THE UNITED REPUBLIC OF TANZANIA
IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MAKAME, J.A., LUBUVA, J.A., And LUGAKINGIRA, J.A.)

CRIMINAL APPEAL NO. 13 OF 1998

BETWEEN

CHANDRAKANT JOSHUBHAI PATEL . . . . . APPELLANT

AND

THE REPUBLIC . . . . . RESPONDENT

(Appeal from the conviction of the High Court of Tanzania at Mwanza)

(Nchalla, J.)

dated the 16th day of March, 1998

in

Criminal Sessions Case No. 8 of 1996

B e t w e e n

THE REPUBLIC . . . . . PROSECUTOR

A n d

CHANDRAKANT JOSHUBHAI PATEL . . . . . ACCUSED

JUDGEMENT OF THE COURT

MAKAME, J.A.:

Following his trial by the High Court at Mwanza, (Nchalla, J.), the appellant, CHANDRAKANT JOSHUBHAI PATEL, was found to have murdered a man called JAGDISH SODHA. He was duly convicted and accordingly condemned to suffer death. In this appeal before us the appellant is advocated for by Professor Shivji and Professor Shaidi, learned counsel. Representing the respondent Republic were Mr. Kabonde, learned State Attorney, (who continued to be instructed by the Director of Public Prosecutions after he had left public service and gone private), and Mr. Mkamanga, learned State Attorney.

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The appellant and the deceased were both businessmen, living in Mwanza at the material time, February 1995. They were friends. On 24th February 1995 when PW4 KIRITI JAGDISH SODHA, the deceased's wife, came home in the afternoon from their family shop, she found her husband on a bed in their children's play-room, covered with a blanket. She removed it and found that he was bathed in blood. He was taken to Bugando Hospital where he was pronounced dead. In the afternoon of the same day the appellant was picked-up, and eventually he was arraigned and convicted, as aforesaid.

The appellant's Memorandum of Appeal challenging his conviction contained six grounds, and in arguing them before us his counsel split them into two: Prof. Shivji handled grounds 1, 2, 3 and 5, arguing the last two together; while Prof. Shaidi tackled grounds 4 and 6. On behalf of the Republic Mr. Kabonde responded to Prof. Shivji's submissions, while Mr. Mkamanga countered Prof. Shaidi's arguments.

At the instance of the Republic the court took additional evidence from a Government Chemist, one ANDREW ALFRED MAGEMBE, after a single judge of this Court, Kisanga JA, had declined, quite rightly in our view, to entertain the application for additional evidence. The learned single judge took the view that the hearing of such additional evidence was within the purview of the full Court, and we respectfully agree. We wish to observe, incidentally, that considerable time and argument were spent by learned counsel on both sides on whether or not we should hear the additional evidence. With great respect,

a good portion of that effort was unnecessary and, quite frankly, at times we felt that the bottom of the barrel of arguments was being scraped. At the end of the day we heard the evidence of the Chemist and we are of the view that the exercise was well worth-while. Indeed we had ourselves occasion to call the expert again, to clarify and elucidate some aspects of his earlier testimony.

A very brief recapitulation of the evidence is necessary at this stage, in order to appreciate fully the context of the appeal.

The deceased and his wife, and their infant children, were living in a first-floor flat in a housing complex consisting of a number of flats. Apart from this menage the couple also had two non-resident domestic servants. These were PW1 HADIJA HUSSEIN, and PW2 TATU IHOYESA, both described as housemaids. The evidence of these two witnesses and that of PW4, the wife of the deceased as well as that of a self-employed electrician, PW3 ABDUL YAHAYA, was chiefly what the Prosecution relied on. There was, further, Exh P5, a written statement by the deceased's one-time watchman, SHABANI WAZIRI, who could not be traced at the time the case was being heard despite concerted efforts to locate him. Initially the Defence objected to the said statement being tendered under Section 34B of the Evidence Act, 1967, but later the objection was withdrawn and the statement was accordingly received.

