

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

CRIMINAL SESSION CASE NO. 12 OF 2021

REPUBLIC

VERSUS

FRANK ^{s/o} SADALA.....ACCUSED

JUDGMENT

7th March & 3^d April, 2023

MRISHA, J.

Frank ^{s/o} Sadala who is the accused person herein, stands charged with an offence of Murder Contrary to section 196 of the Penal Code, CAP 16 R.E. 2019 (the Penal Code). It is alleged that on 1st Day of February, 2020 at Kapolonka/Mbendi Village within Nkasi District in Rukwa Region, the said accused person murdered one **Lihana ^{d/o} Sadala**.

Initially, the accused pleaded guilty to the offence charged, but due to the nature of this case this court entered a plea of not guilty, hence the prosecution case opened. The prosecution marshalled a total number of

six witnesses and three exhibits with a view of establishing its case against the accused person.

Such prosecution witnesses were **Claudia d/o Tadeo** (PW1), **Salome^{d/o} Sadala** (PW2), **Cletus^{s/o} Sadala** (PW3) and **Dr. Felister^{d/o} Beda** (PW4). Others were **A/Insp. Samwe** (PW5) and **G. 9236 D/C Dennis** who testified as PW6. The exhibits tendered were the Post-mortem Examination Report, the Accused caution statement and the Sketch map. The same were admitted and marked as exhibits P1, P2 and P3 respectively.

When this case was called upon for hearing, the Republic was represented by Mr. Peres Simon, Senior Learned State Attorney assisted by Ms. Ashura A. Pazi, whereas the accused person enjoyed the legal service of Mr. Samwel Kipesha, Learned Advocate.

PW1 who appears to be a grandmother of the deceased person and a blood mother of an accused person, testified that she was the first person to arrive at the scene of crime after hearing some noise from PW2 who is the sole eye witness in this case and the accused's young sister.

Her testimony reveals that upon reaching at the scene of crime she saw the deceased lying down unconscious, while the accused was standing closer holding a piece of wood; then she was told by PW2 that the deceased was assaulted by the accused with a burnt piece of wood.

PW1 also told this court that she was joined by PW3, the deceased's father, who also arrived at the scene of crime and found the deceased suffocating and that they arrested the accused person when he attempted to run away.

When cross examined by defence counsel PW1 said the accused was living a normal life, though he was drinking a local brew commonly known as 'Komoni' and that he had not gone to school. That she was not present when the offence was committed. PW1 also said she heard the noise of PW2 easy because her farm was closer to her house. That she was told by PW2 that the accused is the one who beat the deceased as she was standing near and saw him doing so.

Also, PW1 said she did not hear if the accused person had a temporal insanity and also, she responded that she had not seen any one committing an offence with a revenge. She also said she had never paid

a visit to the accused while in remand custody because of the crime he had committed.

PW2 testified that on the day in question that is 01.02.2020 at 1100 hours she returned at their home with one Rose to prepare some food and that at that time the accused was inside his room. Then all of a sudden, she saw him getting out of his room with a piece of burnt wood and approached the deceased who had gone there to seek for some drinking water; then the accused began to beat the deceased with such wooden stick until she fell down. That upon witnessing such sad incident PW2 raised an alarm which was heard by PW1 who rushed to the scene of crime only to find the deceased lying down bleeding and the accused was standing beside looking at her body.

PW2 went on to testify that her continued call for help enabled two other persons to arrive at the scene of crime; she mentioned them as Cletus and Juma who managed to apprehend the accused person before he could fulfil his escape mission. That thereafter the accused was taken to the Village Executive Officer; later PW2 was informed that the deceased person one **Rihana^d/o Sadala** had passed away. PW2 finally concluded her testimony by saying that she could not know why the

accused beat the deceased. She managed to identify the accused in the dock.

In reply to cross examination questions PW2 said the accused person is his brother but she did not know if he had a problem of drinking too much alcohol. She also said the accused did not run after committing the offence even when she raised her voice to call for help. That the distance from their house and the farm is very nearby.

