

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA SUB REGISTRY
CRIMINAL SESSION CASE NO. 77 OF 2021

REPUBLIC

VERSUS

AMANI HEZRON KARIBWANA @HATARI ACCUSED

JUDGMENT

Date of hearing: 5/12/2023

Date of judgment: 8/12/2023

NONGWA, J.

The accused person Aman Hezron Karibwana is charged with the offence of murder contrary to section 196 and 197 of the Penal Code [Cap 16 R: E2019 now R: E 2022].

It is alleged in the particulars of offence that on 14th September 2019 at Igawa-Lugerele ward Rujewa within Mbarali District and region of Mbeya did murder one Mrisho Hussein. The accused denied the charged offence.

The prosecution called twelve witnesses Abdullatif Salum Said (PW1), H. 5550 Coplo Florence (PW2), G. 3340 Coplo Mathayo (PW3),

Ms. Leticia Waitara an expert from Chief Government Chemist Laboratory Agency, (PW4), G.4925 D/CPL Ramadhan (PW5), PF.24203 Tito Peter Maganga (PW6), WP 10616 D/CPL Flaviana (PW7), Dr. Dominic Kadogo a Medical Doctor (PW8), G.9928 D/C Didace an investigator (PW9), H. 1351 D/C Elimwokozi (PW10), Juma Athuman Kuzindwa (PW11), E.5137 D/SGT Hassan Nassoro (PW12).

PW1 Abdullatif Salum Said testified that he was a driver who worked with the deceased Mrisho Hussein at a company known as Kisma. He came to know the accused person Aman Hezron Karibwana on 06/9/2019 when he was at the interview at the company. That on 10/9/2019 he communicated with Aman Hezron Karibwana who was in need of transport (lift) to Chimala. PW1 stated that on 13/9/2019 they communicated again and met at Kongowe ready for the journey to Mbeya.

That his motor vehicle got breakdown at Mikumi, it was already 14/9/2019. That the accused person dropped from the vehicle and came Mrisho Hussein who was driving his vehicle. Then the accused went in the vehicle of Mrisho Hussein, they left. That he later got information from his co – driver that Mrisho is dead, that was on 15/9/2019 and was told that he was killed by a person who bordered in his vehicle.

During cross-examination he said he had time with the accused for almost 13 hours and that he saw him bordering the deceased's motor vehicle.

PW2 (H.5550 Coplo Florence) stated that while at work on 15/9/2019 was informed that Mrisho is dead. They went at the scene of

crime where they found the deceased with wounds on the head. While at the scene he drew a sketch map which was admitted as exhibit P1.

PW3 (G. 3340 Coplo Mathayo) testify that he was a store keeper at Mbarali Police station, on 16/9/2019 he was given a spanner by D/CPL. Ramadhani and kept it on the room. That on 14/11/2023 the exhibit was given to Coplo Elimwokozi for taking it to court. The said spanner was tendered and admitted as exhibit P2.

PW4 (Leticia Waitara) is an expert from Government Chief Chemist office, she testified that on 20/9/2019 received samples which were dried blood taken at the crime scene and from the deceased, she was required to examine its DNA. After examination the result confirmed that the samples were human blood which resembled. That he prepared a report, it was tendered and admitted as exhibits P3.

PW5 (G. 4925 D/CPL Ramadhan) testified that on 15/09/2019 was required to go and investigate murder which occurred at Chimala. He took working tools and disembarked at crime scene. He opened the vehicle and found a spanner which had blood stains, He poured finger print powder, lifting tape, brash and torch which would help to see if the item was touched. He took fingerprint and the spanner was taken to store.

That on 02/11/2019 he collected fingerprint of the accused. The took the fingerprint taken at crime scene and that of the accused together sent to fingerprint experts.

PW6 (PF. 24203 Tito Peter Maganga) testified that on 15/06/2020 went at the Forensic Bereau with sample which related to the case.

PW7 (WP 10616 D/CPL Flaviana) she testified that on 26/11/2019 she travelled to Dar es salaam and sending a sealed envelopes labelled Rujewa/IR/877/2019 and it was handed it to D/SGT Hassan. On 27/11/2019 she arrived at police HQ

PW8 (Dr. Dominic Kadogo) a medical doctor, on 15/09/2019 conducted post mortem on the body of the deceased at the crime scene and on 16/09/2019 the body of the deceased was identified by relatives; The body he examined was that of Mrisho Hussein in his examination the cause of death was traumatic brain and head Injury. That the findings were filled in post mortem report which was tendered and admitted as exhibit P4.

PW9 (G.9928 D/C Didace) was an investigator of the case, through investigation, he found that the suspect was seen by Abdullatif Salum bordering the vehicle of the deceased. Also was seen by Juma at various point where he met with the deceased. That on 18/09/2019 got information that the suspect was at Dakawa. He sent Afande Elimokozi to go and arrest the accused.

