

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA DISTRICT REGISTRY)

AT KIGOMA

CRIMINAL SESSION CASE NO. 40 OF 2022

REPUBLIC

VERSUS

RAJABU S/O JUMA @ KAJABALA


JUDGMENT

23/5/2023 & 31/5/2023

Mlacha,J.

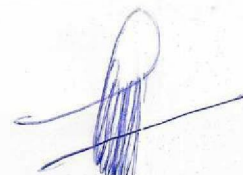
At the Criminal Sessions of the court held at Kasulu district court in Criminal Sessions case No. 40 of 2022, Rajabu Juma @ Kajabala was charged of Murder contrary to section 196 and 197 of the Penal Code, cap 16 R.E 2019. It was alleged that he murdered his wife Rehema Petro on the 4/4/2022 at Nyambutwe area, within Uvinza district in Kigoma region. He denied the charges. The prosecution lead by Amina Mwakosa Senior state attorney and Edna Makala state attorney called 9 witnesses who tendered 7 exhibits to discharge their burden of proof. The accused was the sole defence witness. He had the services of Ms. Mechtilda Mpeta advocate.

It was the evidence of PW2 G 3138 D/CPL Rajabu (37), PW9 G 6252 D/CPL Abel (34) and PW9 ASP Mesa Temba (47) that they received a report on



4/4/2022 morning hours that there was a dead body at darajani area, Nyambutwe hamlet, within Uvinza village, an area not very far from the police station. PW9 is the OC – CID for Uvinza district. The police moved under the leadership of PW9 to the scene of crime. They passed at the dispensary and picked PW3 Dr. Kasian Adamu (60) for purposes of conducting the postmortem examination. They also picked PW4 Omari Kilala, the village chairman. They moved together to darajani area. They met a lot of people. Moving down on a path to the valley, they saw a dead body laid on its back. It was dressed in a Kitenge gown with a piece of cloth (Kitambaa) covering the head. She had a cut wound at the neck. There were banana put on both sides of the body (at the ribs) and an avocado between her legs. Another banana was put on one side of the head. The area did not appear to have had any fracas suggesting that she was killed somewhere and brought to be laid at the place. There was blood from the cut wound moving downwards. She was identified as being Rehema Petro, the wife of Rajabu Juma @ Kajabala, the accused person. This was done by Nasibu Kajabala and the accused, Rajabu Kajabala who were present.

It was the evidence of PW3 that he examined the body from the head to the legs. The chest, Private parts and legs had no problem. He removed the cloth



on the head and discovered that the rear side (Kisogo) was bent inside. It appeared that the skull was bent inside. He suspected that some blunt object must have hit the area. The neck was moving freely suggesting that she had been strangled. The neck appeared to have been cut by a sharp objection from the right to the left. The wound had a length of 10 centimeters and width of 5 centimeters. The depth was 10 centimeters. He used a stick to measure and put it on a ruler to establish the measurements. He had the opinion that death was caused by excessive bleeding and strangulation. It was also a result of the broken skull. He filled the Postmortem Examination Form (exhibit P4) and gave the report to the police who in turn released the body to relatives for burial.

Suspecting that the accused might be the culprit, PW9 did not wish to allow him to bury the wife he had murdered. He ordered him to go to the police station for questioning.

It was the evidence of PW1, Tausi Hassan Ally (43) that she received the deceased on 3/4/2022 at Uvinza bus stand at 2:30 Pm arriving from Kasulu. She knew her to be the wife of Rajabu, the accused person. She gave her phone to her which she used to call her husband to come and pick her. Her husband sent a motorcycle (bodaboda) driven by Hamisi who picked her.



PW1 knew the accused and the deceased for 18 years. They all lived at the same hamlet and were familiar.

