

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF SHINYANGA

AT SHINYANGA

CRIMINAL SESSION CASE NO. 14 OF 2022

REPUBLIC

VERSUS

1. SALAWA NDELEMA

2. MAYALA CHARLES @ MAREGERE

3. SHIJA NGELANIJA @ TEMBO

4. EMMANUEL MANONI

JUDGMENT

17th July & 21st September, 2023.

S.M. KULITA, J.

The accused persons, ones Salawa Ndelema, Mayala Charles @ Maregere, Shija Ngelanija @ Tembo and Emmanuel Manoni stand charged with two counts on the offence of Murder contrary to Section 196 of the Penal Code [Cap 16 RE 2019]. It is alleged that, on the 1st day of June, 2016 at Mahameni Masengwa village, within Shinyanga District, in Shinyanga Region, the accused persons jointly and together murdered one Manyala Ndelema and his wife, Nyamizi Mserengeti.

The facts presented by the prosecution which gave rise to this trial are that; on 1st June, 2019 at night hours, while asleep in their residential house, the victims who were husband and wife were invaded and cut by sharp objects to death. That, the neighbours reported the incident to Police. Upon the autopsy being conducted the cause of deaths were revealed to be loss of blood following the wounds that the victims had sustained.

Investigation was mounted. As a result, the 1st accused who is a blood brother of the 1st victim, Manyala Ndelema was arrested in connection to the said murder incidents. It was alleged that the two had a land conflict during that period. In the interrogation, the 1st accused confessed to have hired the other accused persons to kill the victims. On that account, the 2nd, 3rd and 4th accused persons were also arrested. They too confessed to have committed the said crime. It was through those facts the accused persons were arraigned to court for murdering Mayala Ndelema and Nyamizi Mserengeti.

When the information of murder was read over to the accused persons during Plea taking and Preliminary hearing, they all pleaded not guilty to the information. Further, on 1st June, 2023 when the case came up for trial, the charge of murder was reminded to the accused persons who pleaded not guilty thereto.

In discharging the duty of proving the charge against the accused persons, Prosecution side summoned seven witnesses and tendered ten exhibits while the Defense side had a total number of four witnesses who are the Accused persons themselves, with one exhibit to be tendered by the 3rd Accused person.

The evidence of both parties to the case, that is, prosecution and defence side can be summarized as follows:

The 1st witness for Prosecution, one Steven Misalaba Katale testified as PW1. His testimony is to the effect that, in 2019 he was a Village Executive Officer (VEO) for Masengwa village in Shinyanga District. He went ahead stating that, on 1st June, 2019 while at home, he heard an alarm. He responded to it. When he reached the premise, he got the information that, the victims were murdered. He entered into their room and confirmed that they were truly dead. As the 1st victim's brother (1st Accused) was not available at the scene of crime, he decided to question his mother about the incident. The mother said that, the 1st accused person, for some days has been at another village, looking for a place for them to live, as they were intending to shift from Masengwa. PW1 said that, that answer amused the people who had attended the alarm for the reason that one day before the killings incident, at about 1900 hours, the said 1st accused person, was seen in

the same village drinking alcohol with his relative Mayala Charles Maregere, who is the 2nd accused herein. He went further stating that, on 2nd June, 2019 they made follow up of the 1st accused person up to Mayala's residential premise but they managed to find the 1st Accused's wife only. The wife told them that, the 1st accused was at his farm. When she took them to the farm, the said 1st accused was not found. PW1 stated that, on 4th June, 2019 he got the information that, the 1st and 2nd accused persons were arrested at Ziba in Nzega District. He said that, he went there and seized the 1st accused person's phone. PW1 further stated that, upon reading the phone messages, he found it with conversations between the 1st accused instructing one Neema to receive some people and that she should provide them with an axe. PW1 added that, the other messages showed the crime has been executed. When the 1st accused person was asked about those messages, he admitted to have committed the crime. PW1 told the court that, the 1st accused confessed to have planned to kill the second victim as she was a witch, and that the first victim was killed because he would hunt them down after killing his wife, that is why they killed both victims. The 1st accused told them that, the 3rd and 4th accused persons actually went to the scene and killed the victims. Upon the arrest of the 3rd and 4th accused persons, PW1 stated that, they confessed to have been paid by the 1st

Accused to kill the victims and they actually did so. PW1 added that, the 3rd accused person showed them a place where he did put the bush knife which they had used for the killings. He also took them to the dry river where he had hidden his money share, Tsh 400,000/= which was the payment for the killings. PW1 added that, the axe too was found, it was in the cattle hut where the 3rd accused said to have thrown in after the killings. When cross examined, the witness stated that, when he was interrogating the accused persons, the Police Officers were also there.