The totality of the two witnesses, PW1 and PW2, between them, and the statement Exh P5, suggested that the appellant and the deceased were closeted alone in the room and that no one else

could have gained ingress into the room without the knowledge of PW2 until the deceased's wife made the sad discovery when she got home, after the appellant had left.

The appellant gave affirmed evidence in his defence, in which he denied the allegation laid at his door. He called five witnesses to support him. These were his wife, DW2 DAKSHA D. PATEL: DW3 GHATI OLUACHI, described as a houseboy in the appellant's household; DW4 JASHWANTRAI NARBHERAM, a barber, said to have cut the appellant's hair on the day the appellant was alleged to have killed the deceased; DW5 RAMANLAL T. SHAH, the appellant's fellow-Hindu worshipper at a temple in town; and, lastly, DW6 MANYANDA MAGUHWA, a messenger-cum cleaner at the said temple.

After hearing the evidence and summing up to the three assessors who sat with him, all of whom advised that the appellant was guilty as charged, the learned trial judge explained in his long judgement why he was satisfied that it was the appellant who had murdered the deceased, "butchering him just like a cow".

In the first two grounds, actually argued together, Prof. Shivji submitted that the cause of death had not really been established. He argued that the evidence was circumstantial and so there was need to have been established a chain of facts necessarily leading to the appellant as the only possible perpetrator of the killing: There was no such evidence. Prof. Shivji also argued that the additional evidence infact made things more difficult for the Prosecution, in so far as it introduced another possibility as to the cause of death, whereas the original immediate cause would appear to be stabbing. In the final analysis therefore, Counsel

submitted, there was no conclusive evidence as to the cause of death, and no proof beyond reasonable doubt that it was the appellant who killed the deceased. Of some of the arguments by Prof. Shivji we can, with respect, say outright, that they were picking up small details, of no necessary consequence in the context of the totality of the evidence, and nibbling at them.

On Grounds 3 and 5 Prof. Shivji argued that the learned trial judge used double standards in evaluating the evidence on record, one standard with respect to the testimony of PW1, PW2, PW3, and the watchman's statement Exh 5, on the one hand; and another standard with regard to the evidence for the Defence. Prof. Shivji urged that the learned trial judge also failed to appreciate that there were irreconcilable inconsistencies and contradictions in the Prosecution evidence, and also that the prosecution witnesses referred to, as well as the watchman Waziri, were people with an interest to serve, and, therefore, the learned judge should have looked for independent corroborative evidence and warned himself of the danger of proceeding to convict the appellant in the absence of such corroboration.

Prof. Shivji also complained that the learned trial judge appeared to shift the burden of proof onto the defence and made unjustifiable inferences in some instances. Examples Prof. Shivji gave include the fact, according to the appellant, he did not go back to the house of the deceased on the fateful day, 24th February, having been there the previous day where he had massaged the deceased's arm and shoulder and had discussed the purchase of some liquor from Malawi. Prof. Shivji's suggestion was that

the learned trial judge was unfairly critical of this and suggesting that the appellant was not being truthful as he must have gone back to the deceased's house. Another example Prof. Shivji complained about was the learned trial judge's disbelief that the appellant had his hair cut at Ashwin's hair-dressing saloon for the first time that day, even though he had already lived in Mwanza for several years before the day of the incident.