PW10 (H. 1351 D/C Elimwokozi) testified that on 16/10/2019 travelled to Morogoro and arrived on 17/10/2019 they looked for the suspect and arrested him at around 17:40 on 18/10/2019. They took him to Wami Dakawa Police Station, he interrogated and recorded the statement of the accused, after introducing each other and he told him all his rights. The accused agreed to be recorded statement while alone. They all signed their respective spaces. He added that the accused admitted to the offence. The said statement was received in evidence as exhibit P5 after trial within trial.

PW11 (Juma Athuman Kuzindwa) testified that he knew the deceased as they worked together at Kisma company as drivers. That he saw for the first time Aman Hezron on 06/09/2019 at the interview at their company.

That on 16/09/2019 he saw him again at Ruaha Mbuyuni at the restaurant with Mrisho Hussein and Ngeta. After taking food Aman Hezron boarded in the vehicle of Mrisho Hussein. That he met the accused at Igawa, Madabaga and Chimala when he found the accused with the vehicle of Mrisho packed at the center of the road. They discussed the problem for the motorvehicle and tried to fixed the problem, when asked the accused said Mrisho had gone to take spear. That while looking for further assistance Aman Hezron disappeared. He entered the Mrisho vehicle and saw blood he then reported the matter to Police.

PW12 (E. 5137 D/SGT Hassan Nassoro) testified that he was working with Forensic Bureau, on 27/11/2019 received samples from Mbarali after opening, it was fingerprint. Marked as exhibit A and B. That he found that all exhibits were taken properly, he examined it and the result was that the two exhibits resembled. He prepared a report which was admitted as exhibit P6.

This marked end of the prosecution case the court found that on the available evidence of the prosecution, the *prima facie* case against the accused person had been established. Thus, the accused was addressed in terms of section 293(2) of the Criminal Procedure Act [Cap 20 R: E 2022] he chose to give evidence on oath.

In his defence the accused testified that on 14/09/2019 was called by Jailon who told to go at Kisma for interview, he went but did not do it because he had no NIT training. That he met with Athman Kuzindwa at Ruaha Mbuyuni on 16/17/2019 while on onion business. He took lift to Athman Kuzindwa to Igawa where he told him he could not proceed with Journey because the vehicle had Problem. That he was arrested on 10/10/2019 he was interrogated at Mbarali while being beaten.

from evidence of both parties, the only issues calling for my determination are;

1. whether the deceased Mrisho Hussen died unnatural death
2. whether the accused person is the one who murdered Mrisho Hussen.

To prove that Mrisho Hussein is died evidence of PW8 and PW4 is crucial. PW8 is a medical doctor who on 15/9/2019 went at the crime scene together with PW2 and PW5 where the body of the deceased was laying. According to their evidence the deceased had head injury. PW8 went on to state that after examining brain and head injury, the finding was filled in Exhibit PW3.

Further evidence on death of the deceased came from PW4 who conducted DNA test on the blood which was collected at the crime scene

and that which was collected from the deceased. Taking blood at the scene was confirmed by PW5 and PW8. PW4 stated that the DNA test confirmed that the samples resembled, the report was prepared, exhibit P3.

The accused denied to have known the deceased and be connected with murder. With the prosecution evidence how the deceased met his retirement on earth, I am satisfied that the said Mrisho Hussen is dead and his death was not natural.

This takes me to the second issue, whether the accused is the one who murdered the deceased. Before embarking to the issue, I wish first to state the burden of proof in criminal justice. In all criminal trials that it is the duty of the prosecution to prove the case beyond reasonable doubts that the accused committed the offence. In **Phinias Alexander and Others vs Republic**, Criminal Appeal No. 276 of 2019 citing with approval the decision in **Jonas Nkize vs Republic** [1992] TLR 214 the court held that

"The general rule in criminal prosecution that the onus of proving the charge against the accused beyond reasonable doubt lies on the prosecution, is part of our law, and forgetting or ignoring it is unforgivable, and is a peril not worth taking."

The burden does not shift to the accused, what has to do is to raise reasonable doubts on the prosecution case and where a reasonable doubt arises, it is also the law, it has to be applied in favour of the accused person. I will be guided by this principle in the determination of the case to rule whether the prosecution has proved the case or not.

It is clearly demonstrated in the evidence that in the case at hand there is no direct evidence to show that the accused participated in the commission of the offence but it is vividly seen that the case for the prosecution is built more on circumstantial evidence mainly on the doctrine of the last person to be seen with the deceased alive.

