

TANZANIA / JUDGMENT

19850530 TZHC Mbeya

COURT
TZHCDECIDED
30 May 1985

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1. 0 1 4 Ili THE hIGH COTJrT OF TMZANIA AY MB.YA 'ORIGI3AL JUILISDICTION (Mbeya ieistry) QiUMINAL SESSIO13 CASL 1-1:0.72 OR 1980 THE rPUBLIC Verus AIJAJ'&U NGMILEGE CIwGE Ilu.rder c/s 196 of t ic Pea] Code. J U D G i' ii T 00 Mmtp?T(A T The accused person Adajiiiu s/o J;a.jilege is cna.rged with the offence of murder c/s 196 of the Penal Coda in thitt on 17th day of October, 1978, he ic a11ec3. to ave u Lered ka1aroti l'Iwikalinga. The accused adritt.a o iale 1 i1L t.e cicceased but pleaded insanity at , the time he conui'Ibted the offence. Prosecution called upon only two witesoo to. :up.)ort the charge. and these were. : ajileo•e /o hrurcli (F:i.l). 4ho father of th accused and Jo1.amu s/a iini (2) t ie 11 ifatiier c± the accused n.th .mon the accused was 3tayii , .:(lurla .) t e acte of ~, t.i.. iciiont lccordin toJot5jru (Pi.2), he told th court that the accusad has a long history
- of insanity datin: back fro:i 1)74 wL c wac scat to Itumba hospital for treatment where he stayed for twb months. Again in 1975 he became insane and was sent to Itusba hospital for treatment 3rid from Itumba hospital he was transferrod to .•.boya hos'oital and from fbeya hospital lie was sent to Isann institution odoma for iental treatment. He stayed in Dodoma for three months. On 17th Octcber, 1978, early in the oornin; he again became insane and he came to this conclusion because of his abnormal behaviour for he took a bill hook wishing to kill P -42 1 s wife, he then went on killing Jotumu's Cow, a goat and three chickens and he went round cutting P1.2 1 s bamboo trees. He then threatened to kill P,2 with the said bill hook .but PW.2 rnana;od to away the bill hook from iuin.. The accused then escaped from the hands of FW.2 and went to the direction were tie. ieceased with other children wore gazi&; heads of cattle. After a while PW.2 got informed that the accused had killed the deceased by stragglng him and dumped the dead bcd into a rivar -2- I -2 On receipt of this repor P1.1. and PI2 wont to the scene of the Crime and there they saw the accused being quito naked and he pointed the dead body to PW.1 and F.2. The accusód ws then arrested and taken to the hospital. During the proceedin's accused was transferred to Isanga Insti-tut ion for observatidn of hs.mental condition by bhe time he commi- tted the offence. The iiiiical räport in roepect thereof is very scanty and it stated in part:- 'M th tio of committing, the offence he was aware of the nature and quality of the ac'i. he is fit to stand trial and follow the proceodins in court, iO insight into his inapprOpri- ate behaviour was given by the doctor who examined him, I therefore discard this report, - The two assessors are of a unanimous opinion that the accused was insane at the time he committed the

offence and I agree with them because the abnormal behaviour prior to and after the commission of the offence as narrated by his grandfather (P4.2) .ad,PW.1) clearly indicates that the accused was insane. I therefore under section 168 (1) C.T.C. make a special finding that the accused did kill the deceased, - however, I am satisfied that he was insane at the time, accordingly, because of the said insanity he is not guilty of the murder of: hlangoti s/o Mwakalinga. In view of my observation of the accused person in court on his mental state, I order that he be absolutely discharged in accordance with section 168 (2)(b) of the Criminal Procedure Code, - C.G.MTENGA, JUDGE Delivered in open court in the presence of Mr. Kapiga learned State Attorney and Mr Nwakilasa .learned Counsel for the accused, this 30th day of May, 1985 C.G. MTENGA, JUDGE Assessors are thanked and discharged, - C G MTENGA, JUDGE 30/5/85.

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