On his part Prof. Shaidi criticized the way the learned judge handled the appellant's defence of alibi. He urged that the learned trial judge failed to accord the appellant's alibi due consideration and, further, that the learned judge erred in the way he directed the assessors on that particular defence. Prof. Shaidi submitted that the appellant properly accounted for his movements on that day and that his account was corroborated by the various persons who testified on his behalf; that is: his wife DW2, DW3 the male domestic servant, DW4 the barber, DW5 the appellant's fellow worshipper and, lastly, the Temple messenger-cum-cleaner, DW6. Prof. Shaidi submitted, quite correctly of course, that the appellant did not have the burden of establishing that the alibi was true: it sufficed if the alibi raised reasonable doubt that the appellant's story might well be true. Counsel submitted that the judge misdirected the lady and gentlemen assessors when, in the course of the summing up to them, he said, in connection with the alibi, that the appellant told a lie when he said that the day before the deceased met his death, he and the deceased had parted company right at the deceased's gate; and counsel said it was also unfair for the judge to express his own view, in the course of the summing up, that the appellant was obliged to go back to the deceased's house on the morrow, to check

on the deceased's condition as he had treated the deceased the previous day, and also for the purpose of learning the status of the order for liquor from Malawi. The point Prof. Shaidi was making here was that the learned trial judge was, in effect, suggesting that the appellant must have gone again to the deceased's house on the material day, thus demolishing the appellant's defence of alibi, which would prejudice the assessors' minds.

On the sixth ground the complaint was that had the learned trial judge considered the prosecution and defence cases in their totality in his judgement, he would have come to the conclusion that the case against the appellant had not been proved beyond reasonable doubt. In our considered view this is basically a blanket variation of Grounds One and Two, with a slightly different slant.

In the same vein Prof. Shaidi submitted that the learned trial judge was biased against the appellant and that he magnified what he considered to be weaknesses in the defence case and used these to ground a conviction. According to learned counsel, the learned judge ought not to have capitalized on his own view that the appellant ought to have gone back to the deceased's house on 24th February, and conclude that the appellant bathing and changing into fresh clothes after he had had a hair cut were acts of destroying evidence. Be it as it may, we are, however, at a loss to appreciate Prof. Shaidi's criticism of the learned trial judge's handling of the concept of Malice-afore-thought. At the end of his summing up to the assessors the learned trial judge recapitulated the postmortem examination doctor's finding that

the deceased had suffered "a cut wound 10 cm long, deep to the muscles horizontally placed at the right aspect of the neck extending to the middle anteriorly, severed platysman, sterocleidomastod muscles and the common carotid artery and external jagular vein". The learned trial judge went on to remark, that "this nature of injury is an indication of malice aforethought to (sic) who-ever inflicted the injury." We cannot see how the foregoing can be the subject of criticism, even when read together with an earlier portion of the summing up the learned advocate picked on, that "Malice aforethought is not proved by direct evidence as the same is a mental element. It is proved by circumstantial evidence". With respect, what the learned trial judge was doing was to play his other important role, the role of educating.

In response to Prof. Shivji's arguments, Mr. Kabonde, learned State Attorney, submitted on Grounds 3 and 4, together. Mr. Kabonde contended that the various things Prof. Shivji laboured on were minor matters which did not detract from the sound finding that the appellant is guilty of murder as charged. It was submitted by Mr. Kabonde that Prof. Shivji dwealt on matters of no consequent bearing, things like no finger prints of the appellant were taken to compare with things found at the scene, the mentioned bedsheet, blanket and shirt not being produced. The fact of the matter, according to Mr. Kabonde, is that only the appellant entered the room in which the deceased was later discovered dead. The evidence of PW1 and PW2 established that the deceased was there with the appellant alone and the written statement of Shabani Waziri and the Sketch Plan, Exh P.2 established, beyond

peradventure, that there was no possibility of an intruder gaining ingress: The only other exit was grilled and sealed up with bricks. The appellant was the only stranger between 9 and 11.30 a.m. who entered the room that day, and no one else entered the room until the deceased's wife arrived home at 1.30 p.m., and made the unhappy discovery.

