

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

CRIMINAL JURISDICTION

CRIMINAL SESSION NO. 54 OF 2021

REPUBLIC

VERSUS

SIMON ^{s/o} WATSON @ MWASILE

04/08/2023 & 23/08/2023

JUDGEMENT

MWENEMPAZI, J.

The accused person named above was arraigned for murder contrary to section 196 and 197 of the Penal Code Cap 16, Revised Edition 2019. The prosecution side alleged that on 17th day of January 2020 at Kanondo village within Sumbawanga District in Rukwa Region, the accused person did murder one **CUTHBERT CORNEL MWANGALABA**.

Briefly stated, the facts giving rise to the case are that the accused named above was an employee, a casual labourer in the deceased's farm. He was looking after his farm which is located at Kanondo village at Sumbawanga

District in Rukwa Region, including feeding his livestock at the farm, whereas the employment was for a payment of salary at the tune of Tsh. 60,000/= per month.

The turn up of the event was on the 17th of January, 2020 in the morning, the deceased went to his farm house where he met with the accused person, after an exchange of words, the accused person enquired about his salary payments, whereas it seems the deceased never paid any salary to the accused since the commencement his employment. The deceased's response towards the accused person's enquiry was negative in which it irritated the accused person.

Time passed by and hunger struck the deceased. The deceased told the accused person to stir up some ugali so that they pass the noon, the anger of the accused person outgrew him and decided to settle his heartache by taking an axe which was not far from him. He used it to hack the deceased twice on his head, and the deceased did breathe his last breath within a second. As if that was not enough, the accused chopped the body of the deceased into two pieces (from the waist) and kept them in two separate plastic bags commonly known as "sulphate" and thereafter buried them in a pit hole he had dug himself.

The accused person then cleaned the whole area as it was covered with blood stains, changed his clothes and then took two cellular phones belonging to the deceased, his wrist watch, a wallet which contained Tshs. 26,000/= cash and different identity cards. He also took a grass cutting machine, spraying pump, spade and an axe (he used to hack the deceased) among other things. He then fled off the scene of crime the dawn of the following day.

The deceased's absence was noticed by his relatives through his beloved wife. They then started to look for him around the village as it was known that he had gone to his farm at Kanondo village, whereas on the 18th day of January, 2020 they decided to inform the police about the disappearance of the deceased. Upon responding to the information, the police too went to the scene of crime and the search of the deceased whether dead or alive continued. As the police and village men thoroughly searched the area, they discovered a pit hole where they found two plastic bags commonly known as "sulfate" bags with a body of a human being buried separately, as they took the body off the bags, it was discovered that the body belonged to the deceased person who was reported that he had disappeared. Thereafter, the body was taken to Rukwa Regional Government Hospital Mortuary for storage and medical examination.

The search for the culprit began right away, and the investigating officers discovered that the accused person left for his home at Mbalizi in Mbeya Region. The police went to arrest him and brought him back to Sumbawanga where he was interrogated by way of a cautioned statement. The accused confessed to have committed the crime and thereafter, he was taken to the justice of peace and he reiterated his confession that he had committed the offence.

However, as he was paraded for plea taking here at the High Court on the 10th day of March 2022 and the charge of murder was read over to him in swahili language, the language he best understood, he denied the charges against him. Then the matter had to be arranged for a full trial on the 24th of July, 2023. At the hearing the charge sheet was again read to the accused person and he maintained his plea of not being guilty.

It was established and consequently proved during Preliminary Hearing that the deceased is indeed dead. Report on Post Mortem Examination that was admitted into evidence without objection during trial indicated that the cause of death was a shock due to severe bleeding which led to Hemorrhagic shock, internal bleeding of the brain, brain hemorrhage due to severe traumatic brain injury. Thus, it was proved during preliminary hearing that

the deceased died unnatural death, and thus remained a duty on part of the prosecution to prove that, the deceased's death was the accused's contrivance as alleged in the information.

In this case, the Republic had the services of Ms. Ashura Ally, being assisted by Mr. Frank Mwigune and Salmin Zuberi, all are learned State Attorneys while the accused person was represented Mr. James Lubusi, the learned counsel.

