

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: OMAR, J.A., MEALILA, Ag. J.A., And MAFICANO, Ag. J.A.)

CRIMINAL APPEAL NO. 75 OF 1986

RAHMANI MASSANI. APPELLANT

VERSUS

THE REPUBLIC. RESPONDENT

(Appellant from the conviction of the
High Court of Tanzania at Dar es Salaam)

(Sisya, J.) dated the 19th day of
September, 1986

in

Criminal Sessions Case No. 34 of 1985

JUDGMENT OF THE COURT

MEALILA, Ag. J.A.:

The appellant RAHMANI MASSANI was charged with and convicted of the murder of his wife IFULIDE MWINJUMA in the High Court Sitting at Korogwe (Sisya, J.) and was sentenced to death. He appealed against both conviction and sentence.

The prosecution case against the appellant which he denied, was that he strangled his wife the deceased as they were going to visit her uncle at a village called Pongwe. He then left her lying dead in a valley. The body was recovered the following day. At the trial in the High Court, the prosecution led evidence in three stages all designed to link the appellant to his wife's death. The evidence in the first stage showed that all was not well between the appellant and the deceased. That there were several constant violent quarrels between them and that in the course of one of these quarrels, he threatened to kill the deceased. This evidence was given by the deceased's brother or cousin Mohamed Miyamba (P.W.1) a young boy who was at the time living with the couple in his parents' house. During the last of these quarrels, the appellant had left the house and gone to Chanika. The second stage was designed to show that the appellant was the last person to be seen with the deceased before she died. This evidence was given by the deceased's brother Hassan Mwinjuma (P.W.2). He said that at the request of the deceased's mother, he agreed to take the deceased and her husband to Pongwe for the purpose of introducing them to the deceased's uncle whom they had never met since their marriage. But he said that since he had

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a bicycle and the two were walking, he went ahead of them but he took with him their marriage certificate which he intended to show to their uncle. He was surprised when the two had not arrived by the following day.

The third stage consisted of the appellant's own admission which he made to his uncle Hassan Rashid P.W.5. P.W.3 told the trial court that a day or two after the discovery of his wife's body, the appellant went to him and told him in answer to his question that it was he who had killed his wife because of the constant quarrels between them. He went on to tell him that on the day in question, they were going to Pongwe when they quarreled and he killed her. On hearing this, P.W.3 told him to go and report the incident at the Police station without waiting until Police themselves got him.

In his defence the appellant denied all these allegations saying that they were fabrications. He denied that he had constant quarrels with his wife the deceased. Although he admitted that he had been in the deceased's company on their way to Pongwe, he denied that he had strangled her or that he had admitted the fact to his uncle P.W.3. These fabrications by P.W.3, he said, were prompted by his desire to revenge his earlier refusal to officiate at his child's funeral ceremony.

There is no possibility that P.W.1 and P.W.3 could have met to synchronize their stories and yet what P.W.3 said the appellant told him tallied with what P.W.1 told the Court about the constant quarrels between the appellant and the deceased. Like the learned judge and the gentlemen assessors, we have not been able to find any reason which could make P.W.3 fabricate such a serious admission against his nephew as we agree with the judge that the reason given by the appellant for this fabrication is not worthy of consideration. Likewise the appellant's allegation that the deceased disappeared without any trace as she branched off to ease herself is a fairy tale. She could not have gone so far that he failed to hear her cries for help if someone else had attacked her.

We are satisfied that the learned judge correctly believed the prosecution witnesses and rejected the defence case. The appellant's guilt was proved beyond reasonable doubt.

Accordingly we dismiss the appeal.

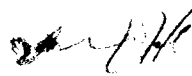
DATED at TANZA this 12th day of October, 1967.

A. M. A. OMAR
JUSTICE OF APPEAL

L. M. MFALILA
AG. JUSTICE OF APPEAL

D. P. MAFIGANO
Ag. JUSTICE OF APPEAL

I certify that this is a true copy of the original.



(J. R. McOMEE)
SENIOR DEPUTY REGISTRAR.