Then came PW3, the deceased father and a young brother to the accused. He narrated that on 01.02.2020 at 11 hours he was at his farm with the deceased and his other child called **Saddock d/o Sadala**; then the two children asked for his permission to go to PW1; their grandmother to drink some water. He permitted them to go there since it was only 50 feet from his farm.

However, PW3 said, immediately after the two children left him, he heard some noise from PW2 who was uttering some words saying, "*Kaka ameua mtoto*" which literally means "brother has killed a child". Having heard so he ran to the scene of crime where he found his mother, PW1, the accused and his daughter was lying down bleeding.

That at that time the accused was standing while holding a stick; then he wanted to ran away, but they arrested him and tied his hands with a rope. Thereafter they hired a motorcycle and took the accused to the nearby Police station and the deceased was taken to the hospital for treatment but soon thereafter they were told by the nurse that the deceased had passed away.

That on the next day PW3 while with the police identified the body of the deceased then a post-mortem examination was conducted by a doctor and finally it was handled over to him for a burial process. PW3 also narrated that before the said incident he was living with the accused at the same house and that the accused was a good person with no mental problems. He finally managed to identify him in the accused dock.

Replying to cross examination questions, PW3 said from 0700 hours to 1100 hours Frank (the accused) was inside his room sleeping; he saw him when he was about to go to his farm. That he did not know anything Frank did until he heard some noise from PW2.

Also, PW3 said he was surprised why Frank did such evil act and he did not know what had influenced him to do so although he knew he had a

habit of drinking a local brew known as "*Komoni*". That he saw the accused standing while holding a stick and was surprising. PW3 also said he was living with the accused; he was mentally fit and was doing his normal activities. He also said he does not remember what the police told him.

On re-examination, PW3 said he does not remember the date he made his statement before the police officer and that the statement he made before the police officer and the one he made before this court are the same.

His testimony was preceded by that of PW4 who according to her testimony before this court, used to work at Nkomolo Health Centre as a Medical Assistant before her retirement. She narrated that on 02.02.2020 while doing her normal duties, was called by the DMO, her superior boss who assigned her to accompany the police officers to the mortuary and conduct a post-mortem examination of the deceased body.

That before doing so the deceased relatives were summoned by the police to identify the body and after confirming that it was the deceased's body, she proceeded with her task by inspecting its

physically appearance and also by touching it. She observed that the deceased body was bleeding on the mouth and it had skull fracture.

Her examination revealed that the deceased died due to skull fracture and severe bleeding. Thereafter she called the police who then handled the body to the deceased relatives for burial process. She finally filled Post mortem examination. PW4 properly identified Form D which she had filled, and then pray to tender it as an exhibit. As there was no objection from the adverse side the said form was admitted as an exhibit P1.

PW5 was the fifth prosecution witness to testify. He introduced himself as an Assistant Inspector at Matui in Kiteto, Manyara Region. He also said before that he was stationed at Namanyere Police Station as a Detective Constable. Testifying about this case, PW5 said on 01.02.2020 while performing his normal duties he attended PW1 hold a child who had already dead; he then informed his superior boss one Inspector Mwalyego who instructed him take the deceased body to the mortuary. He assigned a Woman Police to escort PW1 and the body to the mortuary.

That having done so he also attended the accused person and one **Oscar s/o Sapora** who told him that the accused person is the one

who killed the deceased. Then he put the accused in lockup and was then instructed by the OC CID to record the caution statement of the accused.

That thereafter, he took the accused to the open room and informed him that he has a right to make his statement before him or not and that he has a right to call his relative or a lawyer. The accused opted to make his statement in presence of his mother who is PW1. Then PW5 called PW1 in that room and began to record the accused statement.

That in his statement the accused confessed to have killed the deceased one **Rihana d/o Sadala** and after finished recording the statement PW5 read it to the accused who confirmed that it was correct and he also gave a paper to PW1 who after reading it signed and the accused did so. PW5 identified the statement in court and prayed to tender it as an exhibit which prayer was not objected by the adverse side. Then the court granted the prayer and admitted the said document as exhibit P2.

