



THE JUDICIARY OF TANZANIA
IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA
(CORAM: HON. AUGUSTINE RWIZILE)

MURDER NO. 000038612 OF 2023

REPUBLIC COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

DAVID S/O JUMA RESPONDENT / DEFENDANT

JUDGMENT

Fly Notes

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Facts

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Ratio Decidendi

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7th of June 2024

Hon. RWIZILE.:

In this murder trial, David Juma is accused of killing one Ntiyagala Bandiko. It has been alleged that on 9th March 2023 at Chekenya village of Kasulu District in Kigoma region, the accused who was an ex-husband of Angelina Nashon, went to her house at night. He found the said Ntiyagala Bandiko having sex with Angelina Nashon. By using a knife, he stabbed him twice in the back. Ntiyagala who was half naked, because he had taken off his pair of trousers when doing sex, managed to run away but did not go far. He fell down, lost too much blood and then died.

The accused was later that night arrested. He was taken to village offices and then to the police station. Investigation was mounted and it was found that it was indeed the accused person who committed the offence. He was charged of one count of murder contrary to sections 196 and 197 of the Penal Code. Before this court, the accused who was in the services of Mecktilda Mpeta learned advocate denied the charges.

It was the prosecution led by Ms Happiness Mayunga and Edith Mauya learned State Attorneys who called 6 witnesses to prove the charges leveled against the accused. The prosecution witnesses were Jafari Nawabu, Magdalane Kilibase, Julius Charles Yampanye, WP 8210 DC Lizaligomba, Angelina Nashon and G7629 D/c Amos, who for the sake of convenience to be referred herein as Pw1, Pw2, Pw3, Pw4, Pw5 and Pw6,



respectively.

At the trial, the prosecution tendered, apart from witnesses, two exhibits namely, an autopsy report and a rough sketch drawn at the crime scene, all admitted as P1 and P2 respectively. In its efforts, the prosecution endeavored although unsuccessfully to tender the accused's statement on caution. This is because the objection raised by Mecktilda Mpeta defence counsel, when Pw6 was tendering it, was sustained after an inquiry into its voluntariness and whether it complied with the law. I sustained the objection but reserved the reasons for doing so, which I have to give now before delving into the merits of this case.

At the inquiry, two prosecution witnesses were tendered. Angelina Nashon (IPW1) testified first and said that, at about 11.30pm on 9th March 2023, village leaders came to her house and arrested her. She was taken to the village office and the accused was brought there as well. At about 1.00 am to 2.00am a police officer called Amos (IPw2) came. They were both taken to Kasulu police station where they arrived at about 4.00am.

IPw2, DC Amos alleged to have recorded the statement of the accused on caution at 7:30 am to 8:30 am at the police station where the accused admitted having committed the said offence. As to how, and when the accused was brought to the lock-up, he said, he was aided through the detention register.

On his part, the accused said, they arrived at Kasulu at 1.00 am and were remand, beaten and his statement was recorded at about 5.00pm.

From their evidence, it means two things were at issue. One when was the accused arrested and arrived at the police station and when the statement was recorded. The objection was clear that the statement was recorded after 4 hours assigned to do so in terms of section 50(1) (a) of the CPA. And two, if there was such conducive environment for the accused to confess voluntarily in terms of section 27 of the Evidence Act. The prosecution was therefore under obligation to prove that the statement complied with the law (section 27(2) of the Act.

In the first place, the prosecution had to prove that the statement was recorded in time. There is no evidence to prove so. It was not enough to simply say as IPw1 said that he witnessed the accused brought to the office of the village executive and to the police. The prosecution had for instance to tender the detention register. As far as I know, the detention register, records particulars of the accused, the time he arrived at the police station and the state he was in. It records the movement at all times the accused is removed and brought back to the police cell. This could have not only solved one problem of when he was brought to it, but also how he was in terms of physical appearance.

Therefore, the second point that the accused was tortured could also be cleared by the records or at least evidence of an independent witness apart from IPw1 who did not say anything in relation to whether or not the accused was tortured. It is for those bases that I held the statement inadmissible and rejected it.

Having done the first crucial part of this judgement, it is now pertinent to get into the merits of the case. As intimated before, the prosecution tendered 6 witnesses. It is clear from the evidence that Pw1 conducted a post-mortem examination and filed a report. It is exhibit P1. According to him, death occurred due to loss of too much blood caused by two stab wounds on the back. Therefore, undisputed as it is, the deceased died unnatural



death due to wounds on the back caused by a sharp object.

The next question would be who caused the wounds. Pw3 told the court that they were told by Pw5 that it is the accused who committed the offence. This, according to Pw3 was after they followed stains of blood from where the deceased was found in a pool of blood helpless, to the house of Pw5. This means the crucial evidence that sheds some light on what happened is from Pw5. She testified that, on that fateful night, the deceased approached her for marriage because she had been alone/single for months. She denied the offer, even though she was promised to be assisted to take care of her children. The deceased did not end there, he asked for sex.

