

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mustafa, J.A., Mwakasendo, J.A. and Kisanqa, J.A.)

CRIMINAL APPEAL NO. 11 OF 1979

B E T W E E N

PETER MFALAMAGOHA APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the conviction of
The High Court of Tanzania
at Morogoro) (Makame, J.)
date the 17th day of July, 1978,

IN

Criminal Sessions Case No. 3 of 1978

JUDGMENT OF THE COURT

MWAKASENDO, J.A.:

The appellant, PETRO MFALAMAGOHA, was convicted of murder and sentenced to death by the High Court sitting at Morogoro. He is appealing against his conviction and sentence.

The facts grounding his conviction are quite simple.

LYDIA SEMBUGE (P.W.3), the appellant's wife, in her testimony before the trial High Court, narrated how early in the evening of 14th September, 1975, she was assisted by ERNESTA SEKIMBE (P.W.4) to deliver a healthy baby girl and how soon after the birth of her baby, her husband, the appellant, made it clearly known to her that he did not wish to see or hear her baby cry. Appellant's displeasure at the birth of the baby appears to have originated from rumours circulating in the village to the effect that his wife's pregnancy was not his. Be that as it may, SEMBUGE told the trial Court that the same night the appellant took her new born baby from her and went out of the house. A shortwhile after he returned without the baby but before

retiring to bed he warned her in no uncertain terms:
"If you cry I shall slaughter you too.". Then the following
day immediately after the appellant had left for work
ERNESTA SEKIMBE (P.W.4) came to visit. On inquiring about the
baby and being told by LYDIA SEMBUGE that the appellant, her
husband, had slaughtered the baby, ERNESTA SEKIMBE left to
report to the village Chairman, one MAGNUS MSAGA (P.W.2),
who on getting the report from ERNESTA SEKIMBE reported the
matter to the Police. That same day MSAGA accompanied by
three policemen one of whom was P.W.1, PAUL KINDOLE, went
to see the appellant at his place of work. When confronted
by the police, the appellant is alleged to have made a statement
to them which, as Mr. Chirwa, learned Counsel for the appellant,
has properly submitted before this Court, was without any doubt
a confession to the offence of murder. In this regard we
entirely agree with Mr. Chirwa that the evidence relating
to the confession which the appellant made to Sergeant PAUL
KINDOLE and the Village Chairman MAGNUS MSAGA was clearly
inadmissible and should have been so held by the learned
trial court judge - vide sections 27 and 28 of the Evidence
Act, 1967. However, we are unable to accept Mr. Chirwa's
further submission that even that part of the appellant's
confession which led the police to the discovery of the dead
body of a baby girl in the appellant's latrine and to a
subsequent finding of a knife in a box hidden in appellant's
house, was inadmissible evidence. We are quite satisfied
that appellant's confession relating to the discovery of the
dead body and knife was correctly and properly admitted in
evidence by the trial court. We are fortified in this view
by a long chain of authorities which we find it unnecessary

to mention here and we are further emboldened in our view by the provisions of section 31 of the Evidence Act, 1967, which provides, inter alia:-

"When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, is relevant."

~~And needless to add that it is trite law that any evidence which is relevant, is admissible.~~

Mr. Chirwa further vigorously submitted that once the appellant's confession to the Police Officer KINDOLE is excluded, the case against the appellant collapses, as, according to him, the evidence left on record would leave real doubts as to the appellant's guilt. With respect, we cannot agree. We are perfectly satisfied that the appellant's confession to his wife that he had slaughtered the baby and would therefore not hesitate to slaughter his wife if she made a fuss about it, taken together with the facts leading to the discovery of the dead body of a baby girl in appellant's latrine, which according to the autopsy report showed that all carotide, both internal and external jugular veins were cut through, could lead the learned trial judge to no other reasonable conclusion but that the appellant was guilty of the murder of the new born baby.

= 4 =

We accordingly dismiss this appeal.

Dated at Dar es Salaam this 7th day of November, 1979.

A. MUSTAFA
JUSTICE OF APPEAL

Y. M. M. MWAKASEMBO
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL