D

E AMIRI MOHAMED v REPUBLIC

COURT OF APPEAL OF TANZANIA

(Makame, Omar and Ramadhani, JJA)

F CRIMINAL APPEAL NO 5 OF 1994

May 18, 1994 – TANGA

(From the conviction and sentence of the High Court of
G Tanzania at Tanga, Kileo – PRM/Extended Jurisdiction).

Evidence – Analysis of evidence – Failure to properly analyse evidence – Consequence thereof.

Evidence – Hostile witness – Evidence of hostile witness – Whether such evidence may be used.

H *Evidence – Corroboration – Circumstantial evidence – Reliability of witness*

Criminal Practice and Procedure – Murder – Motive – Whether motive is necessary to establish murder.

I The appellant appealed against conviction and sentence for murder. He challenged the conviction on, inter alia, the ground that the testimony of

one witness in court differed with the statement of the same witness made to the police one day after the event; in particular about the sequence of events. Another ground was that the trial court was wrong to disbelieve the reasonable and likely version by the appellant because the Trial Magistrate had made up her mind that the appellant was a liar.

Held:

(i) All the three versions of evidence given by three different witnesses yielded the same basic message, that the appellant issued threats to the effect that the deceased had done something bad to the appellant for which the deceased would have had to pay on the day he was murdered;

(ii) The appellant did utter the threats to the deceased and this was a circumstance to be taken into account in considering the guilt or otherwise of the appellant;

(iii) It is improper to use evidence of a hostile witness which has to be thrown out in total however in this case there was evidence of the appellant himself that he did instruct the hostile witness to throw away the weapon alleged to have been used for the murder, into a latrine or into a river;

(iv) Every magistrate or judge has got his or her own style of composing a judgment, and what vitally matters is that the essential ingredients should be there, and these include critical analysis of both the Prosecution and the Defence;

(v) The conduct of the appellant of disappearing from his abode soon after the event of murder and his explanations show that he was responsible for the murder:

(vi) Although motive is not discernible on the record but motive does not have to be established to bring the charge home.

Appeal dismissed.

No case referred to.

Kavuta, for the appellant.
Bilaro, State Attorney for the respondent.

Makame, JA, delivered the considered judgment of the Court:

The appellant Amiri Mohammed was condemned to death by Mrs Kiloo, PRM, Extended Jurisdiction, after being found guilty of murdering a woman, variously described as a widow or divorcee, Asha Miraji, at Kilole Village, Korogwe District on 15 February 1991. He is advocated for by Mr *Kavuta*, learned Counsel, while Mr *Bilaro*, learned Senior State Attorney appeared for the respondent and urged us to sustain the finding that the appellant is guilty.

The deceased was stabbed to death some 50 paces from the house

of PW4 Vincent Michael and his wife PW2 Harlamu Mkoma who, like PW3 Daniel Komba, said the appellant was one of the people who went visiting at that house that evening. The appellant owned as much, so that was common ground.

According to PW4, PW2 and PW3, the appellant uttered some threats to the deceased who was also at the house where PW2 was sick. The appellant threatened to get even with the deceased because of some undisclosed uncivil treatment he had been subjected to by the deceased previously. PW4 did not like the commotion in his house so he asked all the visitors to leave. PW4 testified to leaving the house with the deceased with the appellant behind them. Outside there the appellant resumed the quarrel which the deceased said she did not like, whereupon the appellant seized the deceased by her dress and hit her with something the appellant fished out from his pocket. The deceased cried out that she had been stabbed with a knife while the appellant ran away.

On behalf of his client Mr *Kavuta* argued four grounds. First he submitted that PW3's testimony ought not to have been believed and relied on by the trial court because it differed from Exh D1, the statement the witness made to the police one day after the event, in particular about the sequence of events. Going by the statement there was a time when PW3 went away from the deceased, and less than five minutes later is when PW3 heard the deceased's cries.

Learned Counsel for the appellant also urged that the alleged threats by the appellant inside the house were sheer lies. There were no such threats made and that was why the renderings by the three witnesses were so variant.

The appellant's advocate's other ground of complaint was that the learned Trial Magistrate erred in finding that the appellant used the bush-knife (Exh 13) to kill the deceased by making use of the evidence of the appellant's daughter PW5 Fatuma Amiri and that of PW6 D/Sgt Hatal.

Counsel's last ground is that it was wrong on the part of the trial court to disbelieve the reasonable and likely version by the appellant. Counsel also submitted that the Trial Magistrate made up her mind that the appellant was a liar so that even then she came to consider the appellant's disappearance after the killing she made conclusions without properly analysing the appellant's story.

The appellant's version was that although he did go to the house of PW4 and there found the deceased who left with PW3 ahead of him, there was no trouble at all. He left the place normally but did

not go home. He spent the night at Hanundu in his uncle's house and the following day he went on to Ngombozi to look for a job. We wish to pause here and observe two things: One that the uncle was not called and two that according to the appellant himself he had an uncompleted masonry assignment which he left to be completed by other fundis. Regarding the panga said to be the murder weapon, the appellant said he did tell his daughter to throw the panga into a latrine or the river but this was because it had hurt him.

Mr *Bilaro*, learned Attorney for the Republic supported the conviction. He conceded that PW3's statement to the police differed from what she later told the Court but he urged us to accept her explanation that at the police station she held back somewhat as she was scared and she had been roughed up. Mr *Bilaro* also submitted that PW3's identification of the appellant at the scene was worthy of belief. If, however, we thought that that piece of evidence needed corroboration such corroboration was available from three aspects. Those were the threats the appellant uttered to the deceased at the house, the appellant's disappearance for some days, and the discovery of the murder weapon. Learned State Attorney also pointed out that the evidence of the appellant's daughter was discarded and not used. The learned Trial Magistrate relied rather on the appellant's own evidence and that of PW6. Mr *Bilaro* also submitted that the reason the appellant gave for wanting to dispose of the panga was flimsy. Lastly, on Ground 4 learned State Attorney said it was only a matter of style: The truth is that the learned Trial Magistrate considered the evidence of both the Prosecution and the Defence before arriving at her decision.

We are obliged to both Counsel for their help. We propose to deal with the second ground first. With respect, we are not at all impressed by the appellant's advocate's submission that the disparity in the three reproductions of the reported threats by the appellant to the deceased are such that the trial court ought reasonably to have doubted the veracity of PW2, PW3 and PW4. All the three versions yield the same basic message: That the deceased had done something bad to the appellant for which the deceased would have to pay that day. The three witnesses should not have been expected to quote the appellant verbatim necessarily. In fact, in the circumstances, if such witness had used the same precise identical words one might start wondering. Like the trial court, we are satisfied that the appellant did utter the threats to the deceased. We might jump in here and add that this was indeed a

A circumstance to be taken into account in considering the guilt or otherwise of the appellant.

Regarding the bush-knife which was Ground 3, we wish to say that one did not have to rely on the evidence of the girl PW5 to find that it featured in the case. Further, it is true that it would indeed
B have been improper to make use of it because the evidence of a hostile witness has to be thrown out in toto. In the instant case, however, there was the evidence of the appellant himself that he did instruct PW5 to throw away the weapon, into a latrine or into a river. People do not usually throw away weapons which happen to
C hurt them, as that would be quite unnatural. If you fear that a weapon would hurt you again why not fear for your daughter also, and why not think of members of the public who may have occasion to be in the river? We are satisfied that the appellant had something to fear about the panga and that was why he gave in-
D structions for its disposal. We too think it would have been better workmanship to send the weapon to the government chemist, but in the particular circumstances of this case we do not think the unhappy omission was fatal.

Regarding Ground 4 we agree with what Mr *Bilaro* said. Every
E magistrate or judge has got his or her own style of composing a judgment. Some judgments are more logically written, some are more neatly thoughtful, some are more compondious, and so on. What vitally matters is that the essences should be there, and these include critical analysis of both the prosecution and the defence. We
F are unable to say that the essential ingredients are lacking in the judgment we are considering.

We now wish to turn back to the issue of the reliability or otherwise of the witness Daniel Komba. One needs to be realistic. We cannot fail to agree with Mr *Bilaro* that what we are satisfied did
G happen at the house of PW2 and PW4 is a circumstance legitimately to be taken into account. We are of course referring to the threats which, as we have indicated, we are satisfied the appellant did utter. Within minutes thereafter the deceased lies stabbed and dead. The Trial Magistrate and both her assessors specifically said they be-
H lieved PW3. We are respectfully of the view that what she said was true and we accept her explanation that she held back some information at the police station because she was scared and had been roughed up. That in our view explains the disparity pointed out.

I There was also the behaviour of the appellant soon after the event. He disappeared from his abode and his story that he went

off to look for a job, while he had another job uncompleted and without saying goodbye to his family, convinces us that he went into hiding because he was responsible for the dastardly deed. If he innocently spent the night at the house of his uncle and innocently again travelled with him one would have expected him to call that uncle or at least explain why he did not do so.

The totality of the evidence satisfied us, beyond reasonable doubt, as it did the learned Trial Magistrate, that it was the appellant that murdered the deceased. The appellant knows why he did so. The motive is not discernible on the record but then, of course, motive does not have to be established to bring the charge home.

We dismiss the appeal as we are satisfied that the Trial Court decision cannot justly be assailed.

We wish to associate ourselves with what Mrs Kiloo said about the police habit of confining a suspect's dear ones so as to lure the suspect from hiding. The practice may produce the desired results but is is certainly crude, mean, unjust, callous, and deplorable. It is hardly calculated to endear the police force to the public.