

TANZANIA / JUDGMENT

20181214 TZHC Dodoma

COURT
TZHCDECIDED
14 December 2018

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

Is lb "ORIGINAL" IN THE HIGH COURT OF TANZANIA DODOMA DISTRICT REGISTRY ATDODOMA ORIGINAL JURISDICTION CRIMINAL SESSION CASE NO.83 OF 2012 THE REPUBLIC VS HAM IS! BASILI JUDGEMENTOF THE COUT Date: 14TH DECEMBER, 2018... BEFORE: HON. LATIFA MANSOOR,) The Accused person, HAMISI BASIL, was prosecuted with the Offence of MURDER contrary to Sections 196 and 197 of the Penal Code Act, Cap 16 Vol. 1 R: E 2002. The particular ~ of the charge supporting the offence are that on the 24th dd of August, 2010 at Bdbayu ViIIag within Bc hi District in Dodoma Region, the accused person murdered one Esther Venare, 1 / / "ORIGINAL" Following the incident the accused person was arraigned in court where he denied the charge hence this trial. While the prosecution was conducted by Mr. Sarara, the learned State Attorney, the accused in his defense enjoyed the serviões of Mrs. Mary Munissi, the learned advocate. In order to bring home the guilty of the accused, the prosecution brought only four witnesses, namely Margret Zebedayo (PW1), Venance Ibrahim Mgzengo (PW2), Julius Mazengo(PW3). andPolic.e Officer with No. D. 9712, Detective Sergeant Emmanuel (PW4). During the preliminary hearing, the prosecution tendered the Post Mortem Examination Report which was admitted as Exhibit P1, and during trial the prosecution tendered the tip of an arrow and a bow, and these were admitted as Exhibit P2 collective. PW,1 Margret Zebedayo, the wife of the accused testified in court that, her and her husband who is the accused herein had normal domestic quarrel on J9fh August 2010. She decided to leave her matrimonial home and went to Mayamaya. 2 4 "ORIGINAL" Mayamaya is where her father lives. She went with her three children. Then her father decided to take her back to her husband for reconciliation. She said on 23/08/2010, her father decided to take her to Venance Mazengo (PW2) for Venance was a leader in the street. They reached Venance house at around 1 6.00hrs, and Venance had advised them to have the meeting the next morning since it was already too late. That she went to sleep at Venance aunt's place which is only 10 footsteps from Venance house. Venance's Aunt was called Asinati. She testified further that, late at night while she was asleep she heard people. shouting that her husband has murdered someone. She decided to go to Zamahelo Gate, and there she found the police, she informed the police regarding the murder, the police asked her to go back home. She said she went back at Asinafi's house. When cross examined by the defence counsel Mrs Munissi, she said Asinafi had asked her to leave the house since her husband "ORIGINAL" committed the murder and that is why she left and went to Zamahelo for her safety. PW2, Venance Ibrahim Mazengo, told this court that he was a sub village Chairman. He testified that on 23/08/2010, PW1 Margref Zebedayo and her father went to his house, but they did not find