In this case there is little dispute that the accused was known to some of the prosecution witnesses, PW1 and PW11 testified that they first saw the accused person on 6/9/2019 at Kisma company where they worked and the accused appeared for the interview on that day. It would appear that the accused admits to have gone for interview at Kisma company but mention a different date, that it was on 14/9/2019.

Another evidence which points the identification of the accused to the prosecution witness is that of PW1 who said they had pre-arrangement with the accused to travel to Chimala and they met on

13/9/2019 at Kongowe and travelled up to Mikumi where PW1 vehicle got breakdown.

Other evidence comes from P11 who told the court that while at Ruaha Mbuyuni, met the accused who was in the motor vehicle driven by the deceased. This evidence finds support from the accused himself but according to his evidence he boarded the vehicle of PW11 on 16 or 17/9/2019 and travelled together up to Igawa when PW11 motor vehicle was found to have oil leakage problem and could not continue with journey, they parted ways. It is therefore settled that the accused was known to PW1 and PW11.

The law on circumstantial evidence is that a court may ground a conviction based solely on circumstantial evidence where the said evidence irresistibly leads to the inference that it was the appellant and nobody else who committed the offence, and that; such evidence must be incapable of more than one Interpretation and the chain linking such evidence must be so complete as not to leave reasonable ground for conclusion consistent with the innocence of the accused. see **Stephano s/o Victor @ Mlelwa vs Republic**, Criminal Appeal 257 of 2021 [2023] TZCA 152 (TNZLII).

As stated, a specie of circumstantial evidence in this case is that of the doctrine of last person to be seen with the deceased alive. That principles goes thus if an accused person is alleged to have been the last person to be seen with the deceased, in the absence of a plausible explanation to explain the circumstances leading to the death, he or she will be presumed to be the killer. See **Akili Chaniva vs Republic**, Criminal Appeal No. 156 of 2017 [2019] TZCA 385 (TANZLII) and **Justine Hamis Juma Chamashine vs Republic**, Criminal Appeal No. 669 of 2021) [2023] TZCA 214 (TANZLII).

Evidence linking the accused with the murder came from PW1 who stated that on 13/9/2019 met the accused at Kongowe and went with him up to Mikumi where PW1 vehicle got breakdown that now was 14/9/2019. PW1 stated while at Mikumi, the deceased met them, stopped and the accused then boarded the deceased motor vehicle. PW1 added that he was with the accused for almost thirteen hours. In defence the accused did not dispute that he was with PW1 on 13/9/2019 in his vehicle.

Another evidence which connected the accused to the murder is that of PW11 who testified that on 14/9/2019 met with the accused at Ruaha Mbuyuni taking food in the restaurant with Mrisho Hussein and Khalid Ngeta. That the accused was in the vehicle driven by Mrisho

Hussein and they were only two. PW11 added that he met the accused at Madabaga who dropped from the deceased's vehicle, at Chimala the accused who was driving the accused vehicle where he tried to fix the problem some sometimes with the accused. PW1 being told that the deceased has gone to look for help. While looking for more solution the accused disappeared and the murder of the deceased was discovered.

In defence the accused gave a different testimony, he said on 16 or 17/9/2019 at Ruaha Mbuyuni met PW11 and bordered his vehicle up to Igawa where he parted ways after PW11's vehicle was found to have problem and could not proceed with the journey.

What is gathered from evidence of PW11 and the accused is that they were together at Ruaha Mbuyuni, though each mentioned a different date. Examining closely PW11 and the accused evidence, PW1 is a credible witness because he cannot have lied that the accused was in the deceased vehicle, PW11 testimony is corroborated by that of PW1. The fact that murder occurred on 14/9/2019, then the accused was telling lies that he travelled to Igawa on 16 or 17/9/2019 with PW11.

Another evidence which links the accused with murder is finger print, according to PW5 at the crime scene they found a spanner with stains of blood. In his evidence he explained how finger print was taken

from spanner exhibit P2 and lifted with finger print and packed as sample. PW5 further testified that on 2/11/2019 he took finger print of the accused. PW5 was not challenged on how finger print in exhibit P2 was taken and the accused did not deny to have been taken his finger print when in witness box.

Examination of finger print from the forensic bureau was done by PW12 after being taken to him by PW7. PW12 who stated that he received two exhibit A and B. exhibit A being finger print taken in the spanner and B finger print from Aman Hezron. He stated that he examined the samples and found that it was properly taken and upon examination the left fore finger in exhibit A was the same with left fore finger in B. PW12 conclusion was that finger print in sample A was that of Aman Hezron a finger print in sample B. The finding of PW12 is well elaborated in exhibit P5. It reads

'HITIMISHO: Sina shaka yoyote kuwa alama ya kidole iliyoanishawa kwa namba 1 iliyopo kwenye kielelezo "A" (kielelezo "A" ni picha yenye alama za vidole zilizoainishwa kwa namba 1 na 2 zilizopatikana kwenye spanner kuhusiana na tukio la mauaji) ni ya mtu ambaye amechukuliwa alama za vidole kwenye kielele "B" (kielelezo "B" in sampuli za alama za vidole kwenye fomu ya police 14B) yenye jina la Aman Hezron @ Hatari zilizochukuliwavy tarehe 2/11/2019).'

