

TANZANIA / JUDGMENT

republic vs rajabu mohamed nurudini 2006 tzhc 253 9 october 2006

COURT
TZHCDECIDED
9 October 2006

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IN THE HIGH COURT OF TANZANIA AT MTWARA CRIMINAL SESSION CASE NO* 7/2005 THE
REPUBLIC VERSUS RAJABU HOHAMED O NURUDINI

RULING

SHANGAU, J. This is the most hopelessly investigated homicide case have i.ever come -across. Infact scanning the record it seems no particular police investigator was assigned to investigate this case at alii The statements of the witnesses were taken by different Police Officers at divers times and after a long lapse of time. In short the case was not seriously and diligently investigated by those responsible* I have seriously directed ray minds to the* available prosecution evidence of E\t/I, FV/2, FW3* and fW5 and I am convinced beyond doubt that the case has not been made out against the accused person suffice- ntly to require him make a defence. See R«T. BHATT Vs. R (1957) EACA« 332. E W I s 1 evidence does not connect the accused with the alleged offence. Secondly the offence was committed on k/k/2003 and her statement was recorded pn 2k/ S/2.00J>m Likewise, the evidence of FW2 is weak and far from connecting the accused with the serious offence of murder. She admitted before this Court that immediately after the commission of the offence she was directed by the Ward Executive Officer to arrest the a ccused and one Francis matayo because they were known horbital criminals within the area. Certainly, FW2, FW5 and others may have entertained strong suspecion against the accused as a person who robbed and killed the deceased, but it is a se.fctled position of the law that suspecion no matter how grase cannot b-c the basis of a conviction in a criminal charge; and particularly in a serious charge like the present one. There must be ample and direct cogent prosecution evidence to connect the accused with the charge laid against him. Again, the evidence of FW3i PC Eliuta is nothing to go by. As a he Sharge Room Officer at Mangaka Police post/received the accused and the alleged stolen items from P*/2, He was not an investigating .Officer and indeed he categorically ' denied to be the one. In the cross- examination by defence counsel ho stated that he was not the one who questioned the witnesses or recorded their statements. Infact according to the Court record FV/3 recorded his own statement on 12/3/2004, EW4, E/CPL. Herbet attempted to produce the statement of one Bakari Hamisi Mwale, the husband of the deceased as exhibit but the defence counsel raised on objection which was upheld. The admission of that statement was refused because the statement v/as recorded by two Police Officers, The first

potion was recorded by fV/4 on 23/4/2003 while the second potion was recorded by D/Sgt Japhary on 24/4/2003* The typed copies in the Court record and that supplied to the defen*3 counsel does not show the dates nor the name of the Police Officer who recorded that second potion. In addition it was revealed in Court that the said D/Sgt Japhary is the very Court orderly before the Court who was following the case silently* Moreover the Learned State Attorney and her witness failed to disclose as to why they were intending to produce the statement of Bakari Hamisi Mwale, In the result the application was refused and the evidence of FW4 was rendered useless, like FW2 were moved by suspesion against the accused person, 'TV5' s statement was suprisingly recorded on 4/6/2004 by Sgt, Mohamed, after more than a year from the date of inci:lent, FW5 suspected the acc- used and handed him over to the authority in April 2003» Nevertheless, his evidence is deficient of any #onnection of the accused with the alleged offence* It is for the above reasons that I feel entitled to castigate al 1 the persons who mishandled this case to the extent of causing the incaceration of the accused person in custody for more than three years without sufficient evidence against him. I "daro say it is ■ ‘.his kind of .lecklessnes that makes the society loose confidence in the Police force and the Judiciary. A s responsible public officers we should strire to avoid such incidents in the future. In my view in dealing with serious charges like murder, equal seriousness and. diligence should be afforded* The handling of this case was just too facial. Finaly and having gone that far, I am satisfied that there is no sufficient prosecution evidence to require the accused person to mr,,ke a defence. There is no case to answer against him and he is therefore found not guilty and acquittecl The accused Rajabu Ilohamed Nurdin is to be released j^T'thwith unless he is lawfully detained on another different matter. It is so ordered.

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