direct evidence. It can be inferred from the surrounding circumstances of the offence, such as;

- i. The nature of the weapon used (lethal or not);
- ii. The part of the body aimed (vulnerable or not);
- iii. The manner in which the weapon was used (whether repeatedly or not) and;
- iv. The conduct of the assailant before, during and after the attack.

In the present case there is evidence that the weapon that has been used by the Accused which inflicted injuries to the deceased, is a big stick which is used for driving cattle as stated by PW1, the evidence which has never been challenged by the defense side, regarding a total denial of the Accused in assaulting the deceased to death, thus the malice aforethought is there. Even the Post-Mortem Report (Exh. P1), it transpires that the deceased's skull was found fractured on the facial bone. I can therefore agree with the prosecution that the assault that led to the death of the deceased was inflicted by the hits of a big stick which is used for grazing cattle. It is a weapon which is likely to cause death if inflicted to a human body.

The issue here is not only the size of the stick which was used by the Accused in assaulting the victim/deceased, that it was big, but also the fact that the Accused had gone to the scene with it, as per the testimony of PW1 which means that the Accused had tuned his mind to kill or to cause grievous harm against the deceased. According to the provision of section 200 of the Penal Code the intention to kill or to cause grievous harm amounts to Malice Aforethought.

Further, the fact the assault had been inflicted on the head which is vulnerable part of the body, impliedly the accused had the intention to kill or

to cause grievous harm. The weapon, stick being used to hit on the said vulnerable part of the body (head) implicates malice aforethought, hence the Accused killed the deceased with malice aforethought.

The charged crime of Murder in this matter cannot be reduced into the lesser offence of Manslaughter under section 195 and 198 of the Penal Code [Cap 16 RE 2002] as there is no element like provocation or intoxication for the same to be relied upon. Actually, it is in the proceedings, particularly the evidence of PW1 that before the Accused had attacked the victim/deceased to death, he claimed that his father had left the deceased's premise because of the deceased's witchcraft behavior. The only reply by the deceased was "*umetumwa na nani?*" which means that the deceased wanted to know from the Accused as to why he speculates that. Actually, it was not explained by any person as to what was the intention of the deceased to ask such question to the accused, but, can these words amount to provocation? No, these are very ordinary words. They are not abusive or in any way provocative.

All in all there is no element of provocation, nor any other ground for diminishing the responsibility to the lesser offence of Manslaughter. Thus, the Accused Person cannot avoid the accusation that he had the intention to kill or to cause grievous harm, hence responsible for murder.

The 3rd and last issue has therefore been proved in affirmative that the accused had the intention to kill the deceased.

In upshot, I find the prosecution side has successfully proved beyond all reasonable doubts the offence of **Murder**, contrary to **sections 196 and 197 of the Penal Code [Cap 16 RE 2002]** against the accused person. I find the said Accused person, Ngoko s/o Manyangu guilty of the offence, hence, I convict him forthwith.




S.M. KULITA
JUDGE
10/10/2022