Mr. Kabonde also urged us to consider closely the appellant's conduct inside the deceased's house that day. There is evidence that the appellant was alone with the deceased in the room, and that he did not want disturbance. Even when an electrician who was fixing a ceiling fan wanted the key to the main-switch, and PW2 said the key was with the deceased, the appellant said the deceased should not be disturbed because he was treating him. Before that, the appellant had come out of the room after the electrician had arrived, looked about, and went back to the room without saying any thing. Mr. Kabonde suggested that what the appellant could easily have done was to ask the deceased for the key instead of completely denying the witnesses any contact with the deceased. The appellant came out of the room again, asked for a drink of water, drank it, and repaired to the room. When the appellant emerged again he showed PW2 a tube of medicine which he said was strong and that that medicine, which he had used for massaging the deceased, had made the deceased limp and strengthless. He re-entered the room and said he was going to wait for the deceased to recover from the limpness. The appellant finally came out of the room and left the house at about 11.30 a.m., leaving instructions that the deceased should not be awakened: He should be left alone; he would get up himself once he had recovered from

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the effect of the medicine. Mr. Kabonde also drew our attention to the assertion by the watchman at the gate in his statement, Exh P5, that the appellant also urged the watchman not to let in anyone saying he was going to the deceased's apartment, as he had given the deceased some medicine and did not want him disturbed.

With regard to Prof. Shivji's contention that the Prosecution witnesses 1 to 3, and indeed, according to Prof. Shivji, even PW4, the deceased's wife, who first discovered the body, had an interest to serve, learned State Attorney said that that cannot possibly be right. There was no any evidence of enmity between those witnesses and the deceased or of any reason for them to want to harm him. Their relationship with the deceased was good, indeed one of the domestic servants, PW1, was still working at the deceased's house at the time of the trial; so no reason to think they could have feared incrimination. Mr. Kabonde also made the point that defence counsel during the trial did not put any questions to the Prosecution witnesses to suggest that they had any interest to serve. Mr. Kabonde observed also that, in any event, in his summing up the learned trial judge himself invited the assessors to consider the possibility that any one of the first three witnesses, and Shabani Waziri the watchman, might have killed the deceased. In his judgement the learned trial judge considered that possibility and was satisfied that it was "far-fetched." The learned trial judge was satisfied that the witnesses were "so impressive that I have highly believed them and their testimony."

Mr. Kabonde also addressed us on the assertion by Prof. Shivji that there were, in the evidence marshaled by the Prosecution, a number of inconsistencies and contradictions. It was Mr. Kabonde's submission that minor inconsistencies were inevitable, and to be expected, in a case of homicide when witnesses were trying to recollect events which happened some four years previously, and when mention of time is at best a mere estimate: The trial judge was satisfied that the witnesses were credible and counsel urged that his findings should be upheld.

As aforesaid, Mr. Mkamanga responded to Prof. Shaidi's submissions on the other grounds, Grounds 4 and 6. It will be recalled that these two grounds related to the appellant's alibi, and the alleged Prosecution's failure to prove their case beyond reasonable doubt.

On the defence of alibi Mr. Mkamanga submitted that although the appellant's notice in that regard indicated that the appellant was at home with his wife and his domestic servant, and at other places that day the defence evidence left significant gaps of time when the appellant was not at home. Learned State Attorney further submitted that, in any case, in the face of the evidence of PW1, PW2, PW4 and the watchman's statement, the alibi simply cannot stand. About Prof. Shaidi's contention that the learned trial judge's summing to the assessors was highly suggestive and biased against the appellant, learned State Attorney submitted that what the learned trial judge was simply saying was that the appellant's behaviour was out of the ordinary. For example, the judge was remarking that it was extraordinary for the appellant not to want

to go back to the deceased's house on the following day to see how his sick friend was doing. Mr. Mkamanga said also that he did not find anything wrong with the learned trial judge's direction on malice aforethought. He was merely educating laymen on the meaning and essence of the concept.

This was certainly a homicide, and if we may say so, it was not the run-of-the mill type. If PW1, PW2 and PW4, are to be believed, the killing was a daring foul deed by a man with steel nerves. It was as macabre as it was eerie.