him. The two waited for him until he came back. PW1 's father told him of the matrimonial dispute between PW1 and her husband one Hamisi Basil, and wanted him to resolve the dispute as a leader. Venance asked the two to go have a rest until the next morning for reconciliation. PW1 went to sleep at Asinati who is Venance's aunt, and PW1 's father went to sleep at his grandchild. He testified that late at night around 3.00 hrs, in the morning, the accused went to his house. PW2 was sleeping in a hut with his wife Esther Venance, the deceased. The accused knocked but the hut did not have any doors, it was an open hut. The accused asked for his wife. PW2 told the accused that El "ORIGINAL" his wife has slept at Asinati's house and asked him to come back the next morning. The accused kept insisting for his wife. He testified that Venance 's wife crept out of the bed in order to light up the fire, and suddenly she fell down crying "Hamisi Basil umeniva", that Hamis Basil you have killed me. Hamisi Basil then started running away but Venance managed to catch him. A mob of the villagers arrived and they started beating the accused. The accused's left leg got broken due to the beatings, and he was badly injured. Then the police from Bahi arrived with the doctor, they took away the accused in the police car, the doctor performed the examination of his wife's body. They then buried the body. When cross examined he said he recognized the voice of the accused since they are neighbours and they have lived in the same village for a long time, he also said there was a moon light so he saw the accused. It is not clear though as to where he was at the time of shooting, since he didn't say if he went outside the hut or he remained in bed. 5 "ORIGINAL" PW3 was Julius Mazengo, a relative of PW2. He said they are very close neighbours with PW2, and on 23/08/2010 at around 15.00 hrs, he saw PW1 and her father arriving at PW2's house. He also said at night around 3.00 hrs. he heard PW2's wife shouting "Hamissi Basil umeniva". That he went to Venance (PW2) house and found the deceased with an arrow in her stomach. He said he saw the deceased removing the arrow from her stomach. That he reported the incident to the Village Executive Officer "VEO" one Malyosi. Malyosi is now dead. That VEO went to the scene with the chairman and they called the police Bahi. The police arrived, they took the arrows and the bow, they also took away Hamisi Basil who was badly injured as he was attacked and beaten by the angry villagers. The last prosecution witness was No D 9712, Detective Sergeant Emmanuel, PW4 of Bahi Police station. He said, he received information of this incident on 24/8/2010 while he was on duty. He was informed of the incident by OC-CID, one Kyando Nathaniel. He summoned a Doctor one Paulo Kafyolo. Him, the Doctor and the OC-CID and Corporal Joel together "ORIGINAL" went to the scene. They arrived at the scene and found the body of the deceased lying down and a tip of an arrow was beside her. PW4 said the doctor examined the deceased's body. The deceased was wounded on the left part of her abdomen. He said that they also found the accused badly wounded with his left leg broken. He was informed by the villagers that the accused was beaten by the angry villagers. He testified that it was PW2 who narrated to them the story of the matrimonial dispute between the accused and his wife, and that PW2 was to reconcile the dispute in the morning of 24th August 2010, but before that the accused went to PW2 home armed with a bow and arrows, and eventually killed PW2's wife. He said, he was informed by PW2 that the accused had intended to kill his own wife, unfortunately the accused had mistaken PW2's wife with his own wife. It was PW4's further testimony that they took the accused to Dodoma General Hospital in an effort to treat him as he was 7 "ORIGINAL" fatally beaten by the villagers. On 25/8/2010 the accused was formerly charged

