

TANZANIA / JUDGMENT

NA TZHC Dar es Salaam

COURT
TZHCDECIDED
30 May 1971

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ilk I, IN !RE H1431 'Coi3R.0 ANZANXA I., M DAR iJ W IT ORXATrCTXOr CRIMINAL Mf SSTONS
CASE NO. 3.....PP 1972 I TThUO ersu JACKSON WA1JRA CR1RGE;. Manslaughter o/s.95 of the
Penal Codo'.

- :., ____ • ONYItrKE, J. The accu.sed, JACKSON WAMBBBA, atand charged with the unlawful killing of one LAZARO do ULá c/s 195 of the Penal Code. The inciDent out of which the present proceedingsi arose took place on or about the 30th Nay3 1971 at the MVViiNI BUS STOP within the city of Dar es Salaam The case of the prosecution as to the events in this caSe was based on the evidence of two eye witneases, namely., P.W.1 SYLVESTER SOLETI, a supervisor In the 2n'I0EPr'esIdent's office and P.W.2 - MUNGE KX\$ENA, a wOrker' in a Motor Garage. P.W.1 testified that øi. the 30th May, 1971 at about 4.00.p.rn. ho.. was at the Girls' School bus stop onQerezani Street waiting to pick a bus home. There were other passengers at that bus stop waiting for a bus. WbLie they were waiting a bus came along. It slowed down but did not stop and d rove on. Apparently it Was full. The deceased who was one of the vaiting passengers ran atter.it and tried to board the moving bus. In the attempt he.. fell off and tumbled on to the sandy ground. The deceased .Eot up and returned to the bus stop. He was in a drunken state, no.ey and qoru1oua. le was abusive to thOse who remonstrated with him for taking such a risk. tlItimately another bus arrived and they 1rLcludng the deceased boarded it and it moved on. The bus I inspector on this bus was the accused. The bus conductor as usual started to sell tIckets while the accused echeckod the tIckets sold to the passengersi The fare wac 25 cents. The bus was full and some passengers had to travel standing. Among those stand ing were the witness and the deceased who stood next to the wit ness. When the bus conductor came along the witness paid his cor. ct fare. When It came to the deceaseds turn to 'pay , be refused inspite of repeated demands by the conductor and the accused. As this was going on the bus pulled up at the next bus stop which, was the YTVULMI bus stop. Some passengers started to disembark.., These included the witness and the deceased among others. When the deceased was alighting from the bus the accused grasped. him
- by the collar of his shirt and demanded he should pay his faro When they got down from the bus the accused released his grip and again demanded the fare, Eventually the deceased prOduce. pir S - 2 -

- a ten chilling note and handed it to the accused who in turn handed it to the conductor. As the accused was handing the money to the conductor the deceased slapped him in the face. The accused retaliated and hit him in the face and pushed him and he fell hitting his head on the concrete bus kerb. The accused tried to lift him but he slumped back. His face was swollen and he started to pass urine. He could neither rise nor speak. He lay there until P.W.3 who was travelling in a car on that road came along and carried him to the nearest police station and from there to 111uhimbili hospital where he died 12 to 24 hours later, P.1.2 corroborated P.V.1's story. Although there were some discrepancies in matters of detail in their testimony they were emphatic that the deceased fell on the concrete kerb as a result of the push from the accused. An autopsy was performed on the dead body by one Dr. Virji, At the time of the trial Dr. Virji had left the country and I allowed the report to be tendered in evidence under Section 275
- (1) of the Criminal Procedure Code as amended by Section 11 of the Administration of Justice (Miscellaneous Amendments) Act 1971 against the objections by learned Counsel for the accused. I will deal with the objections later in this judgment. The medical report, Exhibit 'A' showed that the deceased had a fracture of the skull and subdural haemorrhage and laceration of the temporal lobe. Death was said to be due to respiratory failure following cerebral injury. The accused made a sworn defence. He denied that he hit or pushed the deceased or that he had any quarrel with him. He stated that when he arrived at the Girls' School bus stop he met the deceased exchanging words with another Bus inspector (Bus Inspector No. 17). He did not witness the incident that led to the dispute but the deceased was abusing the Inspector. Bus TDF 513 arrived and the passengers got in. He also boarded the bus as the bus inspector on duty. The bus moved on and he remained at the rear of the bus. He stated that he did not approach the passengers while the bus was in motion. The bus then stopped at Mwleni bus stop and passengers started to alight. It was then that he started to check their tickets. After 3 passengers had been checked and had alighted the deceased came along. He stretched out his hand and demanded to see his ticket. He brushed his hand aside and asked him what the ticket was for. The accused then blocked the entrance by holding the rails of the entrance while standing on the last step of the entrance door. At this stage the deceased was being pushed from behind by passengers who were scrambling to get out. Because of this pressure on the deceased from the passengers he could not maintain his grip on the rails and was forced to give way. The result was that the deceased who was in a drunken state fell from the bus and tumbled on to a concrete kerb which was about 3 feet away. His story was corroborated by the bus conductor who was D.W.2. After address by counsel I summed up to the assessors, I need not in this judgment recapitulate all I said in my summing up. It is all contained in my notes of the summing up. I directed the assessors to consider the following:-
- (1) Whether they accepted the prosecution story or the defence. (ii) Whether the deceased sustained the head injury during the fall from the moving bus or during the fall on the concrete kerb. I will leave it to the assessors to decide.

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