We now turn to look closely at the evidence and consider the judgement in the light of the spirited and erudite assistance we got from the four learned counsel.

It is common ground that the appellant went to the deceased's place on 23rd February and that the two spent some time together sitting by themselves. According to the appellant, the deceased revealed to him that he had a problem with his right arm, which felt paralysed from time to time. The appellant, a self-proclaimed expert at massaging, having inherited the art from his clan, examined the deceased, and massaged him, with Iodex ointment the deceased himself had produced. Then the two left the house together. According to the Prosecution, from the house they went to the deceased's shop. The appellant prevaricated on this - at first he said that he and the deceased parted at the main gate. He said this in examination-in-chief and repeated it in cross-examination at first. In the course of that cross-examination, however, when he was confronted with a statement he had made before, he said he now remembered that on leaving the house with the deceased, they did go

together to the deceased's shop where the appellant made a telephone call to Malawi to enquire about the availability of Konyagi there, on behalf of the deceased. The deceased had said that he was interested in purchasing that liquor. One way or the other, whether the deceased and the appellant parted right at the main gate, or that the two went together to the deceased's shop on 23rd February, would not really ordinarily matter, in our view. However, we make mention of this because the learned trial judge built on this and concluded that the appellant must have gone again to the deceased's house, on the morrow, to follow up on the konyagi order, and to find out how the deceased was getting on after the appellant had massaged him. At most one might have expected the appellant to do so, in the ordinary course of social conduct, especially as, according to the appellant himself, the appellant and the deceased had been friends for several years. They had known each other for nineteen years, they had played football together, at one time the deceased, a wholesaler, was supplying to the appellant, a retailer, shop merchandize on credit, and the deceased used to visit him at his house. As we have said, one might have expected the appellant to go again to the deceased's house on 24th February. We cannot, however, proceed from that and say that he must have done so, as we are unable to share the learned trial judge's certitude on this. Instead, what we have to do is to take a hard look at the relevant evidence in order to say whether or not it was established that the appellant did go to the deceased's house on the fateful day, 24th February.

As observed, it is common ground that the appellant did go to the deceased's house on 23rd February. PW1 and PW2 said they saw him on that day. PW1 said she had frequently seen the appellant

before, twice a day, while walking past the appellant's shop. The watchman too said the appellant went to the deceased's house on 23rd February. We have no difficulty in believing that that was so. The appellant did not deny the fact. Now, the same people say that he went to the house again on 24th February. The trial court found the relevant Prosecution witnesses credible and truthful. We, too, are satisfied that the said witnesses told the truth, and that they were correct about the appellant going there again on 24th February. We are satisfied that PW1 and PW2 stated the truth when they said that the appellant told them he was massaging the deceased that day. Indeed PW1 told the court of trial that she had a glimpse of the massaging in progress when she made to enter the children's playroom, wanting to sweep it. Once these witnesses are believed, as they were, rightly in our view, the only other question that might reasonably exercise one's mind is whether the witnesses might have been mistaken about the precise date. We cannot see how this could happen, and we confidently discount the thought for being absurd. It might be different if the fateful day had no time context, as it were. This one, 24th February, had a time context. It is that, the man the witnesses saw on 23rd February went again the following day. We have already expressed our satisfaction that the witnesses told the truth. Now, today, and tomorrow, follow so immediately after one another, that the witnesses could not have mistaken the date. Moreover, it has to be remembered that there would have been no other day, after 23rd February, for the appellant to have visited the deceased again, because the deceased died on 24th February.

We have no doubt whatsoever that the appellant made two distinct visits, one on 23rd February, and the other on 24th February. If further assurance was necessary, but we think it would be superfluous, such buttressing assurance is supplied by a detail in the evidence of the two female servants, which strengthens the chronological frame. It is not without significance that both these witnesses, each in her own way, told the court of trial that on 23rd February the appellant found them at the house, while on the 24th February, that is on a later, different, date and a different occasion, they found the appellant already in the house. The appellant asserted that he was not at the deceased's place on the day the deceased was murdered, but cogent and credible Prosecution evidence, to the contrary, is harshly staring at him in the face.