On 4/4/2022 morning hours, while she was on her way to the bus stand with her merchandize, a basin of salt, PW1 saw people wondering. She asked them on what could be the matter. They told her that someone was laid down, near Ruhungi river, at the Railway bridge. She advised them to go down. Three of them moved down only to see that she was Mama Hassan, the wife of Rajabu. She had a cut neck. Blood was moving downwards. The throat was pushing white substances (povu). She made a call to her husband and Rajabu, the husband of the deceased. Rajabu came holding an iron sharpener (tupa). He said that it was his wife. She sent his basket of salt back home. When she came back she saw a lot of people. The police were also around. She moved to the police station to make her statement. Like the police, she also gave the story of banana and avocado placed near the body of the deceased.

It was the evidence of PW6 Kwizige Petro Bushashi (40) that she is a sister Rehema Petro, formerly known as Agnes Petro. She said that Rehema was married to Rajabu and they lived at Uvinza. Rehema came at Kasulu on 28/3/2022 to attend her onion farm. The accused made a call on 31/3/2022

saying he needed her to come back. The accused told her that he had a salt market at Manyovu and needed her to come and stay with the children. Rehema prepared herself and left on 3/4/2022 at 10:00Am. She escorted her to the bus stand and she left. The accused made a call later in the day at 3:00Pm saying that his wife had come home safely. She went on to say that she received a call from her junior mother (Yusta) on 4/4/2022 who told her that her sister, Rehema had been slaughtered. She felt bad. She could identify the accused at the dock.

PW7 Hassan Rajabu Juma, a child of tender age (12), gave unsworn evidence promising to say the truth. He is son of the deceased. The accused is his biological father. He told the court that his mother went to Kasulu where she stayed shortly and came back. She prepared the evening Ramadhani meal (futari) which they ate. She went to sleep. They slept outside, in a small house adjacent the main house. They rose up at around 4:00 Am and ate the night Ramadhani meal (daku). They took it at the sitting room of the main house. His father was also present in the meal. They retired to their house to sleep after the meal leaving his parents at the sitting room of the house where they slept. He rose up in the morning and prepared himself to go to school. He saw his father. He could not see his mother. He



saw his father sharpening an axe. He saw him talking with someone. It was mama Mwana. He heard her telling his father that someone had been slaughtered. He moved to school. While on the way at the bridge, he saw people gathered. Moving close, he saw that the slaughtered person was his mother. Like others, he described the way her mother was laid with banana and avocado placed around the body.

It was the evidence of PW9, PW2 and PW8 that the accused confessed to kill his wife using a knife. When asked where it had been, he said that it was at home. They decided to go for it. They asked the village chairman and a brother of the accused (Nasibu) to move with them. They arrived at the house of the accused and found it locked. Nasibu said that he had misplaced the keys. They broke the door lock and entered inside being led by the accused. It was a house which had one room and a sitting room. The accused said that he had put it behind the door but it was there. The house was made of a room and a sitting room. It appeared to have nothing except a bed which had no mattress. Mr. Nasibu told them that he had taken everything to his house on security reasons. The accused took them inside the room and said that his wife held him saying he needed love but fell down mistakenly and hit his head down. Thinking that she was dead, he took her

to the bridge and slaughtered her. He led them through the path he used to the area. It was some 400 meters from the house. They returned and went to the house of Mr. Nasibu. Mr. Nasibu pulled out a salphate bag with domestic items. He pulled them out. A knife fell down. The accused said that was not the knife he used. Mr. Nasibu said that there was another knife which he had kept inside on security reasons. He moved inside his bed room and picked another knife. It was picked under the bed. It had a red handle with white strips. It had a red star. The accused agreed this to be the knife. The police prepared a seizure certificate (exhibit P2) which was signed by all the policemen present, the village chairman, the accused and his brother, Nasibu. The knife was sent to the police station and stored by PW5 CPL Elipid. He released it to PW2 who tendered it as exhibit P3. PW2, PW4, PW5, PW8 and PW9 could identify the knife in court. They all said that it was picked from the house of Mr. Nasibu and identified by the accused to be the knife he used to slaughter the deceased.