When cross examined by the accused counsel, PW5 responded that he has ten years' experience in investigation; he has a knowledge of reading body language. That he saw the accused in a normal situation; the accused person was apprehended by a civilian. That he does not

know what happened before the accused revenged, but through his statement he told him that he did so a revenge because he was angry.

PW6 came as the last prosecution witness whose testimony is to the effect that he is the one who drew a sketch map of the scene of crime on the 1st day of February, 2020 at 1700 hours with the aid of one **John s/o Sadala**, the deceased relative.

He said prior to that he got an information that there was an incident of murder which took place at Kapolonko Ward, in Mbwendu Village, and that the accused person is the one who committed such offence; then his superior boss instructed him to go to the scene of crime and draw a sketch map something which he did.

PW6 identified the said sketch map in court and prayed to tender it as an exhibit. The same was admitted as exhibit P3 to form part of court record because the defence counsel had no object against it.

In his reply to the defence counsel cross examination questions PW6 said he is the one who recorded the witness statement of **Cletus s/o Sadala** after following a proper procedure of recording the same. That the said statement is correct according to what he said to him and that he recorded what was stated by him as required of him by the law. PW6

also said he cannot guess the distance; he measured it by using a tape measure.

After closure of the prosecution case this court found that a prima facie case in relation to the offence of Murder contrary to section 196 of the Penal Code, had been established against the accused person, and after being informed of all his rights of defence, the accused person who was the sole defence witness (DW1), began to testify before this court.

He said he is the one who killed the deceased person who was a daughter of PW3; his young brother. In elaborating more, the accused said on the day in question that is 1st day of February, 2020 he was at Mbwendi Village which is located in Nkasi District, Rukwa Region. That while there he noticed that his tree which he intended to cut and use for burning charcoal had been cut off by PW3.

That after approaching PW3 and asked why he had done so PW3 seemed not to care about that and went on with his daily activities. Such conduct of his young brother made him furious because it was not the first time for PW3 to do so.

That, he decided to keep quite but later on he went to his PW1's home who is his mother, and got inside his room. Soon thereafter, he got out

with a stick and found the deceased, PW2 and another small child, then he attacked the deceased and hit her with the said stick, as a result the deceased fell down unconscious. Soon thereafter he was arrested by people including PW1 and PW3 who tied up his hands and took him to a nearby Police Station where he was charged for murder of the deceased.

When cross examined by Mr. Feres Simon, Learned Senior State Attorney, the accused said he is the one who caused the deceased to lose her life, that he assaulted her with a stick and that he inflicted a blow on the deceased's forehead. He also responded that he decided to do so in order to revenge from what the deceased's father had done to him. He also said that he was aware of what he was doing at the time he committed the offence of murder.

In reply to re-examination question by his counsel, DW1 said he had the habit of drinking local brew and that his relatives used to insult him by uttering harsh words which caused him to become angry. That when he was faced by such situation, he used to leave his home premises and go to the National Park. That PW3 is the one who caused him to become anger.

Having given the facts reading to this case, it is now my duty to determine whether the prosecution has proved it's against the accused person in the standard required by the law. Like in any other case, the standard of proof in a criminal case like the present one emanates from statute. I will then let the law to speak by itself as I hereby do.

Section 110 of the Evidence Act, CAP 6 R.E. of 2022 provides that,

"(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

From the above provisions of the law it can be settled that in order to establish its case in respect to an offence of Murder contrary to section 196 of the Penal Code against the accused person herein, the prosecution must prove beyond any shadow of doubt; **first**, that the deceased died; **secondly** that her death was an unnatural; **thirdly**, that is the accused person who caused the death of the deceased and; **fourthly**, that in causing the death of the deceased person the accused was actuated by malice aforethought.

In the instant case it has not been disputed at all, that the deceased person one **Rihana d/o Sadala** died on 01.02.2020 and that her death was unnatural. The above is justified by both oral and documentary evidence of the prosecution which was not challenged by that of the defence.