In proving their case, the prosecution side paraded a total of six (6) witnesses and tendered five (5) exhibits.

PW1, EMMANUEL CORNEL MWANGALABA, testified under oath that on the 18th day of January, 2020 he received information that his brother (deceased) was missing and the last time his whereabouts were known was at his farm at Kanondo village. He stated that, he went to the said village and as he reached the place, he saw plenty of people and he had to inform the police about the disappearance of his brother but also there is a suspicious pit hole at the farm.

He proceeded testifying that, after the arrival of the police officers, they dug up the suspicious pit hole and found two 'sulphate bags' which emitted bad smell, and the bags seemed to have a body of a human being inside, as they

unpacked the body, it was realized that it is the body of PW1's brother which was split into two halves. He then assisted one of the police officers to draft the sketch map of the crime scene. The body was then taken to the hospital and the search for the culprit began.

H870 D/CPL MASANJA testified under oath as **PW2**. He told the court that he was told by his superior that there is a person killed at Kanondo village and that he should be prepared and join others as they go to the scene of crime. At the crime scene, the OC CID ordered him to draw the sketch of the crime scene, and he did so by the help of PW1. He then prayed for the sketch map to be admitted as evidence, this court did admit the same as **Exhibit P1**.

PW3 was **G231 D/CPL NADHIR**. He did affirm and testified that he remembers way back on the 18th day of January 2020, he and his colleagues were informed by the OC CID that there is a report of person missing at Kanondo Village at Sumbawanga Municipality and that his relatives are still searching for him. Therefore, a team of police officers headed off to the said village, as they reached there, they saw many people and some were in grief, and the natives showed them the pit hole which they started digging. Therefore, the police officers allowed the village natives to proceed in digging

the suspicious hole, and in doing so, two plastic bags were pulled out which seemed to have a body of a human being, and as they took the bodies off the bags, it was noticed that it was the body of the missing person to whom the report was filed at the police earlier.

PW3 proceeded that, they took the body to the Government Hospital's mortuary, and the search for the culprit began. He added, in the processes of interrogating witnesses at the farm, they interrogated the deceased's brother (PW1) who had told them that the deceased had a farm worker who was not seen at the crime scene, but luckily enough they found a young man known as FRANK KAYOKWA who knew the deceased's farm worker and he knew his whereabouts as he escorted him to the bus terminal the dawn after the fateful day as he was leaving for Mbalizi in Mbeya. The farm worker's name was revealed to be SIMON WATSON, the accused person before this court.

He testified further that, the OC CID organized a troop of police officers and headed for Mbalizi where they were able to find and arrest the accused person together with the things he took as he left the farm yard at Kanondo. PW3 said, the things were grass cutting machine, Pesticide spraying machine, an axe, a spade, two cellular phones, a wrist watch and a wallet

which contained the deceased's belongings such as identity cards like driver's license, voters identity card, ATM card of Postal Bank and NIDA identity card, they then filled a Seizure Certificate which was signed by the OC CID (PW4), the accused person himself and his mother (PW6).

Lastly in his testimony, PW3 stated that as they came back with the culprit, he then interrogated him by way of cautioned statement and in it, the accused person did confess to have killed the deceased as a result of being provoked by him. He said, the accused confessed that his blood heated up and lost control of himself, and picked up an axe and hacked the deceased twice on his head, and as he was already dead, he used the axe to cut the deceased into two halves, and buried the halves in a pit hole which he had dug. He thereafter fled to Mbalizi with the things he was found with. After that, the accused signed the document and so did PW3. He then prayed for the statement to be admitted in evidence, and the Court did admit it as **Exhibit P2**. And then, PW3 identified the accused as the person standing at the dock opposite him in court.

PW4 was **SHUKRANI MADULU MATONGO**, a Superintendent of Police.

He too testified under oath that, on the 18th of January 2020 he received a call from PW1 that referred him to an earlier report made to him on the 17th

day of January 2020 that there was a person missing, PW1 then told PW4 that they are at the deceased's farm yard and there is a suspicious pit hole which they dug a little and the pit seems to have something in it.

