

TANZANIA / JUDGMENT

19710929 TZHC Singida

COURT
TZHCDECIDED
29 September 1971

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4 IN THE HIGH COUIT Oi 10A1ZAiIA AT Shi'TGIDA 1 •t ORIGINAL JUfIIS:1C...?ION (Daroes_Salaam iegitry) CIfI'iIJL 553IQr5 CASE NO. 95 OF 1971. The Republic versus - , • SELZMANI 5/0 HUSSEIN MNZA7AS J.- The accused Seleman Hussein stands charged with murder c/s 19.6 of the Penal code.. The prosécuti±ion alleges that on or about the I 2th day of November 1970, the accused murdered one Nariarnu d/o Makiya. The accused denied hating committed the alleged offence. On the morning of 12/11/70 the deceased left her house with a load of fi.'ewood which she carried to her friend one, Nbaki. From 1"baki's place she proceeded to one bita d/o Ntandu. (PW4) whore she wont to collect her artherware po From hoce Si'O left accom nied Trih Sio to one, Ronahani home—stead to drink pomb., According to the evidence of Sita (PW4) the two drank pombe up to about 11 a.m. when the deceased left leaving her there. The deceased did not reach lions that day. Her husband, Nohamed Lida •(Pv14) thoight that she would turn up in the evening but she did not. turn up Mohamed was no particularly worried about his .rifo 's absence as he took ;. granted that she had spent the night at her friend, n ext day, there was no sii of the deceased. Mohamed decided to visit Mbaki I house where, he inquired about her. hore he was told t at the decoasod had been there the day before and left towards her house. He visited Ramacihani's house and was given the saie story. He ...arao back home and sent his on—in-law Juananne (P12) to look for her at the home of her relatives. According to Jumanne's evidence on 1 4/11 /70 he went to look for her at her relatives place. ho relatives of the deceased told him that the deceased had i.ot been there. As he was coming bad: home he saw pieces of broken arthenware ot as well as pieces of Miard., These aroused his suspicion, he inspected the • surrounding area and he .ioimd a body which he 1denGJ1ea as that of the deceased in a ditch.

- . . . , -2- .. He reported his finding to iioha.ed, and after an alarm villagers went to. the scene. The acc .sod is one of the people who visited the scene:. The prosecation argued that it s the accused who way-laid and attacked the deceased to death. To prove the case againt the accused the xecsecution brouglit evidence to show accused's movements on the day tile decoesed met her death0 Jvidence was also led to show that the accused believed the deceased to be a uitc and that she was responsible for the death of his child. Shaban (P3) and 3jte. (PI4) told the court that the accused was at Ramadhani 'S house drinking pombe at about the same time the deceased wasthore. It is not clear from these two wItneSs who between the deceased and the accused left thepoLibe-shop earlier. In his examination in chief Shaban (Th13) said that the deceased arrived at tue pombe- shop at about 11 a.m. and

that she found the accused there. When cross-examined by the learned defence Counsel he changed his story - now he said the accused had left until the deceased arrived at the poube-shop. Sita on the other hand was sure that the deceased left the poube-shop before her, so to what time the accused left in relation to the deceased she was not sure. All she could tell the court is that when she herself left the poube-shop the accused was not there. As to the alleged bad blood between the accused and the deceased, Shabani (PW3) who is the cell-leader of the area testified to the court that the accused on a number of occasions complained to him that the deceased was a witch. According to his testimony the accused once told him that the deceased had been after his life since childhood. He further related to the court that on another occasion the accused also complained to him that the deceased was responsible for the death of his (accused's) child. Noheemaod, the husband of the deceased told the court that one day the deceased complained to her that she had greeted the accused but the accused refused to respond. According to his evidence he promised his wife that he was going to ask the accused why he was behaving rudely to her but that before he had time to ask the accused the deceased disappeared. The court was also told that one day when Noheemaod was on Safari the accused quarrelled with the deceased and the deceased left the matrimonial home to her parents. Local elders heard their quarrel and the two were reconciled but that from that time the deceased and her husband Noheemaod ceased to live in the same area. Although the two families continued herding their cattle together in the area, there was also the testimony of Jumanne: (22) that at the scene of the crime were found two pieces of flannel whose colour was similar to a flannel the accused used to wear. This is the evidence the 2, the Public relied in support of the charge against the accused. The accused in his unsound statement does not deny visiting Noheemaod's place on the material day. He however says that he visited Noheemaod's place in the morning and drank some pombe before he went to look for his goat which was missing from his flock. He said he looked for the goat in vain and that when he was going home he again passed at Noheemaod's home and drank more pombe. According to his statement he left Noheemaod's place slightly drunk and went to herd cattle as if it was his flock. He said he took over charge of the cattle from Noheemaod at about 1.40pm. The accused also told court that he saw the deceased at Noheemaod's place and that he left her there drinking pombe. S., -----