Because she had had sex many months before, she accepted but agreed that because children were in sleeping should not be disturbed and so went to the backyard where they started quenching their thirsty.

She said, no sooner had they started, than the accused appeared with a knife and stabbed the deceased on the back. The deceased jumped from her and ran away. The accused also caught her and started fighting. She was stabbed as well, on the right thigh and also started bleeding profusely. She thereafter ran away and hid in the bushes close to the house.

When the dust settled, she came back to her house and found her children sleeping and joined them until when the village leader, Pw3 came at the same night with other people and took her to the village office and then to the police station with the accused.

It can be therefore gathered from Pw5 that it is the accused who committed the offence. Being the only witness who alleged witnessed the killing, her evidence should be perfectly mirrored to clear doubts. She said, the offence was committed at night and in the backyard. She said, there was light of the solar which aided her see the accused with perfection. This court therefore is of the opinion that when the offence is committed at night, the witness must clearly describe the amount of light which aided her make a perfect identification. It was her evidence that there was the solar light of five wats. However, this evidence is not supported in any case. Pw3 who went to the crime scene moments light said, they were using light of their mobile phones to locate blood stains at the backyard of the house of Pw5. Even when cross-examined, Pw3 said at the house of the deceased, there was no such light.

Pw4 is the police officer and among the people who also went to the crime scene. She said, she is an experienced investigator and conversant with crime scene investigation. She drew a rough sketch map of the crime scene exhibit P2. She said, she was told that at the crime scene, there was a solar light. Upon going through her evidence, it would appear Pw4 did not know the relevance of crime scene sketches and crime scene investigation as whole.

It is cardinal principle that justice should not only be done but should manifestly and undoubtedly be seen to be done. However, for this to happen, investigators need to be properly guided in their efforts to dispense justice, because investigation is an essential element of resolving crime; prosecutors and courts cannot do without proper investigation. Investigators at work, must be mindful of the fact that investigating an individual alleged to commit a crime requires seriousness and rational decisions in order to uphold fairness.



The investigator having known that the offence was committed at night in a given situation had to assist collect evidence at the crime scene and make a reflected in the sketch on how possible Pw5 identified the assailant. There is nothing in the sketch that shows the distance from the wall of the house where light was located. She, I think, had to show, if there was a bulb and how big/small or it was a tube light. She had to demonstrate that in her evidence to clear doubts as to whether there was light and indeed how could that have helped in proper identification of the assailant. She had to locate, the surrounding premises to clear the doubt if, Pw5 and the deceased could be seen doing sex from a distance or not. Leaving the house, where there is light and going outside, were they also intending to expose themselves to where there is light or at least in a place with darkness. Her evidence therefore did not have something to do with light. She only relied on the information from Pw5 which as I have said needs to be backed by other evidence.

Pw6 was with Pw4 and Pw5, they are all said to have drawn the sketch which materially does not aid any support on the amount of light or rather give this court a full picture of the surrounding premises. Pw3 said, there was no light at the house of Pw5. Pw3 was cross-examined, he said there was no light over there but used the touches. The evidence of Pw3 totally contradicts Pw5. When cross-examined by the defence counsel, Pw5 said she left the lights on after the crime, how come then, light was not found on, by Pw3. She told the court when examined in chief that, when they came, meaning Pw3 and others, she used her touch to light at them and it is because when they came, she put off the solar light. This conflict of her evidence on whether there was light and the amount of it, is material and ought to be cleared by the prosecution.

Another important evidence is what transpired as Pw3 came to her house. It was the evidence of Pw3 that, Pw5 told them that it is the accused who committed the offence. I have perused again and again, the evidence of Pw5, she is not recorded anywhere to have said she told them, it is the accused who committed the offence. In other words, this statement only came from Pw3. Pw5, did not say, when they came to her house, she told them, it is the accused who committed the offence.

It is noted with concern that in her evidence, Pw5 said, the accused stabbed her on the right thigh and was bleeding profusely to the extent of losing energy to shout for help and that she could not go to the village leaders to report. This evidence was first heard in court. No prosecution witness apart from her, who said, Pw5 was in that situation. How was she treated and when was that done, it remains her own version of evidence not supported by any other person. I take her a material witness with evidence posing material contradictions.

It is plain to me, the material evidence brought by the prosecution, does not support the hypothesis that it is the accused, and only the accused who committed the offence. In sum, the prosecution, it is held, has failed to prove the case beyond reasonable doubt. The accused is therefore acquitted.

Dated at KIGOMA ZONE this 7th of June 2024.





AUGUSTINE RWIZILE
JUDGE OF THE HIGH COURT