Ngasa Seni Jiji who testified as PW2 stated that, he lives at Mwasala in Nzega District. He said that, on 2nd June, 2019 he was called at the office of the Ward Executive Officer (WEO) where he met Police who wanted to know about the people whom they had arrested and surrendered to them the a before. He said that those persons were Salawa and Mayala. He narrated that they arrested them at Ziba and took them to Mwasala village where they handled them to WEO for Masengwa, the ward in which Mwasala village is located. He said that the said persons were interrogated on the next day by the WEO for Masengwa. He went on narrating that, the two accused persons, at first denied to have committed the offence till when the 1st accused's phone messages about their participation in killing the assailants were recovered. PW2 said that, from there the 1st accused confessed to have

hired the killers. He mentioned them being the 2nd accused person who then joined the 3rd and 4th accused persons to execute the plan. PW2 went on giving narration of what happened thereafter, which is the same as what PW1 has testified.

Dr. Richard Mwikwabe Okwachi (PW3) testified that, in 2019 he was a Doctor at Shinyanga Referral Hospital. He added that on 1st June, 2019 he together with Police Officers left for Masengwa where two people were alleged to have been murdered. He said that, at the scene he conducted the autopsy for two dead bodies, one male and one female. He said that the bodies had sharp cut wounds on the head, neck and hands. He said that, the cause of death was severe loss of blood following those multiple cut wounds they had sustained. He concluded by saying that he then filled the Post Mortem Reports (PMR) for each victim. He tendered them to court and the same were admitted as Exhibits P1 and P2 for Manyala Ndelema and Nyamizi Mserengeti respectively. When cross examined, PW3 stated that he filled the Post Mortem Reports on 1st June, 2019 but he signed them on 14th June, 2019 because the officer whose office had the stamp was on leave.

A Police Officer No. G 1996 D/CPL Malale testified as PW4. His testimony is to the effect that, on 2019 he was working at Shinyanga Police Station. He said that on 4th June, 2019 he was assigned the duty

of recording the 4th accused person's caution statement at Nzega Police Station. PW4 mentioned the rights he had given to the accused person before he started to record his statement. He then started recording it at 1526 hours and completed at 1610 hours. He prayed to tender the same to court as exhibit but it was objected on the ground of torture. After conducting trial within a trial to find out its reality, the caution statement was admitted as Exhibit P3 while the reasons were reserved till the time for composition of the judgment.

Another witness for prosecution, A/INSP Barnabas Sangarara (PW5) testified that, in 2019 he was working at Shinyanga Police Station in the Criminal Investigation Department (CID). He said that on 1st June, 2019 they went to the scene of crime at Masengwa village. They went with the Doctor who then conducted autopsy for the deceaseds' bodies. He said that before leaving the premise they provided their mobile phone numbers for information. PW5 went ahead stating that, on 4th June, 2019 the Head of CID in Shinyanga District (OC-CID) told him about the arrest of the accused persons. He said that they had to leave for Nzega Police Station where the said suspects were detained. He added that, when they reached thereat, he was assigned the duty of recording the caution statement of the 1st accused person. PW5 mentioned the rights that he had given to the accused person before he

started recording his statements. He then recorded it from 1431 to 16:40 hours. PW5 went on stating that, in the caution statement, the 1st accused confessed to have committed the offence. He prayed to tender the same to court but it was objected on the ground of torture. After trial to find out its reality, the said caution statement was admitted as Exhibit P4 while reasons were reserved till the time for composition of the judgment.

The witness added that, as an Investigator of the case, he was also handled by OC-CID four button phones, Tshs 400,000/= cash, one panga and certificate of seizure for those exhibits. He also said that, he went to the place where an axe was thrown and the same was recovered. He went further stating that, on 6th June, 2019 they went again to Nzega and collected Tshs 400,000/= that the 4th accused said to have paid somebody Masunga for renting a farm. PW5 tendered to court the said panga and axe as exhibits. They were received and admitted as exhibits P5 and P6 respectively. The same witness tendered the seized money, Tsh.800,000/= and the same was admitted as exhibit P7. PW5 also tendered certificates of seizure and the same were admitted as exhibit P8 collectively.