It was the evidence of PW8 that he recorded the cautioned statement of the accused and the statement of his brother Nasibu on 8/4/2022. The cautioned statement of the accused was received marked exhibit P6 while the statement of Nasibu was received under section 34B of the Evidence Act



marked P7. Mr. Nasibu was traced without success. His summons was returned with an endorsement that he had vacated his home at the village and all efforts to trace him could not be successful. The two statements show the way the accused led the police and the village chairman to the place where the knife was found and the way he moved to the place where the body was slaughtered. The cautioned statement has a confession of the accused accepting to commit the crime.

It was the defence of DW1 Rajabu Juma Kajabala, the accused person that he lived at Uvinza village. His work was boiling salt for sale. He said that his wife asked permission to go home on 28/3/2022 to attend her onion farm. He allowed her to go. Her home village is Kilombero village, Kasulu district. He went on to say that on 3/4/2022 at 2:00 PM he received a call from mama Mwana (PW1) that his wife had come and needed transport. He sent a cyclist to pick her. She came home with a parcel of cassava, banana and potatoes. There were also ripe banana and avocado. They agreed to have cassava for 'futari' that evening. She prepared and put cassava at the fire place. He made a call to her sister Kwigiza and told her that she had come home safely. They left with his child, the last born to see his salt. They attended salt for a while. They left and passed at the shops to buy rice for 'daku'. They also passed at

the valley to pick firewood. They came back home. His wife cooked tea and prepared cassava for 'futari' while he remained outside attending a tire puncher. He finished it and went back to town center to collect money from someone who had taken his salt. He picked the money, bought a voucher and returned home. They sat down and ate 'futari' together. He talked to his mother in law through Kwigiza at this moment. He took bath with his wife. He thereafter left to Kasulu road at Mvuyekule hall to watch football. He came back around 12:30 midnight. He demanded 'daku' because he needed to return to the salt water. His wife woke up the children and they ate 'daku' together. Children went to sleep. His wife said that she could go to see her brother on the following day because he was sick. Her brother lived at Kashili hamlet. His name is Jackson Mmasatu. She could also pass at Msimba forest to collect charcoal. They agreed so. The accused left home and moved to attend his salt. It was around 1:00Am. He remained there up to 6:30Am. He came with some salt which he gave to mama Mwana (PW1) at the bus stand who promised to pay in the evening. He arrived home and met his children preparing to go to school. He asked his son Hassan on the whereabouts of their mother. They said that they never knew where she had gone. He started to sharpen his axe as he needed to go to the bush to cut firewood



for boiling salt. While doing so, he received a call from mama Mwana that his wife had been slaughtered. He moved to the place and wept. His children joined him soon. The police came with a doctor who examined the body. He was arrested. He denied the charge saying none of the witnesses saw him killing his wife. He said that he cannot challenge the medical report which shows that she was strangulated and slaughtered. That can be correct, he said. He denied the confession. He said that he never went to school, he does not know how to read and write. He accepted the statement but said that some words did not come from him. He agreed that he is aware of the knife, exhibit P3 which came from his brother, Nasibu. He challenged the evidence of the police and the village chairman saying it is not correct. That marks the end of the summary of evidence received in court.

In a murder case like this one, the prosecution have to establish two key things in order to prove their case, *actus reus* and *means rea*. In simple terms, there must be evidence showing that the accused is the one who killed the deceased and if so, whether he killed her intentionally. There must be evidence to establish these elements. Evidence may be direct or circumstantial. It can also be based on the confession of the accused person. Direct evidence is the evidence of a witness who says he saw the accused

committed the crime. Circumstantial evidence refers to the circumstances under which the crime was committed.

The prosecution case is based on circumstantial and the confession of the accused. Speaking of circumstantial evidence, the Court of Appeal had this to say in **Makame Junedi Mwinyi v. Serikali ya Mapinduzi Zanzibar (SMZ)** [2000] TLR 455 at page 463:

"What is circumstantial evidence? Simply put, these are circumstances in the form of evidence which enable a court to reasonably infer or conclude the existence or non-existence of a fact in issue or the guilt of an accused person. It is generally in the form of oral evidence.... Suffice it to say that in order to justify conviction on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused."

