

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

CRIMINAL JURISDICTION

CRIMINAL SESSION NO. 56 OF 2021

REPUBLIC

VERSUS

RICHARD ^{S/O} YACHITWI

27/07/2023 & 23/08/2023

JUDGMENT

MWENEMPAZI J.

The accused named in this case has been arraigned in this Court and charged with the offence of Murder contrary to Section 196 of the Penal Code, [Cap 16 R.E 2019]. It is alleged that on the 8th day of December, 2019 at Mpui village within Sumbawanga District in Rukwa Region the accused, did Murder one GOVERIDINA D/O EMMANUEL. When the charge was read over and explained to him he pleaded not guilty to the charge.

During preliminary hearing under section 192 of the Criminal Procedure Act, [Cap 20 R.E 2022] the accused did not dispute his name. The rest of the facts were disputed. The facts were that on the 8th day of December, 2020 at Mpui Village within Sumbawanga District in Rukwa Region, the accused invaded and attacked the victims Barnabas s/o Katyego and Goveridina d/o Emmanuel (who is deceased) at their residential home.

It was narrated by the prosecution that on the date during noon hours the accused went at the residence of the victims. There he accused them of keeping ghosts. The victims denied. It is said the allegations were raised in a kind of quarrel. Then the accused left.

In the evening the accused went back to the victims' home where he knocked on the door. As usual, the residents (victim in this case) inquired as to who it was the told them his name and they then opened the door for him as he was known to them. While at sitting room suddenly the accused person, started to attack the deceased's husband, one Barnabas s/o Katyego by beating him on different part of the body using a stick he came with and was holding. Barnabas escaped and ran out. He thus shifted attention to the deceased attacking her on different parts of the

body. The husband while outside the house and made an alarm seeking for help. The assailant on hearing the alarm, run away.

The victims were injured due to the beatings as a result they were both taken to Mpui Dispensary for medical treatment. Since the injuries were complicated they were transferred to Sumbawanga Referral Regional Hospital where the deceased's husband was discharged. The condition of wife continued to deteriorate. She was thus transferred to Mbeya Zonal Referral Hospital. The condition did not change, a decision was made by the medical officers to discharge her and she was returned back to Sumbawanga Regional Referral Hospital. On 12th January, 2020 Goveridina d/o Emmanuel passed away at Sumbawanga.

Upon examination of the deceased's body, which examination was conducted on the 13th day of January, 2020 by medical doctor BAHATI S/O MBWILO, it was found that the cause of death was severe anaemia due to internal bleeding.

The accused was arrested, interrogated by way of cautioned statement by a police officer G. 2683 D/C Geoffrey. In the caution statement the accused admitted to beat Goveridina d/o Emmanuel which action caused her death.

At the hearing the prosecution called six (6) witnesses and tendered exhibits. The prosecution was being lead by Ms. Irene Mwabeza, learned State Attorney and the defence was conducted by Ms. Tunu Mahundi, learned Advocate.

The prosecution called three witnesses. The victim PW1 one Barnabas s/o Katyega, Bakari Salum Luvangu (PW2), the police officer who was the OCS of the Mpui Police Station at the time and Dr. Bahati Maiko Mbwilo (PW3) who conducted post mortem examination of the deceased's body.

According to the testimony by Barnabas s/o Katyega, on the date of the event, during the noon hours the accused, Richard s/o Yachitwi went at his house where he was residing with his wife, the deceased. The accused person raised allegations against them that they are witches. They keep ghost at their home. They denied and the accused left. The exchange of words was in a sort of a quarrels, it was hot as to utter some insults its agaist PW1.

During the night the accused went back; this time around he was prepared with a stick. He knocked the door. The witness, PW1 Barnabas s/o Katyega testified that as it was night he took a solar powered torch, went to attend the guest who had just knocked the door. He did not however state whether the guest introduced himself or not.

As the door was opened, the witness says he was beaten by a stick the guest was holding in his hands; he was injured on the right hand as he was trying to block the blows from the assailant. He, however, managed to escape, ran away from the assailant and raised an alarm seeking assistance. The assailant then turned to his wife who ran towards him as he was complaining that he is being beaten. The assailant struck on her with the stick. She fell down and lost consciousness.

The witness testified that after sometime he came back, as when he was screaming to raise an alarm, he also went to report to the police station. He says he found his wife has been taken to the hospital. Neighbours called his son in law and daughter who came and took the old man to the hospital. In the account of the event, the story could not flow well as the witness seemed to be on and off in regard to his memory.