A/INSP MGARE KALOGO who testified as PW6 stated that, he is a Police Officer who in 2019 was attached in the CID Department at

Shinyanga Police Station. He said that, regarding the order of the OC-CID, SP Magambo on 4th June, 2019 they went to Nzega Police Station where there were criminals for murder who had been arrested. He said that, having reached there, he was assigned to take caution statement of Mayala Charles (2nd accused). PW6 said that the Accused admitted to have committed the crime. He mentioned the rights that he had given to the accused person before he started to record his statement. He added that he started recording it at 1532 and completed at 1710 hours. PW6 prayed to tender the same to court but it was objected on the grounds among others, that it was taken under the influence of torture. After the trial to find out its reality, the caution statement was admitted as Exhibit P9 while reasons were reserved till in the judgment. PW6 went on stating that, the accused person confessed to have killed the victims herein in corporation with the other accused persons charged herein for a consideration of Tshs. 1,200,000/= in total for him, 3rd and 4th Accused persons.

A/INSP EDSON testified as PW7. His testimony was to the effect that, in 2019 he was a Police Officer attached in the CID department. He stated that, on 4th June, 2019 he together with other Police Officers went at Nzega to attend the suspects of murder. He said that while at Nzega he was assigned to interrogate the accused one Shija Ngelanija

@ Tembo. PW7 went on stating that, before he started recording, he gave the accused all his rights. He said that in recording, the accused confessed to have participated in killing the victims. PW7 prayed to tender the said Accused's caution statement as exhibit. The prayer was objected, among the grounds that had been raised based on torture. After trial within a trial the same was admitted as Exhibit P10 while the reasons reserved till composition of the judgment. PW7 concluded that, the accused confessed to have participated in killing the victims and mentioned the other accused persons as his accompanies.

On these seven witnesses, as I said earlier, the prosecution case got closed. In terms of the provisions of section 293(2) of the Criminal Procedure Act [Cap. 20 RE 2019] the accused persons were found to have a case to answer. After being addressed in terms of section 293(3) of the Criminal Procedure Act, the accused persons opted to testify themselves on oath. Save for the 3rd accused person who had one exhibit to tender, the other Accused persons had nothing to tender as exhibit.

The 1st Accused Person, Salawa Ndelema testified as DW1. His testimony is to the effect that since 27th May, 2019 he was at Ziba in Nzega District within Tabora Region. He said that he had gone to take

cattle for Masengwa in Shinyanga. He went ahead saying that, on 3rd June, 2019 he was arrested by the militiamen for not paying debt for the loan that he had taken from the Sungusungu Saccos. He said that while under custody of Militia, surprisingly, the Village Executive Officer (VEO) for Masengwa arrived and informed him that he was suspected to have killed the victims. He said that, from there his custody was changed as the Police Officers from Nzega arrived and took him to the Nzega Police Station. He stated that he denied the allegations and added that, on 5th June, 2019 the Police Officers from Shinyanga arrived and started to interrogate him. He added that, during the interrogation, he also denied to have committed the offence. He alleged that his denial led the police to start torturing him by beats.

Concerning the caution statement, he stated that, he does not know the same as he was just made to only sign it. He further stated that, he knows Neema Simon but he never instructed her to take the axe to anybody. As well the said accused person denied to have known prior, the rest of the accused persons. When cross examined, he said that, he had no conflict with the victims and that, he did not attend the funeral as he had no knowledge of the incident till when he was arrested. However, he agreed on the signature appearing on the caution

statement as his, but he contended that the same was put under coercion.

The 2nd Accused, Mayala Charles Magele who testified as DW2 stated that, he was arrested on 4th June, 2019 at the WEO's office for Mwasala. He said that, at first, he was needed at the WEO's office regarding the allegations that he had not taken his cattle for vaccination. He said that, later on the Police Officers arrived and took him to Nzega Police Station whereby the allegations for murder were advanced to him. He said that, he denied the said allegations, the thing which led torture to start against him. DW2 however, denied to have neither participated to commit murder nor to mention the rest of the accused persons. He denied also to have confessed killing of the victims. When cross examined, he stated that, on 31st May, 2019 he was at his home with his wife and children but he couldn't call them as a witness for him.