With the oral evidence the key witness in the above two respects is PW4, a medical expert who conducted a post-mortem examination report of the deceased body and observed that the deceased actually died and that the cause of her death was severe blood loss due to fracture on her head. Her evidence is corroborated by Exhibit P1 as well as the evidence of PW2, an eye witness who clearly to have seen the deceased been beaten with a piece of wood on her head more than once by a person who she used to know very well before the incident of murder of the deceased which is the subject of the present case.

Next for my consideration as I proceed to answer the above main issue, is the question as to who caused the death of the deceased person? This is the most important question because it helps to know the actual killer of the deceased person should be answered in the affirmative way. However, basing on the circumstances of this case and the evidence

from both sides, I don't see if I will have to spend much time in order to get the right answer.

Almost all the prosecution witnesses, save for PW4 whose task was only limited to conducting a post-mortem examination of the deceased body in order to reveal the cause of the deceased death, have pointed a finger towards the accused person by imprecating him as the actual killer of the deceased person one **Rihana d/o Sadala** by beating her with a piece of wood twice on her head on the day in question.

For instance, PW2 who is the sole eye witness narrated very well how the accused assaulted the deceased person which assaults led to her death on the same day of the incident. She mentioned the accused as her brother and the one who got out of his room with a piece of wood as a result the deceased fell down unconscious and bleeding.

If the above is not enough, there is evidence of an accused person himself which shows that he confessed before this court that he is the one who caused the death of the deceased person who is his young brother's daughter. He has gone far by clarifying that he killed the deceased with a view of revenging because her father who is PW3 had cut his tree which he was planning to use for burning charcoal.

It is due to the above evidence that any reasonable man would not hesitate to conclude that the accused person one **Frank s/o Sadala** and no one else, is the one who caused the death of the deceased person. His confession right from the police custody, to this court clearly indicates that he is the best witness in this case.

At his juncture I wish to substantiate the above view by borrowing the words of their Lordship Justices of Appeal in the case of **Jacob Asegelile Kakune v. D.P.P** Criminal Appeal No. 178 of 2017(Unreported) at page 14 in which they reiterated the principle that *"....an accused person who confesses to a crime is the best witness"*.

In my view, the above principle is applicable in the present case because the accused person has confessed that he is the one who caused the death of the deceased person. He has done so not only when called upon to plead to the information of murder but also when he was adducing his defence. All that proves the second ingredient of murder offence.

Coming to the third ingredient which is an intention to kill or a manslaughter, as provided under section 200 of the Penal Code, the prosecution has to proof beyond any reasonable doubt that in causing the deceased death the accused was actuated by a malice aforethought.

In order to determine malice aforethought, one has to trace the circumstances enshrined under section 200 of the Penal Code and in caselaw. Section 200 provides,

"Malice aforethought shall be deemed to be established by evidence proving neither 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...."

Also, in the case of **Enock Kipela v. Republic**, Criminal Appeal No. 150 of 1994 (unreported), sets out guiding principles for ascertaining whether the person who killed did so with malice aforethought or not. In that case the Court of Appeal stated as follows: -

"Usually, an attacker will not declare his intention to cause death or grievous bodily harm, whether or not he had the intention must be ascertained from various factors, including the following: -

(i) *The type and size of weapon which was used in the attack leading to the death of the deceased; (ii) The amount of force which was used by the attacker in assaulting the deceased; (iii) The part or parts of the body of the deceased where the blow of the attacker were directed at or inflicted; (iv) The number of blows which were made by the attacker, although one blow may be enough depending of the nature and circumstances of each particular case; (v) The kind of injuries inflicted on the deceased's body; (vi) The utterances made by the attacker if any, during, before or after the incident of the attack".*

I think, and I believe so, that the above principles were established in order to assist the trial courts dealing with cases involving capital offences as the one at hand, to be able to ascertain whether or not the accused person had an intention to kill the deceased because section 200 of the Penal Code merely talks about situations where malice aforethought can be deemed to have been established but it does not go far by describing the circumstances in which one can be

in a good position to ascertain malice aforethought on part of the accused person.

