

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT MAFINGA.

CRIMINAL SESSION CASE NO. 110 OF 2022

THE REPUBLIC
VERSUS
RAHIM FESTO SILINU

JUDGMENT

18th & 31st October, 2023

I.C MUGETA, J:

The accused person is alleged to have murdered his aunt, a wife of his paternal uncle, one Elizabeth Chalamila. A charge of murder has been laid at his doors. The incident occurred at about 22:30 hours at Ukelemi Village at the night of 8/7/2022. The murder was not only cold blooded but also heinous. The medical doctor, Deus Kangalawe (PW3) who examined the deceased's body and reported it in exhibit P1 described the incident as follows:

"Multiple cut wounds on sculp and left eye lid exposing the eye, cut lower lip, multiple deep cut wounds (Lt) shoulder, multiple cuts on (Lt) upper arm and multiple fractures of (Lt) humerus, (Lt) upper arm attached by tendons".

The medic, Dr. Deus Kangalawe concluded that the cause of death is multiple cut wounds, multiple fractures and excessive bleeding. Therefore,

the established cause of death has been proved to be unnatural. The deceased was murdered and the description of the inflicted injuries testify to the fact that the attacker intended death to be a result of his action. Therefore, he had malice aforethought.

From the above finding, the issue for my determination is whether the murderer is the accused person.

The star witness to prove the above issue is Hekima Lucas Silinu. She has known the accused as her relative born to her paternal uncle since childhood. At the incident time she was with her mother (the deceased) in the same room. They were on beds but they had not yet slept when the door was violently opened.

After gaining access, two men who entered directly assaulted the deceased with an axe and a machet. One of them covered his face and another one who she identified as the accused did not. When she cried for help she was assaulted with a "panga" on her leg to silence her. She sought help from neighbours after the murders left, she told them right away that the accused was among the murderers. They include Juma Silinu who testified as PW2. Hekima said she identified the accused by assistance of a solar torch light which was on. He was arrested in the afternoon on

9/7/2022 by the Village Executive Officer. He was summoned and he surrendered himself.

In his defence the accused said at the material time he was in the farm collecting maize produce from his father's farm. That he arrived home at around 23:00 hours and his father (DW2) supported his version of the story. That he got the news of the death on 9/7/2022 at about 06:00 hours and later, he joined the mourners whereupon he participated in the burial process by digging the grave. His participation in the burial ceremony was confirmed by Juma Silinu (PW2).

The issue is whether the accused person was properly identified. When on cross examination, PW1 admitted that her statement to the police contradicts her evidence regarding how the murderers covered their faces. That in her statement she said Rahim covered his head with "mzura". However, counsel for the defence did not seek to have her statement tendered in order to impeach her credibility.

The procedure for impeaching a witness credibility by using his/her previous statements was discussed in **Lilian Jesus Fortes v. Republic**, Criminal Appeal No. 151 of 2018, Court of Appeal Dar es Salaam (unreported) where it was held:

*"The procedure for impeaching a witness by using his previous writing therefore, requires the following to be done, in our view; **first**, the previous statement must be read to him. **Secondly**, the attention of the witness must be drawn to those parts which are intended to demonstrate contradictions. **Thirdly**, the statement should be tendered in evidence".*

The above procedures were not followed by the defence counsel. Notwithstanding, I am of the view that the credibility of PW1 was shaken on cross examination.

It is settled that the ability of the witness to name a suspect at the earliest opportunity is an all important assurance of his reliability. **Marwa Wangiti Mwita & Another v. Republic** [2000] T.L.R 39 at page 43. Under the circumstances, PW1 who said the room was sufficiently lit by a solar torch ought to be believed. But there is a caveat.

Juma Silinu (PW2) is a ten cell leader of the area. He did nothing upon being informed of who the murderer is. No efforts were made to trace the named murderer immediately after the incident. On cross examination (PW2) said he did not report to the police who came to the scene of crime who the murderer was because that would be a hearsay. I agree with him but as a leader he ought to have done more. Even when he

saw the accused at the burial he was not perturbed. Two conducts are unusual in this incident. **Firstly**, the lack of concern on part of PW2 and **Secondly**, the accused person being the murderer to attend the burial of the person he murdered. Even when he was summoned by the VEO he just surrendered.

I understand, the accused's defence is of a nature of alibi which has been raised without notice as required by section 194(4) of the Criminal Procedure Act [Cap. 20 R.E 2022]. Under the circumstances of this case, however, I cannot ignore it. The reason being that he was not properly guided by his counsel. I have considered it in light of the conducts of both PW2 and the accused after the incident, I hold that PW1 might have made a mistaken identification. In his defence the accused testified that he had no sour blood with his aunt nor there is one between their families. The prosecution did not lead evidence not only to prove but also to suggest a reason why the accused person would kill his aunt. This fact was necessary to prove malice aforethought on part of the accused person.

Under the circumstances, I hold that, reasonably, one can doubt if indeed, the accused killed the deceased. As the principle goes, once a doubt is entertained it ought to be resolved in the favour of the accused person. I hold that the charge against him has not been proved to the hilt.

I, accordingly, acquit him of the charge of murder contrary to section 196 and 197 of the Penal Code.




I.C. Mugeta

Judge

31/10/2023

Court: Judgment delivered in open court in the presence of Baraka Uswege, learned advocate for the accused, Genis Tesha, Senior State Attorney and Phoibe Magiri, State Attorney for the Republic and accused person in person.

Sgd. I.C. Mugeta

Judge

31/10/2023