while in the hospital. He interrogated him on 25/8/2010 but observed that he had difficulties in speaking. On 26/8/2010 he took the accused to the justice of the peace. He also said that Hon. Mwalulefu took the extra judicial statement of the accused person at Dodoma Urban Primary Court. He also said he recorded the statement of the accused but he did not tender the statement in court. This witness tendered a bow and a tip of an arrow found in the crime scene and these were admitted as evidence and marked as Exhibit P2: The Report of the Doctor was admitted during preliminary hearing as Exhibit P1. The Doctors report shows that the deceased died out of poisonous arrow and hypovolemic, a decreased volume of circulating blood in the body. Hypervolemia occurs when there is excessive bleeding. At the close of the prosecution case, the accused was found with a case to answer, he was addressed in terms of s 293 (2) (a) and (b) of the Criminal Procedure Act, Cap 20 R:E 8 "ORIGINAL" 2002; the accused person gave his own defense and did not call any other witness. DW1, Hamisi Basil, said, Margret Zebedayo (PW1) is his wife and they were blessed with 8 children, four of them died. They had a peaceful matrimonial life. That, he quarrelled with his wife on 19/08/2010 as she left the child of 3 years old who was breastfeeding at home, she went for a local brew club and came back late. He said, the wife decided to go away with the three children. He testified that he went to sleep and next morning he went to the bush as he was doing timber and charcoal business. He said he came back home on 22/08/2010 and did not find his wife back home. He said on 23/08/2010, a Sunday, he went for a local brew in a local club and there he was told that his wife was there but she went to PW2's house. He said, he went back home to see if his wife had returned but did not find her. At 8.00 p.m (20.00 hrs.), he decided to go to PW2 house to take his wife back home. He was armed with three arrows with no poison, a stick and a bow to guard him from wild animals. "ORIGINAL" On arriving at PW2's home he found his wife and PW2 sitting outside PW2 house. He asked to take his wife home but PW2 refused and told him that he will take his wife the next morning. He said he started lighting with PW2, and did not know what happened as he heard someone crying. He then decided to run away. PW2 ran after him, apprehended him and started beating him. Then the villagers joined and had beaten him till he lost conscious. They also broke his left leg. He refused to have fired the arrow on the deceased, and he said he did not see the deceased at the scene. That, he regained consciousness at Dodoma General Hospital on 24/8/2010. The facts of the case was summed up to the assessors, two of the assessors said there was no malice aforethought as the accused did not intend to kill anyone. One assessor gave the opinion that the accused is guilty of murder as he formed "ORIGINAL" an intention to kill his wife when he went to look for her while armed with lethal weapons. The facts of the case and the evidence given by the prosecution proved that one Esther Venance was stabbed by an arrow on the left part of her stomach and she died on hypovolemic, that her death was caused by lack of enough circulation of blood in her body. The facts also show that PW2 who is the deceased husband was at the scene of crime, and he is the only witness who has seen the accused shooting an arrow to the deceased. PW2 told the court that he did not try to rescue the deceased instead he went running after the - accused. Thus the prosecution case was based entirely on the evidence of one witness, the husband of the deceased (PW2) to establish that it was the accused that had shot an arrow to the deceased. The evidence of PW1, the wife of the accused Only shows that there was a fight between them, and that on 24/08/2010, Esther Venance was shot by an arrow. She said she did not

see who shot her as she was not at the scene of crime. 11 "ORIGINAL" Similarly, the evidence of PW3 explains the events after the shooting but he also did not see who shot the deceased. Section 143 of the Evidence Act, under which no particular number of witnesses was required for proving any fact and that it should not be necessary for the proof or disproof of a fact to call a particular number of witnesses. If the testimony of a single witness is found to be entirely reliable, there is no legal impediment to the conviction on such proof. Moreover, if courts were, irrespective of the quality of the, evidence of a single witness, to insist on plurality of witnesses, they would be indirectly encouraging subordination of witnesses in situations where only one witness is available. Thus, the issue that Esther Venance, the deceased is dead was 'proved beyond reasonable doubt by the prosecution Witnesses. The second issue is whether the accused was the one who shot Esther Venance with an arrow. It was the accused's own evidence that he went to Venance House to take his wife 12 "ORIGINAL" home, and that he went there while armed with three arrows and a bow and a stick. He said he took these weapons with him in order to guard himself against the wild animals. The evidence of the accused corroborates the evidence of PW2 that the deceased was shot with an arrow, and the arrow belonged to the accused as he went to PW2 house while armed with three arrows. The police recovered a tip of an arrow from the crime scene; it was not explained as to the whereabouts of the two other arrows. That however did not affect the fact that the late Esther Venance was shot by an arrow, the arrow belonged to the accused. As to whom between PW2 and the accused shot an arrow to the deceased, this also came from the evidence of PW2 only. While the accused said there was a fight between him and PW2 and that the arrow might have fired accidentally at PW2's wife, PW2 said it was the accused that fired the arrow on the deceased. There was no any other witness who has seen the accused shooting an arrow to the deceased. As 13 "ORIGINAL" whether the firing of an arrow was an accident or intentional by the accused, this fact stand unproved to the effect that in the facts of the case it would be unsafe to hang a person on the sole testimony of PW2, without corroboration. PW2 was not an abettor, he merely witnessed the crime but his evidence was shaken by the defense as the defense has raised a doubt that PW2 and the accused were fighting and during the fight an arrow fired accidentally. The statement of PW2 was not corroborated, and the courts is in doubt as to whether the accused shot the deceased intentionally, as both the prosecution and the defense had testified that there was absolutely no quarrels between the accused and the deceased to have the accused have the intention to harm or kill the deceased; The benefit of doubt must therefore be tilted toward the accused and the court therefore believes that the arrow fired accidentally. PW2 also said that after firing, PW2 saw the accused running and he ran after him, apprehended him and assaulted 14 "ORIGINAL" the accused to the extent of breaking the accused left leg. PW2 also said the angry villagers came and also attacked the accused. PW2 did not tell the court on how he attracted the attention of all the villagers at 3.00 a.m, while the people in the villages are all asleep. It is no doubt that it was the arrow of the accused that fired accidentally on the deceased. The deceased died instantly. However, it is on evidence that the accused went to PW2's house in search for his wife. He was - armed. He was also drunk. There was also proof that there was either a fight or exchange of words between the accused and PW2, thus the accused was also provoked. It is argued by the prosecution that since the accused carried the arrow from his house and must have been taken to have carried it for