See also the decision of this court made in **Republic v. Kerstin Cameron** [2003] TLR 84 (Rutakangwa J. as he then was) at Page 107 where it was said thus:

".....to ground a conviction on circumstantial evidence:

(a) that evidence must be incapable of more than one interpretation...

(b) in a case where the evidence against the accused is wholly or exclusively circumstantial, the facts from which an inferences of guilt or adverse to the accused sought to be drawn must be proved beyond reasonable doubt and must clearly be connected with the facts from which the inference is to be drawn or inferred..."

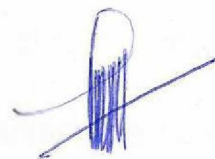
(c) that evidence should be cogent and compelling as to convince a jury, judge or Court that upon no rational hypothesis other than murder..."

We have evidence of the child PW6, showing that the accused was the last person to be seen with the deceased. The child says it was around 4.00 AM. The accused admit this fact but says it was around 1.00 AM. He also said that he could not see his mother in the morning. He saw his father who was sharpening an axe who was asking the where about of his wife. He could not mention the time but he says that it was at the time when he was preparing to go to school. Given the geography of Kigoma, far in the west,

with our late sun rise, this can be around 7.00 AM. He saw her dead on the next day morning at the bridge.

PW2, PW8 and PW9 received information and moved to the area. They saw the dead body. She appeared to have been laid nicely with fruits placed on her side. The area did not show any sign of a fracas. They suspected the accused whom they arrested. He confessed and the place where he had put the knife. They got the knife. He said that was the knife he used to kill the deceased. He said so before PW2, PW4, PW8 and PW9. PW4 was the village chairman. He was an independent person and a person with authority. He also took them to the route he used to take the dead body to its destination. There is evidence showing that the deceased was found laid near the bridge with a cut neck. The area did not show any sign of a fight or fracas. Her neck was moving freely showing that she was strangled before being slaughtered. He had a broken skull. The doctor had the opinion that death was caused by strangulation followed by a cut neck. It was also the result of a heavy object which was applied at her rear side of the head.

None of the witnesses said that he saw the accused killing the deceased. PW6 who is their son said that the deceased rose them up and all shared



he Ramadhani night food. He went to sleep leaving the deceased with his father. He did not see him killing the deceased.

PW1 said that she saw her on the previous day coming from Kasulu. She communicated with the accused who sent a cyclist to pick her. She could not hear or see her again. She never saw the accused killing the deceased. She only saw her at the bridge on the next day dead. PW4 received her sister at Kasulu and stayed with her for some days. She left to Uvinza. She received a call later in the day that informing him that she had come home safely. She received another call in the next day saying that she was found dead at the bridge. She never saw the accused killing the deceased.

The police and village chairman did not see the accused committing the crime. They only heard his confession and received the knife used to kill the deceased.

The fact that the accused was the last person to be seen with the deceased who found dead at the railway bridge 3 hours later, the fact that he confessed and showed the police and the village chairman the route he used to carry the dead wife whom he slaughtered and the fact that he showed the knife which he used to slaughter the deceased show a sequence of events which when chained together bring a circumstantial evidence leading

to the guilty of the accused on the offence charged without doubt. The accused was the last person to be seen with the deceased, he confessed and took them to the route and the knife. The circumstance points at his guilty and not his innocence.

The accused is recorded to have said the following in his confession statement:

"Tulikuwa na migogoro na ilisababishwa na mimi kuoa mke wa pili ambaye anaitwa MWAVITA D/O JUMA ambaye naishi nae Nyambutwe. Migogoro hiyo na mke wangu ilipotokea kwa mara ya kwanza alienda nyumbani kwao akakaa miezi mitano ilikuwa mwaka 2021 mwezi sikumbuki, lakini pia mwaka jana huo huo 2021 mwezi sikumbuki ulitokea mgogoro mwingine ambao ulisababisha marehemu mke wangu akaenda nyumbani kwao Kasulu na kukaa miezi mitatu. Mwaka 2022 mgogoro pia ulikuwepo ambapo alipofika hapa Uvinza kutoka kwao alikaa wiki tatu kisha akarudi nyumbani kwao ambapo nako alikaa wiki moja na ilipofika tarehe 03/04/2022 majira ya saa15:00hrs alikuja nyumbani Uvinza baada ya mimi kumuita.....majira ya saa 04:00hrs **mimi na mke wangu na**



