

IN THE HIGH COURT OF TANZANIA
AT SONGEA
ORIGINAL JURISDICTION
(AT SONGEA REGISTRY)
CRIMINAL SESSIONS CASE NO. 13 OF 2022
THE REPUBLIC
VERSUS
SABINUS KOMBA
JUDGMENT

13/03/2023 & 21/03/2023

E.B. LUVANDA, J.

Sabinus Komba the accused person herein, is indicted for murder contrary to sections 196 and 197 of the Penal Code, Cap 16 R.E. 2019. In the particulars of offence, it is alleged that on 30th day of October, 2021 at Mateka Kigamboni Street in Ruvuma Region, the accused person murdered one Isabela Nyoni.

At the arraignment, the accused person pleaded not guilty to the information. The prosecution side summoned five witnesses to prove the accusation levelled to the accused.

The facts leading to the arraignment of the accused can be deduced from the testimony of Donata Cosmas Mkale (PW1) who alleged that on

30/10/2021 while attending holy communion or confirmation at Kigamboni Street to Mzee Mbunda, alongside the accused person and the deceased, PW1 saw the accused person beating by slapping the deceased on her head while the later carrying a baby. The accused person and deceased were husband and wife. PW1 also inferred past fight history between the accused person and deceased. Another scenario is what was explained by Nicolaus Banda (PW2) the anxiety situation of the accused person allegedly visited twice at PW2's home on that fateful night, on the first occasion at 01.00 hour where the accused person asked PW1 to ferry him to the latter's mother at Libya and after refusal by PW2, the accused person departed and made a second visit at 03.00 hours. At this second visit, the accused person abandoned his young baby to PW2's sitting room. The following day, the deceased was found dead inside their house (where she was living with the accused person), her body covered fully with uncounted clothes, her stomach full. Dr. Esterius Labanusi Ndunguru (PW5) confirmed the death was due to spleen laceration which entailed haemorrhage, as per a report on post-mortem examination (legal), exhibit P1. Another scenario was the accused's conduct where it was alleged to have disappeared and later surrendered to his young brother, before he was formerly apprehended

by Robi Eleneus Mhagama (PW4) the then Village Executive Officer (VEO) at Matimila 'B' Village.

The accused person defended that the deceased had complained stomach pain, then heard her jumping and saw her falling on the generator. When DW1 was said to be at a verge of ferrying her to hospital by a motorcyclist, the later said he cannot carry a corpse, meaning the deceased had passed away. According to the accused person, the anxiety was caused by a confusion on his part and his disappearance was attributed by fear from people whom he alleged were about to harm him for allegation of murder.

The issue is whether the information of murder was proved.

The only direct evidence was that of PW1 who alleged seeing the accused person slapping the deceased on her head. But PW1 was not an eye witness up to the end of an episode, because according to her, after the beating or blow which lasted for an hour, the accused person and the deceased disembarked at the ceremony (local dance) and departed to their home. Therefore, the remained portion of the episode culminating or leading to the deceased death was wholly circumstantial.

It is to be noted that PW1 only saw the accused person slapping the deceased on her head. But the evidence of PW5 and exhibit PE1, suggest death was due to spleen laceration. No one said saw the accused person beating the deceased on her stomach, or that the blow was directed towards the stomach. As to what caused spleen laceration, PW5 was unable to tell specifically, because he introduced several theories which can cause spleen rupture or damage including sharp object which according to PW5 must entail clues of penetration externally; blunt object like fisting, kicking, or knocking a tree; accident where in most cases the body will be having bruises, fracture. According to PW5, the deceased body had no bruises, fracture or injury, neither signs of use of sharp object. In other words, the spleen laceration was caused person by a blunt object with possibility of fisting, kicking, or knocking a tree. The evidence of PW1 does not prove any of the three option, as according to her the blow was directed on the head. Up to this stage, a defence by the accused person that the deceased fall down, invariably cast a shadow of doubt on the prosecution case, coupled by the explanation by the accused person that the deceased was complaining stomach aching.

There are discrepancies on the prosecution witnesses evidence, while Nicolaus Banda (PW2) alleged to have been escorted by the motorcyclist to the hamlet chairperson Agatha Mwingira (PW3), the later disowned seeing any motorcyclist, instead insisted that PW2 was escorted by the cell member one Sandali Hunguli. PW2 made no mention of a cell member by the name Sanduli Hunguli. Secondly, while PW2 said the accused person asked the latter to be ferried to his mother, PW3 said the accused person visited to PW2 to ask for a motorcycle.

Another doubt, PW2 alleged to have reported to PW3 after the accused person had abandoned a child, and agreed for the matter to be sorted out the following day in the morning. However, PW2 did not honor the promise, instead changed mind and proceeded to PW2's sister one Luciana Banda, thereafter proceeded to break the door of the deceased and found her dead. Now, why PW2 did not make a follow up visit and meeting with PW3 as per their promise. Why PW2 rushed to break the door of the deceased in absence of PW3. Which was more grave and serious matter for PW2 to make a report to PW3, either an abandoned baby indeed of his nephew or suspicious that his in law being mysterious nowhere to be found? For another thing, while PW2 was avoiding disclosing some incidents happening before, including a fact that PW2

asserted to PW3 to have visited at the deceased house searching for the latter to handover an abandoned baby, and saw the door locked by a padlock. In view of this fact, it is why I queried as to why PW2's and sibling rushed to decide on their own to break the door in absence of PW3 to whom PW2 had a promise to handle the matter. This shadow a serious doubt on the prosecution, because circumstances suggest possibility of some people having conduct with the scene of crime dubiously and without notice to local leaders.

The rule on circumstantial evidence is that the same must be watertight and irresistibly implicating the accused person to the commission of offence. This was the position in the case of **Hamida Mussa v. The Republic** [1993] TLR 123 where the apex Court held that,

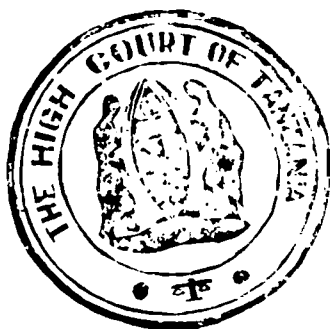
Circumstantial evidence justify the conviction where inculpatory fact or facts are incompatible with the innocence of the Accused and incapable of explanation upon any other reasonable hypothesis than that of his guilty.

Herein, the circumstantial evidence is marred by discrepancies and doubts.

Regarding disappearance immediately after the incident, was explained by the accused person being due to fear of rumours to harm him due to allegedly murder accusation fingered to him. Indeed PW4 said the accused's reception was somehow unfriendly at the village. More importantly, PW4 said the accused person had resurfaced and surrendered for purpose of explaining as to how the death of his wife occurred. Unfortunately, the accused person was denied that chance and opportunity, for reasons best known to PW4.

In the premises it cannot be said that the information for murder was proved on the required standard.

I therefore enter a verdict of not guilty for murder contrary to sections 196 and 197 of the Penal Code Cap 16 R.E. 2019. The accused is acquitted forthwith.



E.B. Luvanda
Judge
21/03/2023