The 3rd Accused person, Shija Ngelanija Tembo (DW3) testified that, on the night of 31st May, 2019 he was at his home. He was arrested on 4th June, 2019 while attending the alarm at Mwasala Centre, a place where the WEO's office is located. He said that he is among the sungusungu militia for the village. He added that, he was there till when the suspects who by that time were under their custody were handled to

Police Officers. He went on stating that, he was also arrested later, following being mentioned by the arrested suspects. He added that, he together with those other suspects were then taken to Nzega Police Station. He said that, thereat he was interrogated on the murder incident, after which he was beaten following his denial to commit the same. The witness (DW3) further stated that, due to torture that had been inflicted to him, he became unconscious. When he woke up, he was forced to sign the papers that he did not know their contents. He also denied to have been found with money and that the signature seen in the documents involving those monies were not made by him as he does not know to read and write. He only came to know it, reading and writing while in remand for this case. He prayed to tender as exhibit his exercise book that he uses for primary studies at the Remand/Prison house. It was received and admitted as exhibit D1. During cross examination DW3 stated that, he never led the Police to the discovery of the money that were tendered to court as exhibit.

Emmanuel Manoni (DW4) who is the 4th Accused person testified to the effect that, on 3rd June, 2019 he was at home and responded the alarm "Mwano" at the Mwasala village Centre on this murder incident. Thereat, they were told that, there were suspects of murder incidents

that had happened, one was at Mwasala, one at Masengwa and the other ones were at Ziba. He added that, he together with other 7 (seven) people were sent to Ziba to take the suspects. He said further that, they managed to return with those suspects from Ziba. DW4 said that when they were interrogated, those persons denied to have committed the crime. He added that, on the next day he sought for leave and went to his farm. He went further stating that, while at farm during the day time on that next date, he saw Police Officers and other people who went to arrest him. He was informed to have participated in the commission of murder of the victims. He denied the same, the thing which led him to be tortured through beats by those Police Officers. He added that, he was then forced to sign the papers of which he did not know their contents. He stated that, he was joined in this case because he was chosen a leader of the people who went to collect the murder suspects at Ziba.

That marked the end of both parties' evidence. In view of the above evidence, the following issues call for determination: -

1. Whether the victims met unnatural death (if yes),
2. Whether the accused persons are responsible for the death of the victims (if yes),

3. Whether the accused persons with intention/malice aforethought killed the victims.

Concerning the first issue, whether the victims met unnatural death, firstly, from both sides' testimonies, it is not in dispute that Manyala Ndelema and Nyamizi Mserengeti are dead. According to the Post Mortem Reports which have been admitted to court as Exhibits P1 and P2 the cause of the death of Manyala Ndelema was severe bleeding due to the deep multiple cut wounds on the head, neck and fore arm and for Nyamizi Mserengeti it is severe bleeding due to the multiple deep cut wounds. This evidence has been cemented with the testimony of PW3, the Doctor who conducted autopsy for the victims' bodies.

Such multiple deep cut wounds found on the victims' bodies prove that, the victims met unnatural death. As there is no evidence disapproving this fact, I find no need of dwelling much on this issue. It is therefore positively answered that, the deceased persons, Manyala Ndelema and Nyamizi Mserengeti met unnatural death.

Concerning the second issue as to whether the accused persons are responsible for the killing of the victims, the prosecution side depends on confessions done by all accused persons and the circumstantial evidence.

The prosecution evidence through the testimonies of PW1 and PW2 show that, the accused persons confessed orally before them. Their testimonies are to the effect that, when the 1st and 2nd accused persons were under arrest, they first denied to have committed the offence. However, after the 1st accused person's phone being opened, the messages associated with murder incident were discovered. It is when he orally confessed to have hired the rest accused persons for a consideration of Tshs. 1,200,000/= to kill the victims herein. The said 1st Accused did so regarding the conflict that he had with the victims. The evidence shows that, the 1st accused had a land conflict with the 1st victim (Manyala Ndelema) who was his brother and blamed the second victim (Nyamizi Mserengeti) for witching him.