Therefore, PW4 took his policemen and headed to the crime scene, as they reached there, PW4 found a lot of people and therefore he started dispersing them. He then ordered the pit hole be dug, as they did so, they found two plastic bags soaked in blood and when they pulled the object within the bags, it was a body of a human being which was identified by the relatives as the body of the deceased who had gone missing the day before. In addition to that, PW4 ordered one of his officers (PW2) to draft a sketch of the crime scene. He added, as he distributed the duties to his policemen, upon interrogating the witnesses at the crime scene, they realized that the deceased had a farm worker who was not at the crime scene that instant. They were informed by a person known as Frank that the name of the farm worker is SIMON WATSON and he resides at Mbalizi in Mbeya, the person who informed them knew him and assisted the police in apprehending him.

He finally testified that, he arranged his officers and a vehicle and headed to Mbalizi, where they succeeded to locate and arrest the accused person. They found the accused person whereas as they asked him where his employer

was, the accused person did confess to have killed him. PW4 said they found the accused with the things suspected to belong to of the deceased person. The things were; one grass cutting machine, one pump for pesticides spraying, an axe, two cellular phones whereas one was Itel and other Tecno and a Black wallet which had Identity Cards, an ATM card and Employment Identity Card and lastly was a spade. He thereafter filled a seizure certificate which was signed by himself (PW4), the accused's mother (PW6) as witness and the accused person himself. PW4 then prayed to tender the Seizure Certificate as Exhibit in evidence and this court did accept the prayer as it admitted the Seizure Certificate in evidence and marked it as **Exhibit P3**. However, PW4 also recognized the things they seized from the accused person as follows herein;

1. One Pesticide pump-yellow in colour
2. One Spade with black Handle
3. One locally made axe with wooden handle
4. Two Cellular phones
 - a. Itel with Imei No. 358288052776787
 - b. Tecno with Imei No. 359939090709045/359939090709052
5. One Black Wallet with;
 - a. Employment ID LAPF No. 10906424

- b. Sumb. District Council ID No. 3943
- c. NIDA-19720608-55102-00001-27 Cuthbert Cornel Mwangalaba
- d. Driver's License No. 4000392097
- e. Voter's ID No. T1062-0303-530-4
- f. TPB Umoja Card No. 5036970000001242067 Cuthbert C. Mwangalaba A/C No. 01000287048
- g. Business Card-Upendo Electronics

In this court, PW4 prayed to tender these items as exhibit in evidence whereas this court accepted the prayer and admitted them in evidence collectively and they were marked as **Exhibit P4**. He finished up by recognizing the accused being the person at the dock opposite him in court.

PW5 was **MSHANGA GADI MJEMAS**, a medical doctor who tendered his evidence by video conference as at the time he was in Moshi, Kilimanjaro region. He did testify under oath that he remembers that on the 20th day of January, 2020 he was at his work station at Sumbawanga Regional Referral Hospital continuing with his duties. He was assigned by his in-charge that there is an examination to be conducted on a dead body at the mortuary. He proceeded that as he went at the mortuary, he found the mortuary attendant, two relatives of the deceased and one police officer. The relatives

identified the body of the deceased to be that of their relative who had gone missing.

PW5 then examined the body and stated that the deceased was a male, and that his body was in two halves as it was cut at the waist, and that there was an injury on the head which was deep and the skull was fractured, and on the neck, there was another cut which exposed the blood vessels and finally at the waist there where the body was separated into two halves. He added that the cause of death was severe bleeding from main blood vessels to the head and the brain being mixed with blood at the place the skull where it was fractured. After, the examination PW5 filled in the Post Mortem examination report which he prayed to tender in court as evidence, in which this court did admit it in evidence and marked it as **Exhibit P5**.

CHRISTINA WATSON MWASILE was **PW6**. She is the accused person's mother. She testified under oath that, she is a resident of Mwaselele village in Mbeya rural, that she is a peasant and she has a husband and seven children who are alive and that three had passed away. She said among the seven, females are two and males are five whereas her last born child is **SIMON WATSON** (accused) who was born on the 25th of December, 2003 and that, his son now lives in prison as he was arrested for murder and she

recognized him as the person present in court and sits opposite her in the dock.

