

TANZANIA / JUDGMENT

19770326 TZHC Tanga

COURT
TZHCDECIDED
26 March 1977

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IN THE HIGH COURT OF TANZANIA AT IRINGA ORIGINAL JURISDICTION (DO DOMA REGISTRY) CRIMINAL SESSIONS CASE No. 45 OF 1974 THE REPUBLIC versus TOFILI MTAKILA Charge: Murder c/s 196 of the Penal Code. J U D G M E N T. CHIPETA, Ag.J. The accused person in this case, Tofili s/o Matalika, stau. charged with the offence of murder c/s 196 of the Penal Code of The Republic has alleged that on or about 20th May, 1972, in Iringa Region, the accused murdered one Matalika s/o Ngongoga @ KaziuLaya. The accused has denied the charge. The evidence adduced by the prosecution is that the deceased was a father of the accused and that he and the accused. lived happily together in Wasa village. There is no evidence that there was any ill-will between them. Durn the evening of 20th May, 1972 9 the deceased and the accuse'ih the deceased's house, apparently chatting. The wife cf"the deceased (Pw.1) then prepared food which the deceased and the accused ate together. Thereafter the accused left the house to go and sleep. Shortly after that the deceased also went out to collect liquor locally known as "ulanzi" from outside the house. When he was returning into the house a short while later, ard while Pw.1 and her daughter-in-law (Pw.2) were in the kitchen, the deceased raised an alarm saying: "Help meL I have been stabbed with a spear by Tof iii't Pw.1 and Pw.2 rUshed to the deceased and saw that the deceased had in fact been stabbe ith a spear. The accused, however, had, disappeared 0 The dceased managed to pull out the spear himself, and Pw.1, tied a cloth around the deceased aparentiy in a bid to stop the bleeding. Pw.1 and Pw.2 then raised an alarm and many neighbours cune to the scene. That same night the deceased was taken to Iringa Government hospital. On arrival at the hoital the deceased was in severe shock. In spite of ±esusitation measures and a subsequent operation on rum, the conditio±i of t)ie deceased continued to deteriorate, and on 23rd May, 1972, the deceased died. In the opinion of the doctor who attended the deceased, the cause of death of the deceased was irreversiblo shock. Meanwhile, on 21st March, 1972, the accused gave himself up to police at John's Corner police station, and he told the police that he lEd killed his father. According to Pw.1 and Pw.2 the accused sometimes behaved like a person of unsound mind. According to Pw.3, the accused ran mad some four years after his marriage. Although he was treated by native doctors, he later ran mad again and had to be sent to Dodona Mental Hospital for treatment. Four months after his return from Dodoina, the accused stabbed the deceased. --_ - The accused gave his defence on oath. He told t1 court that on the morning of the day of the incident he was abused by his sister in law (Pw.2) but he does not rember the nature of the abuse. As a result of that he becsrc annoyed and resolved to kill Pw,2 That evening he stabbed the deceased with a spear. The accused added that prior to and at the time be stabbed

the deceased he was insane. On two occasions he was sent to Dodoma mental hospital for treatment, and it was only a month after his return from Dodoma that he stabbed the deceased for no apparent reason. In the opinion of the psychiatrist who observed and treated the accused for about 2 years, the accused was insane at the time he did the act, and that even after the trial he should be sent back to the mental hospital for further treatment. After my summing up to the lady and gentleman assessors, the lady assessor found as a fact that the accused is mad. However, she went on to say that the fact that he ran away after stabbing the deceased shows that he had his senses. She then found that he is guilty of murder. The gentleman assessor was of the same opinion, and he also found the accused guilty of murder. From the circumstantial evidence of Pw. 1, Pw. 2, and Pw. 4 the deceased dying declaration, and from the accused's own confession before this Court, I am left in no doubt at all that it is the accused who stabbed the deceased, and that the stab wound was the cause of death of the deceased. The crucial question is whether the killing was with intent aforethought to amount to murder. In my considered view, there is more than ample evidence that prior to the attack on the deceased, the accused had been mentally unsound from time to time. The next question I have to answer is whether the accused was of unsound mind at the time he attacked the deceased. In the opinion of the psychiatrist, the accused was of unsound mind at the time he did the act. The psychiatrist arrived at this opinion after he had observed the accused for about 2 years, and also from his records which revealed that the accused is suffering from chronic schizophrenia. I have also taken into consideration the fact that the attack on the deceased was unprovoked, and there is no evidence of motive. On these grounds, and with great respect to the lady and gentleman assessors, I cannot agree that the accused was sane at the time he attacked the deceased. It is my considered view that at the time he attacked the deceased the accused was insane, and that by reason of such insanity he was incapable of understanding what he was doing, or of knowing that he ought not to kill the deceased. I, therefore, hold that the accused killed the deceased in circumstances that would otherwise be murder, but that by reason of his insanity at the time, he is not guilty of murder. Accordingly, under section 168(1)(2) of the Criminal Procedure Code, I direct that a certified copy of the record of the proceedings be submitted to the Minister, and the accused shall be kept in custody in a mental hospital as a criminal lunatic. B.D. I am Ag. Judge. Judge Omti delivered in open Court at Iringa this 26th day of March, 1977. B.D. I am Ag. Judge.

- 3 - - b Assessors thanked and discharged. B. - uipeva Ag. Judge Mr. Mchora— State Attorney for the Republic Mr. Mwakinge Counsel for the accused.

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