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IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CORAM: MAKAME, J.A.; KISANGA, J.A. And OMAR, J.A.

CRIMINAL APPEAL NO. 63 OF 1986

DANIEL DOMINICO. . . . . APPELLANT

VERSUS

THE REPUBLIC. . . . . RESPONDENT

(Appeal from the conviction and Sentence  
of the High Court of Tanzania at Singida)  
(Bahati, J.) dated the 8th day of August,  
1986

in

Criminal Sessions Case No. 45 of 1985

JUDGMENT OF THE COURT

MAKAME, J.A.:

In this appeal Mr. Banturaki, learned Counsel for the appellant, could not find much to say in favour of his client. We are hardly surprised. Mr. Kyaruzi, learned State Attorney, supported the decision of the High Court Sitting at Singida (Bahati, J.) in which the appellant was found guilty of Murder and was duly sentenced to suffer death.

The deceased was the appellant's paternal uncle's wife. At the trial the appellant admitted to have killed the deceased but he claimed to have been inebriated and provoked when he did so. He twice cut the deceased with a bill-hook on the head and the cause of death was given as shock as a result of severe haemorrhage because of severe cut wounds.

The deceased and her companion, P.W.1 BASILISA SELEMANI, had gone to the appellant's mother's place for some liquor but there was only liquor which was not wholesome - so they decided

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to leave. As they were leaving with the deceased behind P.W.1, the appellant followed carrying a bill-hook. P.W.1 noticed this but it did not alarm her she said, because there had been no quarrel. Alas, when the appellant caught up with the deceased, he slashed her with the bill-hook. All the relevant witnesses, that is P.W.1, P.W.2 RAJABU ALMASI and the appellant's own mother, P.W.4 BASILISA PINDA, said that there had been no quarrel between the appellant and the deceased. P.W.1 is more specific, that there had been no verbal exchange at all between the deceased and the appellant immediately before the assault. After the appellant had dealt the deceased the blows he threatened P.W.1 with the bill-hook and told her not to make any noise.

In his evidence the appellant said that when the deceased was passing by the appellant's house she complained that the appellant's mother had denied her a drink. Then the deceased used vulgar language - "Mundu wa Mamako" - which annoyed him so he cut the deceased. He also said he had been drinking liquor for some nine hours that day.

The trial court considered the two defences put up by the appellant and was satisfied that none would avail the appellant. The learned trial judge was satisfied that there had been no insults whatsoever. He also expressed the view that even if, for the sake argument, there had been the abuse alleged by the appellant, the appellant's reaction was disproportionate. We respectfully agree and wish to add that, for our part, on the evidence, we are satisfied that the appellant alleged falsely that the deceased had abused him. There was in our view no provocation at all.

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As for drunkenness, we share the view expressed by the High Court that that defence was not available to the appellant. He himself owned that he was not all that drunk and that he knew what he was doing. He also had the presence of mind to give the bill-book to his sister to go and throw away into a pond.

We are satisfied that the appeal is devoid of merit and it is accordingly dismissed.

DATED at DAR ES SALAAM this 28th day of May, 1987.

L. M. MAKAME

JUSTICE OF APPEAL

R. H. KISANGA

JUSTICE OF APPEAL

A. M. A. OMAR

JUSTICE OF APPEAL

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

(J. H. MSOFFE)

DEPUTY REGISTRAR.