She testified further that the accused had dodged his studies and in 2019, he fled to Sumbawanga in search for employment as a casual labourer. As he got the temporary employment he was looking for, he called her and told her that he had found a farm where he takes care of chicken, cows and pigs. She added that, on the 18th of January 2020, as she was at her home village the accused arrived at around 14:00 hours, he had a luggage and he took out the items he had carried in the bag, it was a sulfate bag. She then enquired as to where he got the items from and he replied that his boss has given them to him. Among the items were pesticide spray pump yellow in colour, an axe, a grass cutting machine, spade and two cellular phones. That he also took out some papers which were small and were kept in a black wallet.

She proceeded that, as they were asleep that night, the police officers from Sumbawanga arrived and knocked on their door, as they responded, they were asked if SIMON is present and she replied he is present. That, the accused person was then summoned and one of the police officers asked him the whereabouts of his boss, then the accused replied that he had killed

him. She added, the police officers demanded the items he had with him to be retrieved for they did not belong to the accused person, and so PW6 assisted in retrieving some of the items which were in her room and she signed on a paper which she believes it had the list of the items seized under the accused's person possession. Here in court, PW6 did identify exhibit P3 and the items collectively admitted as exhibit P4. PW6 concluded that her son did confess in front of his father and herself that he had killed the deceased.

The prosecution side prayed to close their case as they had no any other witness to summon, and in so doing this court was invited to rule out as to whether a *prima facie* case was established against the accused person. Indeed, it was this court's ruling that a *prima facie* case has been established against the accused person, and therefore he was addressed in terms of S. 293 (2) of the Criminal Procedure Act, [Cap 20 R. E. 2022].

The defense being led by the learned Counsel Mr. Lubusi had one witness to testify, the witness was **SIMON WASTON MWASILE, DW1**. He testified under oath that he recently resides in prison for he was arrested for the murder of his boss the deceased. He stated further he was born in Mbalizi in Mbeya in 2003. He said, in 2019 he left Mbeya for Sumbawanga where he

came to visit his brother known as Frank s/o Kayokwa. Apart from visiting him, he was also in search of an employment whereas he got the same in April but he could not remember the exact date as he was employed by Cuthbert Cornel Mwangalaba after being introduced to him by his brother.

He proceeded that on the 17th day of January 2020 he killed his employer employ. That his employment was only seven months old in which his duties were to take care of the deceased's livestock and that they had agreed on the payment of Tshs. 60,000/= per month. He testified further that, in all those months the deceased never paid him anything and every time that DW1 reminded him, he was told to wait. Therefore, after the seven months had lapsed DW1 wanted to leave the farm yard, but the deceased told him that he can not leave until he returns all the items that DW1 had sold and also, he would not pay him his salary. He added, the deceased threatened him further that, if he forces to leave, he will put him in jail.

DW1 did not end there, he stated that as he was told those words, he felt angry and lost control of his emotions and beside him there was an axe, he picked it and hacked the deceased on the head. He added that he felt remorse when he was apprehended and taken to prison as he still feels bad for what he had done and he prayed for this court to do justice and release

him and prays for this court to admit his certificate of birth as he had tendered it before.

When cross examined by Ms. Ashura learned State Attorney, DW1 stated that he was 17 years old when he killed the deceased. And that, due to fear of being apprehended he cut the deceased's body into two halves and then buried them in a pit. He insisted that he killed him out of anger but he never killed anyone before, despite the fact he was never paid his salary for the months he had worked, he never complained anywhere. DW1 also admitted to have recorded a cautioned statement at the police station after being arrested and that he had confessed to have killed the deceased.

The defense counsel, Mr. Lubusi then prayed to close their defense case as they had no any other witness.

At this juncture, I am fortified that this matter has its hinges nailed on the confession made by the accused person himself both at the police station as seen in Exhibit P3 and during his defense. And in determining this matter, the only issue is ***whether the accused person had malice aforethought in committing the offence as addressed under Section 200 of the Penal Code Cap. 16 R. E. 2022.***

It is worthy of notice at this point that, for a confession to be acted upon it must be corroborated. This was insisted in the case of **Ndalahwa Shilanga & Another vs Republic, Criminal Appeal No. 247 of 2008, CAT at Mwanza** (unreported), it was observed that, the requirement of corroboration is either a matter of law or of practice. That, where it is the matter of law, no conviction can be sustained without corroboration. But, if it is the matter of practice, a conviction would not necessarily be illegal or quashed if it stands on uncorroborated evidence. That, the court however, has to warn itself as a matter of practice in such cases.