using it and he did use it, then there was an intention to kill. A number of points were involved in this case. There was an issue of an accident, an issue of provocation and an issue of intoxication. From the testimony of the accused, it is clear that the accused was provoked and thus there was grave and sudden provocation constituted by the act of PW2 stopping the accused from taking his wife home. That, words and gestures of PW2 may under certain circumstances cause grave and sudden provocation on the accused. On the facts of the case, the provocation coupled with intoxication had caused momentary loss of self-control to the accused. This court believes that although the accused went to his house and took a bow, the stick and the arrows, he did so in order to harm himself from the wild animals or just to threaten his wife to have her back at their matrimonial home. There was no proof whatsoever which shows that the accused had an intention of either causing grievous harm to his wife or an intention to murder her. The provocation did not happen at the time he was leaving his home, but at the scene of crime, he went to PW2's house simply to have his wife returning home, but there came a fight and the fight coupled with intoxication was sufficient for losing self-control. As regards him running away from the scene after the shooting, the evidence did not prove motive against him and that his running away from the scene was merely the result of his apprehension that he might be attacked by either PW2 or the villagers for shooting the deceased. As held in the case of *R v D. H. Relief* (1941) 8 EACA 71 which case was cited by the Court of Appeal in the case of *STANLEY ANTHONY MREMA Vs. REPUBLIC*, Criminal Appeal No. 85 of 2005 (Appeal from the Conviction and Order of the High Court of Tanzania at Arusha- HC Criminal Sessions Case No. 36 of 1999-Massati, J.), the Court of Appeal held that "That as a general proposition drunkenness is no excuse for a crime and that insanity whether produced by drunkenness or otherwise is a defence to the crime charged. It was further held therein that if insanity is not established, killing by a drunken person is either murder or manslaughter. It will be murder if intent to cause death or grievous harm is established. But if it be found that by reason of intoxication the accused was incapable of forming such intent the offence is manslaughter." Having considered the entire evidence and all the circumstances in this case, the killing of Esther Venance by an arrow was done by the accused herein, but the arrow fired accidentally at the deceased as the accused did not have any intention whatsoever of killing either his wife (PW1), Venance (PW2) to imply either constructive malice or transferred malice. This court is of the opinion that the killing was accidental, and that the accused was provoked as well the alcohol made him lose his sanity as he even mistaken his wife to the wife of PW2 even though there was no resemblance between the two in size, appearance or looks. Thus the charge of murder is reduced to that of manslaughter. Under the circumstances of the case the accused is found guilty to the offence of manslaughter contrary to section 195 and 198 of the Penal Code, Cap 16 R: E 2002 and he is accordingly convicted for manslaughter. I order accordingly.

18 a "ORIGINAL" I order accordingly. 11\ON. LATIFA MANSOOR ".)UDGE December, 2018 19

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE [https://media.tanzlii.org/media/judgment/345691/
source_file/9b6dbd0fcf09768e/20181214_TZHC_Dodoma.pdf](https://media.tanzlii.org/media/judgment/345691/source_file/9b6dbd0fcf09768e/20181214_TZHC_Dodoma.pdf)

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/Murder-tzhc-2018--6a3ea5293b1caa9129821ba0>

Prepared on 13 October 2026 · Esheria