- 1 - U The accused also admitted that pieces of flannel resembling his flannel were found in the vicinity of deceased's body but denied the allegation that they were pieces from his flannel. He also in his defence said that there was a black piece of cloth at the scene but that this piece of cloth was not taken from the scene. After summing up to the assessors one of the assessors was of the opinion that there is sufficient evidence implicating the accused with the offence. He therefore found him guilty of murder. The other assessor was of the view that although there was strong suspicion that the accused killed the deceased he was not satisfied that the evidence against him was strong enough to implicate him with the offence. He found the accused not guilty of murder. In this case there can be no doubt whatsoever that the circumstances in which the body of the deceased was found support the conclusion that the deceased met her death by violence applied through human agency. The

vital question to be decided however is who -€hcr the accused is the person who fatally attacked the deceased. The posscution case is completely based on circumstantial evidence. The court has been told that the accused wished the death of the deceased because he strongly believed that the deceased was a witch and that she was responsible for the death of his son. This evidence may well be true, irnowing as I do, that belief in iltchcraft is extremely common among tile Janyat1)-ru. The prosecution went further and brought evidence to show that the accused in fuJ'ilhis desires he way—laid the deceased and attacked her with a billhook to death. There is no direct evidence to show that the accused attacked the deceased. The prosecution relied on a piece of flannel which was found near deceased body and which was of the same colour as accused's flannel and told the court that the piece of flannel must have been torn off from accused's flannel after a struggle between the accused and the deceased. Nuch as I would like to accept this evidence I fail to see how a court of law can come to the conclusion that ' because the piece of flannel resembled accused's flannel then the piece must have been torn off from accused's flannel and therefore the accused is the person who killed the deceased. "here was unrobu -Gtcc. evdcnce GnaG one, i3akari had a similar flannel in the village, indeed there may have toon many more pe:ople in the villge with similar flannels as that of the accused. There was the evidence that a billhook ;as found in accused's house. This weapon was be lieved to be the one accused used in inflicting the fatal blows. The billhook was examined for human blood. It proved negative. There was the shuka whiLch was taken from accused's house. Chemist's report showed the shuka to have human blood of group B. ee are however not told what was the blood group of the decesod or are we told the blood group of the accused. If the prosocation h..d only taken the trouble to examine the blood groups of ae accused and that of the deceased the evidence of blood of group B on the cloth found in accused house coald have been of much value. As it is, export investigations which might or might not have strengthened the case against the accused were hot carried out. I ••••/4 , L. — 4 — / J I have no doubt in my mind that there is strong suspicion against the accused as the person who kild tie deceased - Had there been anything approaching an efficient Police investigation, the outcome of this case would have been totally different 0 In my view the gaps in the prosecution case are so ido and the evidence against the accused so inconclusive that I can only come to the conclusion that the prosecution has totally failed to prove the charge against the accused beyond all reasonable doubt. I agree with the second aeso.sor that the accused is not guilty of the offence charged. He is accordingly acquitted. 29th September, 19714 N.S 11 ZAVAN SOIJI for the Republic ilangat for the accused,

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