I am alive with the principle of law concerning oral confession as it was stated in the case of **Boniphas Methew Malyango @ Shetani Hana Huruma & Another V. Republic, Criminal Appeal No. 358 of 2018 [2020] TZCA 314 (18 June 2020)** where the Court of Appeal referred its holding to the case of **Tumaini Daud Ikera V. R, Criminal Appeal No. 158 of 2009** in which it stated; -

"we reiterated that oral confessions of guilt are admissible and can be acted upon, but we also

emphasized that great caution is required before courts rely on oral confession to convict. Admissibility of oral confession does not automatically mean this genre of evidence carries sufficient weight to convict. Even where the court is satisfied that an accused person made an oral confession, the court must take an extra distance to determine whether the oral confession is voluntary”

In connection with the above quoted position of the law, the issue is whether the said oral confessions were voluntarily taken from the 1st accused person.

The answer is not far to fetch. Firstly, it should be born in mind that PW1 is a VEO of the area. Such administrative officer of the Government cannot have a conflict of interest whatsoever, rather than being a Government leader of the area. On those circumstances, it is difficulty for him to compel the accused person to confess, while he knows that the act would cause the real offender be at large and affect the innocent one.

Further, confession by the 1st accused led to the arrest of the rest of the accused persons. The evidence shows that, those who actually

went to execute the killing at the victims' house were three in number who divided their pay in equal share of Tshs. 400,000/= each.

The testimony by PW1 shows that, after being arrested, the 3rd accused person confessed and led people to the discovery of his share of Tshs. 400,000/= which he had hidden under the sand of the dry river floor. The same applies to the arrest of the 4th accused. He also confessed and led the police to arrest the person whom the said 4th Accused had paid the whole of his share amounting Tshs. 400,000/= for renting a farm. To the surprise, the same amount of money, Tshs. 400,000/= were actually recovered from that said person. This situation implies therefore that, the 3rd and 4th accused persons' shares for executing the killing were recovered following the confession that the 1st accused had made before PW1 which led to their arrest.

The list of discovered things does not end up to the amount of money that the killers had distributed among themselves as their considerations for the killings. The confession that the 1st accused had done did not only enable the arrest of the rest accused persons, but also led to the discovery of the new "panga", and the axe which was thrown into the cows hut, after they had been used in the killing of the victims.

With the above endeavors, I am firm that, the oral confession that was done before PW1 by the 1st accused person was true and voluntarily made, that is why the same led to the discovery of the material objects which have connections with the murder crimes in question.

However, in our jurisprudence, whenever confession leads to the discovery of material things connected to the crime is relevant. Such confession is taken to be true. See, **Mboje Mawe & Three others V. Republic, Criminal Appeal No. 86 of 2010 [2011] TZCA 136 (29 June 2011).**

Remaining on the same point of confessions, the prosecutions side depends on the confessions done by all the 1st, 2nd, 3rd and 4th accused persons in their caution statements, which were admitted to court as exhibits P3, P4, P9 and P10 respectively.

Though the accused persons alleged to have been tortured and signed the caution statements without knowing what had been written there in, during trial this court had the doubts on the truthfulness of the allegations, hence admitted them as exhibits and reserved the reasons till the time for composition of the judgment. Here now are the reasons on their reliabilities to the matter at hand.

I am alive with the position of law as stipulated in the case of **Ndorosi Kudekei V. The Republic, Criminal Appeal No. 318 of 2016, CAT at Arusha**, (unreported) that;

"A trial Court should accept any confession which has been retracted or repudiated or both the retracted and repudiated caution and must before founding a conviction on such a confession be fully satisfied in all circumstances of the case that, the confession is true."

In my view the accused persons caution statements were true confessions. The following are the reason behind;

Firstly, as alluded earlier, the confessions led to the discovery of material objects that are connected with the murder of the victims. The circumstances that the alleged amount of money that each of the killer was given, is the same amount that the third and the forth accuseds were found holding/possessing, does not come into coincidence for no reason, but it is because the accused persons truly participated in the commission of the crime. Thus their caution statements are true confessions.

Secondly, when you go through the caution statements, though they were all recorded by different Police Officers, still they resemble in almost all aspects in relation to the *modus operandi*. They all speak the same in preparation to commit the offence, the way they bought "panga" and sharpened it, the way they acquired the axe, the way they traveled to the scene of crime and back, the way they broke the door and executed the killing, the place and amount of money they distributed to each other as their shares after the execution of the crime. These aspects, as to mention a few, plus the other pieces of information like personal particulars of the accused persons, which are found in those caution statements show that no any other person would have been able to speak as such and in detail, if he did not participate in the said killings. In **Luhuye V. Republic, [1994] TLR 181** at page 185 the court of appeal while resolving the same kind of issue had this to say: -