Bakari Salum Luvanga, (PW2) is the police in charge of Mpui station at the time the event happened. He testified that he is the one who received the three persons (two men and one woman) who went to report at the police. They complained to have been assaulted and injured by RICHARD S/O YACHITWI. The condition of those who were assaulted, man and his wife was, in his assessment, serious and the woman could not talk. He

issued a PF3. He then sought assistance of the village leadership so that Richard s/o Yachitwi is arrested.

At first Richard was charged with the offence of assault and later on the 12/1/2019. The charges changed into murder after Goveridina d/o Emmanuel had passed away. This time around he went at the scene and drew a sketch map of the scene of event which was admitted in Court as exhibit P1.

In his description of the scene of event, it was as if there was turmoil, the door and things were in shambles. The sketch map of the scene of crime was tendered in Court and admitted as exhibit P1. The distance from the residence house of the accused, Richard Yachitwi to the residence of PW1 is two hundred (200) meters. There is a close residence house of one LYELA. No resident of this nearby house was interviewed nor called to testify as a witness.

As I noted there was a third witness, PW3 who is Dr. Bakari Maiko Mbwilo, holder of practicing licence No. MCT 2729. He conducted an examination of the deceased's body. In his testimony as well report, the cause of death of the victim Goveridina d/o Emmanuel is severe anaemia secondary to internal bleeding. The body had multiple fractures on right and left ulnar, radius and right femur. That is also recorded in a post

mortem examination report, received as exhibit P2. Thus, death of Goveridina d/o Emmanuel was unnatural. At the testimony, the witness PW3 testified that she might have been beaten by a heavy blunt object.

In murder cases, the prosecution is required to prove the ingredients of murder beyond reasonable doubt that; the deceased is really dead; that the death was caused by someone unlawfully and that there was malice aforethought and that the accused person directly or indirectly took part in the commission of the murder. That is according to the case of **Anthony Kinamila @ Enock Anthony versus the Republic, Criminal Appeal No. 83 of 2021 [2022] TZCA 356 (16th June, 2022).**

The evidence we have is clear and to the point that death of GOVERIDINA D/O EMMANUEL was caused by one who attacked her and her husband. Her husband, Barnabas s/o Katyega (PW1) has testified that it is the accused in this case. PW1 is the only witness who links the accused with the events which happened on the 8/12/2020. The witness had a story which somehow showed lack of flow although he admits that he knew the accused from time ago before the date of the event as they live together at Mpui Village. In fact, as he was testifying, there was a point, the witness showed that he had no good memory of what actually happened

and later after short recess he came up and identified the accused at the dock.

The event happened during the night. The witness says the assailant knocked the door and at the time they were sleeping with his wife. He went out with a solar torch and he was told by the guest before opening the door that it was Richard s/o Yachitwi. If we recollect the memory this is the person, they had a quarrel in the noon hours. Obviously if they did not end with reconciliation in the afternoon, he is not a good guest to be welcomed. However, he opened the door for him. He was received by sticks which made him ran. The question is whether the identification of the assailant was perfect without any mistakes while the witness was also running to save his life. I am asking this question taking note of the fact that the witness also is old enough to have weak vision. If he was hesitant to have recognize the accused at the dock, what was the situation where his life was at stake.

In defence the accused has distanced himself with the afternoon quarrel and also the night visit which culminated into beating of the couple. He alleges that many people went to attack the family on allegations of witchcraft.

Assuming the witness did not meet the beating with sticks at the door; can we safely say he did identify the person who knocked at their door on that night?

It is a well principle of law that where the evidence relied upon is that of identification, factors favouring accurate identification and credibility of the witness are important. In the case of **Joseph Mkubwa and Samson Mwakagenda Versus the Republic**, Criminal Appeal No. 94 of 2007, Court of Appeal of Tanzania at Mbeya the Court observed:

"It is true that Waziri Amani case (supra) is one of the landmark cases on the question of visual identification. But as the Court also observed in that case, the factors listed therein were not exhaustive and that in each case all the circumstances surround it must be considered".

In my view, we cannot entirely take the testimony to be exhaustive taking into consideration that the situation seems to have involved more people than a single accused as it would appear so far.

Under the circumstances, I hesitate to hold that the evidence is water tight as to find the accused linked to the beating and therefore murder of Goveridina d/o Emmanuel. Therefore, I find the prosecution case to have

been shaken by the defence and the doubt created is resolved in favour of the accused. He is therefore found not linked to the commission of the offence, therefore the accused is not guilty. I proceed to acquit him; the accused should forthwith be released unless otherwise he is being held for another lawful cause.

It is ordered accordingly.

Dated and delivered at **Sumbawanga** this 23rd day of August, 2023.




T.M. MWENEMPAZI

JUDGE