

TANZANIA / JUDGMENT

19891108 TZHC Dar es Salaam

COURT
TZHCDECIDED
8 November 1989

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THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM-II ORIGINAL JURISDICTION CRIMINAL SESSIONS CASE no. 30/87 THE REPUBLIC
_versus

1. HAMISI PROPELA SALUH
2. MOHAMED MZEE K. AISI Q., hereinafter referred to as "the 2nd accused" under s. 196 of the Penal Code.

RULING:

1. I, Mr. Mselem, learned counsel for the accused persons has submitted that there is no prima facie case which would require the accused persons to make their defence. He reviewed the evidence and said that none of the witnesses said anything concerning the first accused Ramis Propela Saluh and that although the second accused is said to have been seen at the home of PW1 and PW2 there is no evidence to show that he did anything to the deceased. He concluded that there was no case made out against the accused persons sufficient to require them to make their defence. In reply, Miss Barahomoka, learned State Attorney submitted that it was true that there was no mention of the first accused in the evidence of the Prosecution witnesses but that the second accused was seen at the home of the deceased. She concluded that the second accused had a case to answer. There is no doubt that the first accused has no case to answer because the prosecution evidence does not touch him at all. As for the second accused, although witnesses said that they saw him around the area near the scene of crime, namely at the house of PU1 and PW2 and also along a path near the house of PW1 and HFJ, there is no evidence to show that he, in any way, took part in the assault of the deceased. The facts as presented by the witnesses are that a group of youths who included the 2nd accused 1, went to the house of PU1 to buy mosquito liquor • • • • • /2.

- 2 - II. - 'i' , a' ~ i ~ . But they did not get any liquor. Then one of the youths assaulted PW1 with a stick and all the youths ran away. Soon after that PW1 and PW2 heard the deceased Filbert Nchimbi crying that he was dying. The deceased came to the house where PW1 lived and entered the house. He was lying bleeding. This was about fifteen minutes from the moment the youths left the house of PW1. The cries of Nchimbi were heard only five minutes after the youths had run away from the house of PW1. PW2 saw the youths go and he identified two youths who included the second accused. The deceased came through the

sar;e path which the youths had fellowed. Later on but not ~ong .:1.f'ter that, the second accused was-seen by PWJ run."1.ing along t:1e path ·which pas'ses very near to the home of PWJ. I""ie v,as· w! J..h ·-='r:' -- --~_,_____ ~-,..-----' 1,"~ ThElIn these. youths who numbere....: d. . .')Und 6 began fighting over a shirt• On the above eyid;lnce even if' it is believed, a reason- . ·able tribunal direct;i;;...; itself properly on the evidence cannot convict. The tds;l; is whether a reasonable tribuha1 could convict on the 1, ridence adduced., The. answer here is certainly in the negat:Lve because ther:e is nothing to connect ·the second accused with the an_:::ault 0£ the deceased. I therefore agree ·with the le.arr.Gd. co.._msel. f'or the accused that a case io not made out against the accused persons suf:iciently -to require them to make a defence -in relation to the o:f:fenoe charged. Consequently in terms·of' section 293 (1) of tr.0 Crim.,,,,<>, -i:'::-:::--~--~- ,.....=-~~~ · finding o:f not gui!.~./ ;: v.J..! both accused persons• <~--~--~-----.....~ -- 8/11/89 Court: Ruling delivered. Aoc~sed and bet~ ~o~nsels present. Assessors th.ankA-1 AT DAR ES SALA.AE

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