

TANZANIA / JUDGMENT

19940812 TZCA Mwanza

COURT
TZCADECIDED
12 August 1994

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I IN Trei: COORT OF 1...PP:!!L..J., OF T.:NZ.\.NIA AT M:'11.NZ/t .. KISJJIGAa J.L. 2
OI'1.'Jl.,-J.4.-,1Jld MHZJYt.S, J.A.) CRIMlIJ, l.l'PEtJ. NO. 165 OF 1993 ,,. - -

1. CCSU!..S NICODEMO

2. J3U1T }JID!. KlJ..ITI.'jIZE Ai:-'"TELLANTS .AND THE :PJW!UBLIC
RESPClfDIINT (Ji.ppocl. from tr,o conviction of the High Court of TnnzMio. c.t llihcro.oulo)
(Lugckingiro., J.) d=i.ted the 29th dey of Cxltobe:r, 1993 in Crimincl S0ssions Cesa No, 66 of
1991 JUDOEI>IGNT OF THE COORT Thia c.ppocl .:irises froo the appellc.nts I c.onvotion for-
t!UI'der -and th/3 -sentence of death passed on bio by tho High Court (Luso.lcin,giro., J •)
sitting at :&lkoa. Tho fa.eta ns found b,y the triol.ju%'8 were that this lro.a o. oose o.rising
out of o. brawl during o. drink:inc p01'ty at o. ponbo shop in vhioh both o.pl)ElloOJ'.lts and
the deooc.sod wore involved. However, tho lileter we.a sottled, the drinking party rosumd
Md nll seeod to be well. The pn.t'ity wont on until botwoon 7.30 end 8.00 p.m. whon people
dis:porsod. Tho dooensod left first e.nd o. little le.tor the o.ppollonta nlao left, o.11 of thoo
tclt.ing the snoe rou.to hooa. Ch tho wey tlw o,ppollD11ta caught up with the dooeasod,
roughed 11.io up ey slapping hio and thon w:ilkod on leaving bil:l behind. At sooa . -'• ••• /2
- ! [_____ 2 point farther ahoa.d they slowed down until
tho dececaed ca.ught up with thee, whereupon tlloy sot upon hie and o.ssaul ted hio to
doc.th. Tho killing was not seriously disputed, ond indeed on tho evidence it could not.
Howovor both ct the triol and in this appool tho defence raised t13:q_j_1~sl,1El of
drunkenness. In tho cours'o of tho judgocont tho lo;:i.rnod tricl jucJ.6,e, in his usuel detailed
a,p:proach, docl t with t!ULt issue o.t length. 1:..ftor a ca.rof'ul roviow of tho evidonco an
that issue he held. tb.c.t the defence of drunkenness \ uns not open to tho a,ppello.nts. Ha
found tho,t ol thoUBh tllero wcs ovidonco of drinking, tho nppellents were not in a state af
drunkenness which produced in their minds tho ate.to of' insoni ty, on which rendered them
incc.pable of' forcti.ng tho intent to kill ar cnu.se grievous bnro. That finding was c.oply
supportGd. For instance thoro was the ovidenoo of Plf.3 who stated that tho nppollcnts waro
not drunk. Tho sooond o.pl>ollo.nt hicsolf testified that when ho loft for hooo he was in his
senses. Fron the pocbo shop tho :first a.ppelhnt could wolk and :find his wey thct night· to
his hooo which was 5 miles nwcy without gott~_)o13t. lloforo the lo.st stDt.,'"El af their
attack on tho deoeosod tho appellc.nts dragged thoir feet so that tho doconsod who WM
behind thom could oc.tch up with thoo. The trial judge :found such conduct to bo indicative

of' tho \ capability on tho port of the o,ppolc.nts to plon or intend thoir oots. 1-eo.in the assault on tho docoo.sed which consisted of' \ kioking and tr:::oping c:nor his body, persisted ond lasted :for a.n;ythins up to thirty minutes. Like tho trial judgo we Ol'O sa.tif!::fied tb.nt oll this evidence to.ken togetbor coopletely nega.tives the defence of drunlcannoss whether as producing tho ate.ta of' in~iani ty or as icpc.irinB tho cc.po.bili ty to fore tho intent to· .. kill or oo.uso ti['ievous harm. . ••• /3 3 In this apliod frJr. 11:Sta.to., lee.med Counsol for tho al)l)ollnnts, filod two i;rounds of c.:ppoc.l. Both grouncls which wero oansolidntod n.nd areu\ld t05etl;:or rc.ised no nGw issuos. T'J.10y rciso tho dofenoo of intoxicoo.tion which, as stated above, wc.s dealt with coot adequately ct tho trial. In tho ovont we c.ro satisfied th..-:t the r,ppool is ooaplotcly dovcid of corit, it is accordingly q1o;:,i.ssod in its enti=ety, Di.Tr:D o.t N.:T.LN2.t.. tt.is 12th dcY af August, JU:lTICE OF JJ-'i."il'i.L .t...M.J• OMLlI JUSTICE OF ;,,:r::E.t.L N.S. MN'Zl.V.M3 JUSTIC~ OF l:..Pl'EiiL I oortify thct ths is n. true copy of tho orii3inal. (M.S. D!llPU"lY Tiill I3Tllt.R

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Prepared on 25 October 2026 · Esheria