The above finding point finger to the accused person to be the one who murdered Mrisho Hussein because as stated earlier the accused in his defence did not deny to be taken finger print, further PW12 was not controverted in his evidence.

Last is caution statement of the accused which was repudiated or retracted. As a matter of law caution statement can form the basis of conviction but in practice it needs corroboration unless the court is satisfied that it contains the truth. The court stated in the case of **Flano Alphonse Masalu @ Singu vs Republic**, Criminal Appeal No. 366 of 2018 [2020] TZCA 197 (TANZLII) that;

'The law is trite that where an accused person retracts/repudiates his confession, the court can convict him on the uncorroborated confession provided that it warns itself of the dangers of acting solely on such confession and if it is fully satisfied that the confession cannot be but true.'

In the present case statements were admitted after the court had conducted trial within trial and satisfied that it was made voluntarily by the accused person. I have read the statement and it indeed provide detailed information of the whole episode. They are so detailed that the events described therein could have only been given by a person who had the knowledge of how the deceased met his demise.

For instance the statement has the information of going to the interview at Kisma company, how Silivester connected him with PW1 for a lift to Mbeya, where he was taken by PW1 and the breakdown of the vehicle of PW1.

The statement corroborates with prosecution evidence particularly PW1 on that he communicated with the accused, took him at Kongowe up to Mikumi where his car got breakdown. Further corroboration comes from PW11 who testified that he was in touch with the accused, that they met at Igawa, Madabaga and Chimala where the vehicle at last failed to move due to mechanical.

I have said already the defence evidence corroborated evidence of PW11 that they were together though each mentioned a different date. I have chosen to believe evidence of PW11 that it was on 14/9/2019 because it has been accepted by the accused that they were together from Ruaha Mbuyuni to Igawa. This evidence materially corroborates PW11 and the whole prosecution case. Further reading testimony of PW11 together with oral and cautioned statement of the accused irrespective of the date it becomes clear that it was from Igawa to Chimala when the accused was alone driving the deceased vehicle and on being asked, he

lied that Mrisho was asleep and at Chimala, that Mrisho has gone to look for spears.

It be noted that in explaining the deceased's whereabouts to PW11 the accused told lies. It is an elementary principle of law that an accused person has no duty to prove his innocence, but there are times when lies by such an accused may be resolved against him. See **Miraji Idd Waziri @ Simwana & Another** vs Republic, Criminal Appeal 14 of 2018 [2020] TZCA 387 (TANZLII).

In the circumstance of this case, I am satisfied that the prosecution evidence irresistibly points guilty the accused as being the one who murdered the Mrisho Hussein, the deceased in this case. Evidence of the accused has completely failed to shake the prosecution case. In the event I find the accused Aman Hezron Karibwana @Hatari guilty of the offence of murder contrary to section 196 and 197 of the Penal Code [Cap 16 R: E 2019 now in R: E 2022] and is accordingly convicted in accordance with section 312(2) of the Criminal Procedure Act [Cap. 20 R: E 2022).

V.M. NONGWA
JUDGE
8/12/2023

Sentence

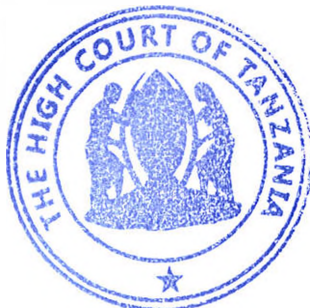
The offence of murder contrary to section 196, with which the offender has been convicted with, has only one mandatory sentence, under section 197 of the Penal Code Cap 16, Cap 16, the law provides that a person convicted of murder shall be sentenced to death. Section 322 (1) of the Criminal Procedure Act Cap 20, R.E.2022 provides the modality on which the death sentence is to be executed, that is by hanging.

Therefore, the Convict is Aman Hezron Karibwana @Hatari is sentenced to suffer death by hanging as per section 197 of the Penal Code Cap 16 R.E 2019 (now R.E 2022) read together with section 322(1) & (2) of the Criminal Procedure Act Cap 20 R.E. 2022.


V.M. NONGWA
JUDGE
8/12/2023

Right of appeal is explained as per section 323 of the Criminal Procedure Act, Cap 20 R.E. 2022

Dated and Delivered at Mbeya in presence of both sides this 8th December, 2023.




V.M. NONGWA
JUDGE
8/12/2023