

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB-REGISTRY)

AT DAR ES SALAAM

CRIMINAL SESSIONS CASE NO. 145 OF 2022

THE REPUBLIC

VERSUS

- 1. FLEX HUMPHREY MOSHI @BABA ENJO1ST ACCUSED**
- 2. FELICIAN SABAS @ SHAO2ND ACCUSED**
- 3. GILBERT SABAS SHAO.....3RD ACCUSED**
- 4. BARAKA SABAS SHAO@ BARAKA.....4TH ACCUSED**

RULING ON CASE TO ANSWER

12th & 12th March, 2024

MWANGA, J.

The above-named accused persons were charged with Manslaughter contrary to Sections 195 and 198 of the Penal Code, Cap.16 [R.E 2022]. The facts can be stated that, on the 1st day of September 2021, in the Mgongelwa area within Kibaha District in Coast Region, the accused persons murdered one **SHAURI THOMAS @SAUTI YA ZEGE**.

During the hearing, the prosecution produced seven witnesses. PW1 was **Praxeda Atieno Ogweyo**, a medical doctor with PhD in Pathology at

Muhimbili National Hospital. She examined the body of the deceased and her report revealed that the cause of death was due to Traumatic brain injury, entailing that there was blood clotting in the layer covering the brain and the skull. Another witness was **Gilbert Thomas Butanda** (PW2), the brother of the deceased. He told the court that, on the day of the incident after the deceased health conditions deteriorated, he was called via the mobile phone to come to the deceased's home. After he arrived, the deceased complained about a serious headache and was not able to speak. The deceased told him that he was beaten up by the accused persons before the court namely Shayo, baba Enjo, Gill, and Baraka. Then, they took him to Mwendapole Police Station where they were given PF3, and later to the Tumbi Hospital for further treatment. But he could not produce PF3 as evidence. When cross-examined, he informed the court that he was not present at the scene of the crime during the incident.

Later, on further cross-examination, he responded that the deceased was seriously sick but could speak a bit. When the question of residence of the deceased arose, he was able to tell the court that he was living at Tanita-Kibaha and not in other areas. PW3 was **Habiba Omary, the** uncle of the deceased. She narrated the same stories as PW2. She accompanied the

deceased together with PW2, son of the deceased, Juma Kurwa, and Gilbert to Mwendapole at Health Center and later to Tumbi Hospital. She insisted that the deceased told them that, the accused persons were the ones who beat him. On cross-examination, she said no descriptions of the accused persons were given by the deceased.

Further more, PW4 was **G 1048, D/Sergeant Oscar**. He investigated the case. He told the court that, the accused persons were arrested on 3rd December 2021. He visited the crime scene and drew a sketch map of the scene of the crime which was admitted in court as exhibit PE2. According to him, the sketch map of the crime scene was drawn with the assistance of a person who was not even at the scene of the crime when the incident occurred. His investigation revealed that the accused persons admitted to having known the incident of the death of the deceased but refused to have killed the deceased. Again, he received information about the death of the deceased from the relatives of the deceased, PW5-joyce (CRO officer to whom the incident was reported and issued PF3 to the deceased. At some point, he said he was informed by the informers that the accused person was responsible for the death of the deceased. PW5-joyce never produced

the PF3 in court. This witness also was told the names of the accused persons but she never said if there were descriptions of the accused persons.

PW6 was **(H7108 D.CPL Emanuel**. He only took the deceased body from Tumbi Hospital to Muhimbili National Hospital for examination and back to Tumbi Hospital. Lastly, he handed over the deceased's body to the relatives for burial. The last witness was PW7-Glory, the husband of the first accused person. She was at the scene of the crime and told the court that on the date of the incident, there was fighting. And it was the deceased who attacked her customer in the name of DEO. According to her, the deceased hit the said DEO with the bottle of beer in his head. Abruptly, the 2nd, 3rd, and 4th, accused persons intervened in the fighting and proceeded to fight with the deceased. However, PW7 was not able to tell the court the person who struck the deceased on the head and with which object. PW7 only showed that the deceased was so much drunk. What was quite devastating in the prosecution case is that the incident occurred during the night and there were **dim lights**. The law is settled that, the intensity of the light is important in identifying the suspects.