"With respect to the learned judge we agree with his finding that appellant's cautioned statement to the police was so detailed, elaborative and thorough that no other person could have made the statement but the appellant. His caution statement to the effect that he decided to attack the deceased with a panga and a

stick on the head after he was told by witch doctors that it was the deceased who had made him (appellant) impotent by means of a witchcraft was so personal that no other person would have such information"

On account of the above discussion and the quoted principle of law from the cited case of **Luhuye** (supra), I am firm that, what is contained in the accused persons' caution statements is the true information that has been voluntarily given by the accused persons themselves while confessing before the Police Officers separately. That holding, defeats accused persons' defenses that, they all signed the caution statements involuntarily and without their knowledge of what were the documents' contents.

On the defense by the 1st accused that, he did not hire people to kill the victims herein and that he did not attend the funeral as he had no knowledge of the deaths, it does not exonerate him from this case. This is because, in connection to the discussions on the caution statements above, I am not convinced that, the accused who had a phone as testified by PW1, could not have the knowledge of his brother's death till when he was arrested after the period of four days being passed.

As for the second accused person, he defended that on the night of the incident date he was at his home. Though he stated that he had a wife and children yet he could not bring any person to prove his assertion. This defense too defeats itself. Though the accused does not have to prove his innocence, yet his defense must be true and convincing that it is true. As such, the said 2nd Accused person to prove his presence at home on the material date was of importance.

Concerning the third accused person's defense that, he participated in putting under custody the other accused persons, then he was told that he was himself mentioned by the same accused persons and arrested, my view is that, the alarm (mwano) is what made him to participate at a place where the rest of the accused persons were held under custody, and, as for this act, any persons could ever do so, especially if that person wants to disguise people that he is not among the killers. If this kind of defense meant that the third accused was mentioned to have been among the killers because he put the rest of the accused persons under custody, this court would expect not him alone to have been arrested, as he was not the only person who had participated in arresting and putting the other suspects under custody.

Further, prosecution evidence shows that, the third accused person led the police to the discovery of his killing wage/consideration,

Tsh. 400,000/= which he had hidden under the dry river base sand. Under normal circumstances one cannot hide his legally owned money under the dry river floor sand. Circumstantially, this act proves that the third accused person acquired the said money illegally, that is why he had hidden the same under that said place.

The fourth accused person defended that, he was mentioned as among the killers because he was sent as Commander In-Charge to take the 1st and 2nd accused persons under custody. Actually, the evidence transpire that he was the Commander In-Charge when he went to take the suspects of crime being with other 7 (seven) people. But, under that circumstances even the remaining whom he had gone with to take those accused persons, would also be implicated.

In connection to what I have endeavored to explain in discounting the accused persons' defense, the elaborative and detailed confessions of the accused persons found in their respective caution statements, and the confessions that led to the discovery of material things which are connected to the murder in question, I find it that, all accused persons are responsible for the killings of the victims Manyala Ndelema and Nyamizi Mserengeti.

Concerning the last issue, whether the accused persons killed the victims with malice aforethought. This issue tends to prove whether the accused persons are guilty of Murder or Manslaughter.

In the case of **Enock Kipela v. Republic, Criminal Appeal No. 15 of 1994, CA** (unreported), the law is settled that, in establishing the intention to kill, courts should take into account the following factors, among other things:

"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 or blows were directed at or inflicted in; 4. the number of blows, although one blow may, depending upon the facts of the particular case, be sufficient for this purpose; 5. the kind of injuries inflicted; 6. the attacker's utterances, if any, made before, during or after the killing; and 7. the conduct of the attacker before and after the killing"

The evidence on record clearly tells it that, the accused persons used deadly weapons namely, "panga" and axe. More abominably, they inflicted blows on critical parts of the victims' bodies which include head

and neck. This was the observation and testimony of PW3, the Doctor who conducted Post Mortem for the deceased bodies. It follows therefore that, inflicting a fatal blow on the head and neck of a person, which are vulnerable parts of the human body, by using a sharp and heavy object like axe and/or panga shows that the accused persons had the intention to kill the victim(s).

On that account, I am of the considered view that, the prosecution side has proved its case at the required standard, that is, beyond all reasonable doubts. In the results, I find all accused persons herein guilty of Murder. Consequently **I hereby convict them for Murder**, contrary to sections 196 and 197 of the Penal Code as charged.




S.M. KULITA
JUDGE
21/09/2023