**watoto tuliamba kula daku ambapo tulikula daku
sebuleni kwenye nyumba kubwa baada ya hapo watoto
walirudi ... alinitekenya eneo la mbavu ndipo nilipogeuka
nikamuuliza vipi akasema nakuhitaji, niligeuka nikamkumbatia
nikambusu nikamuweka kifuani, nikawa nimeitekenya
akashituka akaanguka akawa amejigongo kisogoni kwenye droo
ya kitanda baada ya kuanguka alikaa kimya kwa muda wa nusu
saa nzima, **ndipo nikajua amekufa, ndipo niliombeba kwa
kujitwisha kwenye bega, nikamtoa nje, nikambeba
nikampeleka karibu na daraja la reli (manzese)
nikamweka chini eneo la njiani.....wakati nampeleka
nilikuwa nimebeba kisu kikubwa chenye mpini wa rangi
nyekundu na mchoro mweupe** katika, nilikuwa nimekiweka
kwenye mfuko wa suruali upande wa kuli, na matunda, ndizi na
maparachichi idadi sikumbuki nilikuwa nimeyaweka kwenye
mfuko mdogo nikaufunga kwenye neksi ya suruali, **nilipofika
eneo hilo niliweka mwili njiani mwili wa marehemu mke
wangu na ndipo nikachukua yale matunda nikayaweka
chini pamoja na kandambili zake zilizokuwa miguuni****

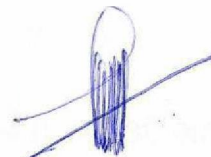


*mwake. Baada ya hapo nilichukua kisu kutoka mfukoni mwangu nikampitishia shingoni, kwa kukata upande mmoja wa shingo ndipo damu zikaanza kutoka na mimi nikarudi nyumbani na kutelekeza mwili pale njiani eneo la darajani. Dhumuni la kumkata kwa kisu eneo la shingo ilihlali alikuwa ameshafariki dunia ilikuwa ni **kuficha ushahidi aonekane ameuawa** ...”(Emphasis added)*

The confession made was in line with Section 3(1) of the Law of Evidence Act cap 6 R.E 2022 which says:

"Confession" means:-

- (a) **Words or conduct, or a combination of both words and conduct**, from which, whether taken alone or in conjunctions with other facts proved **an inference may be reasonably drawn** that the person who said the words or did the act or acts constituting the conduct committed an offence; or
- (b) A statement which **admits in terms either an offence or substantially that a person making the statement has committed the offence**; or



(c) A statement containing **an admission of all the ingredients of the offence** with which its maker is charged; or

(d) A statement containing **affirmative declarations in which incriminating facts are admitted** from which, when taken alone or in conjunction with the other facts proved, **an inference may be reasonably be drawn that the person making the statement has committed an offence.**"(Emphasis added)

Interpreting the law of confessions, the Court of Appeal had this to say in **Msafiri Jumanne & 2 Others V. R** Criminal Appeal No. 187/2006 at Page19:

"...an accused person who confesses his guilty is the best witness"


See also **Maselo Mwita @ Masoke & Another V. R, Criminal Appeal No. 63/2005.**

Looking at the way the confession was made and recorded and its contents, I have no doubt that it was made voluntary. In the confession the accused spoke of a series of conflicts between him and his wife, the deceased following his decision to marry a second wife. He explained the way he killed

his wife and took him at the place where she was found. To prove the story, he took the police to the place himself. He also showed the knife which he used. This is also backed by the statement of his brother, exhibit P7 which supports what was said by witnesses on the place and the way the knife was recovered. The confession made was therefore good evidence showing that the accused is the one who killed the deceased.