It was in this case that the CAT cited with approval the case of **Hatibu Tengu vs Republic, Criminal Appeal No. 62 of 1993** (unreported) where the court developed two tests for a confession to pass so as to be acted upon by a court. The Court observed as follows;

*"The **first** test is whether the confession was made voluntarily and properly, that is legally, if necessary, by the process of trial within a trial or inquiry. The first test determines the admissibility of the confession. The **second** test is the evaluation of the confession, to determine, whether it is true including the need of and*

whether or not there is corroboration. This stage determines the weight/value of the confession. If the court finds that there is corroboration it can convict. If the court finds no corroboration, it can still convict if the court finds that the confession contains nothing but the truth, and after warning itself of the danger of convicting without corroboration. But in determining whether or not the confession contains the truth, the circumstances of the particular case, must be taken into account including whether the confession is retracted or repudiated by an accused person."

This legal position was also underscored in the cases of **Jackson Mwakatoka and 2 Others v. Republic [1990] TLR 17** and **Kashindye Meli v. Republic [2002] TLR 374**.

In my perusal of the testimonies before me and indeed the exhibits tendered, most of the evidence, specifically the cautioned statement (Exhibit P3) in its admission, was not objected, whereby its contents and the testimonies of PW3, PW4 and PW6 corroborated the testimony of DW1. In the light of the above cited precedents, the accused's confession in the present case, can

be acted upon because, this court finds that it contains nothing, but the truth as it was made voluntarily by the accused himself.

This finding is based on the following reasons: that, the accused gave a detailed history of the entire event. This included the conflict between him and the deceased, especially when he first enquired about his salary and the deceased threatened to imprison him, and secondly when he told the deceased that he wants to leave, but the deceased assured him that he would not leave until he had returned all the items of the farm that he had sold, and that is how he got over heated and hacked the deceased with an axe on his head twice. The contents of Exhibit P3 corroborated the testimony of the accused person himself.

Nevertheless, in an afterthought DW1 attempted to convince me that he was of the age of 17 years during the commission of this ordeal, I hold that the act of dodging studies and opting for a casual labour was a sufficient proof that he had attained the age of majority and that he cannot simply exonerate himself from the criminal liability he immersed himself into.

Having being assisted by the confession of the accused himself and the corroborative evidence of the prosecution side witnesses, it is my firm holding that the prosecution side has proved their case against the accused

person beyond any doubt and at the required standards of the law, that the accused person one **SIMON WATSON @ MWASILE** did maliciously murder **CUTHBERT CORNEL MWANGALABA**. I therefore, find the accused person guilty of the murder of the deceased and I proceed to convict him for the offence of murder as charged contrary to section 196 and 197 of the Penal Code, Cap 16 R. E. 2019.

It is ordered accordingly.


T.M. MWENEMPAZI

JUDGE

23/08/2023

SENTENCE

I have noted that at the commencement of the hearing of this case Ms. Irene Mwabeza, learned state attorney informed this Court that the defence counsel prayed before this Court to inquire on the age of the accused at the time of commission of the offence. She informed this Court that they have confirmed that in 2020, the accused was 17 years old. Therefore, this fact is undisputed.

Under the circumstances, though the accused has been found guilty of the offence of Murder contrary to section 196 of the Penal Code, [Cap 16 R.E 2019]; and the normal punishment for the offence under section 197 of the Penal Code, [Cap 16 R.E 2019] and section 26(2) of the Penal Code, [Cap 16 R.E 2019] is death by hanging; that cannot be pronounced as such to the accused person. Section 26(2) provides that the sentence of death shall not be pronounced on or recorded against any person who at the time of the commission of the offence was under eighteen years of age, but in lieu of the sentence of death, the Court shall sentence that person to be detained during the President's pleasure.

I therefore sentence the accused person to be detained during the President's pleasure.


T.M. MWENEMPAZI

JUDGE

23/08/2023

Right of appeal fully explained.




T.M. MWENEMPAZI

JUDGE

23/08/2023