Throughout the trial, the prosecution tendered two exhibits only which are a Post-mortem Examination Report (**PE2**) and a **sketch** map of the scene of the crime (**PE2**).

After the conclusion of the trial, the duty of this court was whether the accused persons had the case to answer or not, before allowing them to enter their defense, if any.

For the accused persons to have a case to answer, it must be shown that a prima facie case has been established. A prima facie case, as known to the law, is a cause of action or defense sufficiently established by a party's evidence to justify a verdict in his or her favor, provided the other party does not rebut such evidence.

The principle is enunciated also in the case of **Dpp Vs Peter Kibatata**, Criminal Appeal No. 4 of 2015 (CAT-Unreported) where the court held that what essentially the court looks at is **prima facie evidence** for the prosecution is, unless controverted, the evidence would be sufficient to establish the elements of the offense. The court went further stating that;

*"What is meant by prima facie case has been, with lucidity, elaborated. and articulated in the case of **Ramanlal Trambaklal Bhatt vs***

Republic [1957] EA 332-335, where it was stated that:-
"Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt| we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one, which on full consideration, might be thought sufficient to sustain a conviction. This is perilously near, suggesting that the court will fill the gaps in the prosecution case. Nor can we agree that whether there is a case to answer depends only on whether there is some evidence, irrespective of its credibility or weight, sufficient to put the accused in his defense. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence. It may not be easy to define what is meant by prima facie. Still, at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defense." (Emphasis added)

Given the standard set by law, I have carefully analyzed the evidence of the prosecution and found out that there is no doubt that **Shauri Thomas**

@ **Sauti ya Zege** is dead. The evidence PW1-Medical Doctor, PW2, and PW3 who are relatives of the deceased have spoken out. However, what is in doubt is who killed the deceased. PW2, PW3, and PW4 gave hearsay testimonies that they were told by the deceased that it was the accused persons who had beaten him. How he was beaten and the object has not been stated by any of the prosecution witnesses including the investigator of the case.

More so, there was a contradiction from even the members of the family whereabouts the residence of the deceased. PW2 told the court that the deceased resided at Tanita while PW3 told the court that the deceased lived at Mapene whereas the chargesheet shows that the deceased was residing at the Mwendapole area. In my view, such contradictions though may be not fatal but it leaves a lot to be desired, taking into account that the testimonies are coming from the close relatives of the deceased who met the accused after the incident, and took him to the police and Hospital thereafter.

Both prosecution witnesses testified that there were no descriptions of the accused persons given by the deceased after meeting them at the police and Hospital. Again, PW7 also did not identify the accused persons. Failure

to give descriptions raises the question of how the accused persons who were not known to PW2, PW3 PW4, and PW5 were arrested.

Also, the prosecution witnesses have failed to connect the accused persons with the offense charged. PW1, PW2, PW3, PW4, PW5, and PW6 were not at the scene of crime. They gave the hearsay evidence. Even PW7 who was at the scene of the crime told the court that on the date of the incident, there was fighting which took place in the presence of the dim lights. And she could not identify the accused persons by their physical appearance. She could also not even see the object that the deceased was struck with on the head to connect such evidence and the testimonies of the Medical Doctor (PW1) who told the court that, the deceased was struck with a heavy object on the head.

Moreover, the prosecution could not state whereabouts the said DEO which was fighting with the deceased in the first instance. The law is settled that, the extent of the light is important in identifying the suspects if the offence was committed in the night.

The investigator also relied on the evidence of Joyce (PW5-CRO). According to Joyce, the deceased only reported the incident that he was

beaten by six people but only mentioned **Baba Enjo, baraka, shayo, and Gill**. She gave the deceased PF3. No descriptions were given of the appearance of the accused persons.

After reviewing the evidence produced by the prosecution, I am confident that a prima facie case has not been made out. Prosecution witnesses gave hearsay evidence. Even the CRO or relatives whom met the deceased could not give descriptions of the accused persons so as to lead their arrest. Henceforth there is nothing produced by the prosecution to connect the accused persons with the offence charged with.

Given the above findings and analysis, the trial court is enjoined to find that both accused Have No Case to Answer; and therefore, are acquitted on the charge of manslaughter.

Order accordingly.



A handwritten signature in blue ink, appearing to read 'H. R. Mwanga', is centered at the top of the page.

H. R. MWANGA

JUDGE

12/03/2024