Next is malice. The leading case is **Enock kipela v. Republic**, CAT Criminal Appeal No.150 of 1994 (unreported) where it was said thus:

"... usually an attacker will not declare his intention to cause death or grivous bodily harm. Whether or not he had that intention must be asertained from various factors, including the following: (1) the type and size of the weapon, if any, used in the attack (2) the amount of force applied in the assault; (3) the part or parts of the body the blow were directed at or inflicted on; (4) the number of blows though one blow may, depending on the facts of a particular case, be sufficient for this purpose; (5) the kind of injuries inflicted; (6) the attackers utterances, if any, made before, during or after the killing; and (7) the conduct of the attacker before or after the killing."



See also **Saidi Ali Matola @ Chumila v. Republic**, CAT Criminal Appeal No.129 of 2005.

There is no doubt about malice of the accused. Looking at the evidence we can see that the deceased was beaten by something heavy which broke the skull. She was strangled and taken to the place where she was slaughtered. Beating someone on the head and breaking the skull, strangulating and slaughtering her cannot have a different meaning than the intention to kill her. The conduct of the accused was also showing an ill motive. He killed her at home but threw her at the bridge to fake that she was killed by bandits as she was moving to greet her sick brother.

The accused denied to commit the crime. His evidence shows that his wife might have been killed by some people on the way as she was moving to see his sick brother. This evidence does not sound to be true. It is a lie because the account of the accused himself is confusing. The accused said that he received his wife. He had cassava, potatoes and the like. They agreed to have cassava that evening. His wife started to cook cassava but they soon left to the place where he boils salts. He returned but could not stay. He moved to the village center to claim a debt which he was paid. He came back

home and ate 'futari' but could not stay. He left to the village center to watch football matches. He remained there up to 00:00 mid night. He came back at 00:30 but could not sleep. He demanded 'daku' which was set aside for him and the family. They ate together. He could not sleep again. He went back to his salt factory where he worked till morning. He returned home at 6:30AM and met his kids. His wife was missing. He asked them on her where about. They said that they were not aware. He could not sleep. He started to sharpen his axe in a preparation to go to the bush to prepare firewood for his salt factory. Those are stories of a liar because no one can be in a moving position, day and night, without a rest, without a sleep. Further his wife who was away needed him as well. He could not care to stay with her, even for a word and company! He also cheated when he asked his child about the where about of his wife. This contradicts his statement that he had allowed her to visit her sick brother. This is a fabricated story meant to hide the truth contained in the confessions and witnesses. It is rejected. Lies of the accused corroborate the prosecution case. See **Felix Lucas Sinyila v. The Republic**, Criminal Appeal No. 129 of 2002 (CAT).

In view of what has been said, based on the circumstantial evidence and the confession, I have the opinion that the accused is the one who murdered



the deceased and no one else. The circumstantial evidence and the confession point to his guilty and nothing else. I find that the prosecution have proved their case beyond doubt. I find the accused guilty as charged and convict him accordingly.



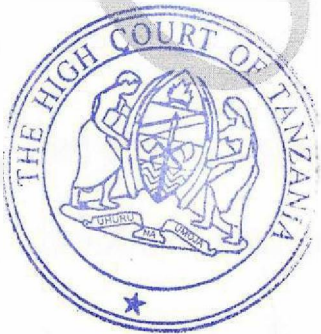

L.M. Mlacha

Judge

31/5/2023

SENTENCE

There is only one sentence for murder which is death by hanging. Personally, I don't want this punishment but my hands are tied by the judicial oath which I took. I sentence you the said, RAJABU JUMA @ KAJABALA to suffer Death by Hanging.




L.M. Mlacha

Judge

31/5/2023

Court: Judgment delivered in the presence of the accused, Ms Edna Makala state attorney and Ms. Mechitilda Mpeta advocate for the accused.

Right of appeal explained




L.M. Mlacha

Judge

31/5/2023