It is also my considered view that the rationale behind establishment of the above principle is to help the trial Judges to ascertain malice aforethought from those accused person who hides the truth in relation to their guilty minds.

Thus, applying the above principles to the present case I wish to say that the accused person in this case had malice aforethought when he killed the deceased. Why I say so, is because the prosecution evidence which was not denied by him clearly shows that the accused used a wooden stick to hit the deceased twice on her head. This caused the deceased to fall down unconsciously and was severely bleeding.

If that is not enough the prosecution evidence is to the effect that so after such blows the deceased lost her life while medicated at Nkomolo Health Centre. Yet it is evident the reason behind causing death of the deceased by the accused was a revenge because his young brother who is PW3 had cut his tree which he had plan to burn charcoal.


The accused him told this court, while adducing his evidence, that he is the one who killed the deceased by hitting her with a wooden stick and that he did so in order to revenge. In my view the above prosecution evidence as well as the confession of the accused person on a crime of murder suits the circumstances indicated in the above principles to be applied in ascertaining whether or not the accused person in this case was actuated by a malice aforethought when he killed the deceased person. Something unique and more important in this case is that the accused person has clearly declared that he had intention to kill the deceased. That can be ascertained from his utterance before this court that he killed the deceased view of revenging.

That in my view was an inhuman conduct which cannot be accepted in any civilized society because being a small and an innocent child, the deceased had done nothing bad that would have induced the accused kill her. I think his conduct of just remaining at the scene looking surprised towards the deceased might have been caused by his bad act of killing an innocent child whom he had no conflict with.

Having said the above, I am satisfied that the prosecution has also proved the third ingredient of an offence of murder which is malice

aforethought; hence the main issue of whether or not the prosecution side has proved its case against the accused person one **Frank s/o Sadala**, is answered in the affirmative.

It follows, therefore, that since the offence of Murder contrary to section 196 of the Penal Code has been proved by the prosecution side beyond any reasonable doubt, then I find the accused person one **Frank s/o Sadala** guilty of the offence of Murder contrary to section 196 of the Penal Code and I convict him as charged.


A.A. MRISHA
Judge
03.04.2023

Dated at Sumbawanga this 3rd day of **April, 2023.**


A.A. MRISHA
JUDGE
03.04.2023

SENTENCE

There is only one punishment for the offence of Murder once it is proved. My hands are tied by the law and I have to pronounce the sentence. I sentence the accused person **Frank s/o Sadala** to suffer

death by hanging as provided under sections 26(1) and 197 of the Penal Code Cap 16 R.E 2019.

It is so ordered.


A. A. MRISHA
JUDGE
03.04.2023

Right of Appeal is fully explained.


A. A. MRISHA
JUDGE
03.04.2023

Dated at Sumbawanga this 3rd day of April, 2023.




A. A. MRISHA
JUDGE
03.01.2023

Date - 03/04/2023

Coram - Hon. K.M. Saguda, Ag.DR

For republic - Present

For Accused - Present

Accused - Present

BC - Miss Jackline Kabata

Ms. Ashura Ally State Attorney for republic, Mr. Kamyalile holding brief of Mr. Kipesha for Defence.

The matter is coming for judgment we are ready for it.

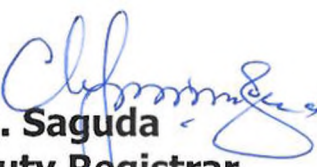
Sgd: K.M. Saguda
Ag. Deputy Registrar
03/04/2023

Mr. Kamyalile for Defence: We are ready for judgment today.

Sgd: K.M. Saguda
Ag. Deputy Registrar
03/04/2023

Court: The judgment delivered this 03/04/2023 before Ms. Ashura Ally for Republic. Mr. Kamyalile holding brief of Mr. Kipesha while the accused person present and the B/C Ms. Jackline present.




K.M. Saguda
Ag. Deputy Registrar
03/04/2023