We are of considered view that the foregoing places the appellant at the deceased's house right on the day the deceased got killed, and that the relevant witnesses were indeed in the house with him. The appellant was at the scene of crime and his alibi, which cannot have been wholly truthful, does not shut out the proven fact that between about 9.30 and 11.30 a.m. or thereabouts, the appellant was at the deceased's house, and not elsewhere as he claimed. It was between when the appellant was seen closeted with the deceased and the appellant's announced departure at around 11.30 a.m. that the deceased was killed.

Who killed the deceased? The lady and the two gentlemen assessors confidently and eloquently expressed the opinion that it was the appellant who did it. The learned trial judge, after a careful consideration and analysis of the evidence, on both

sides, for the prosecution and for the defence, was of the view that the appellant was the murderer. We have already briefly indicated why we were not necessarily prepared to go along with the learned judge regarding his expectation that the appellant must have gone to the deceased's house again on 24th February, an inference he drew from the appellant's asserted omission, which he did not believe. As it turns out, however, we are positively of the view, albeit for a different and better reason, that the appellant was at the scene. The distance we are prepared to go along with the learned trial judge takes us to the same destination, the finding that the appellant's conviction is firmly sound.

We are genuinely grateful to learned counsel for the various authorities they cited. The authorities were of great assistance to us and they contributed to our focusing on vital issues more sharply.

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On the question of the identification there cannot be serious doubt that it was the appellant who was with the deceased inside the room on 24th February. In view of the established geography and details of the house, it would in our view, be fanciful to assert that an intruder could have come in, undetected by the witnesses, PW1 and PW2. What of the circumstances? Prof. Shivji is undoubtedly correct that to ground a conviction based on circumstantial evidence, the evidence must irresistibly lead to the accused as the person who committed the offence charged, with no possibility of another different person being the one who committed the deed. That is indeed the case law, and trite. We have ourselves said so, for example, in a case Prof. Shivji cited, BAKARI SEFU v. REPUBLIC (Criminal Appeal No. 21 of 1993 (unreported). Another authority among those Prof. Shivji furnished us with, REPUBLIC v. SIRASI BACHUMIRA (1936) 3 E.A.C.A. 40, is another such decision in point. There is no problem about that. What has to be emphasized, however, is that the alternative possibility must not be fanciful. It must be plausible. Doubt about the guilt

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of an accused person can count only if such doubt is reasonable. The circumstances must also be looked at, and considered, in their totality. As this Court said in MAGENDO PAUL AND ANOTHER v. REPUBLIC [1993] TLR 219, quoting Lord Denning's view in MILLIER v. MINISTER OF PENSIONS 1947 2 All E.R. 372, also quoted by the learned trial judge in the instant case, remote possibilities in favour of the accused cannot be allowed to benefit him. If we may add, fanciful possibilities are limitless, and it would be disastrous for the administration of criminal justice if they were permitted to displace solid evidence or dislodge irresistible inferences.

The sequence of events until the deceased's wife, PW4, discovered the foul deed admits of no other reasonable hypothesis than that it was the appellant that maliciously caused the deceased to die. No one else could have done it. The facts were incompatible with the innocence of the appellant. See SIMON MUSOKE v. R, E.A.C.A. Criminal Appeal No. 188 of 1958.

We are satisfied that the learned trial judge weighed the evidence quite fairly and judiciously before he agreed with the unanimous opinion of his assessors. Prof. Shivji submitted that the prosecution witnesses had an interest to serve. He suggested that they, including the deceased's wife, were potential suspects, so independent corroborative evidence should have been found before proceeding to convict. Of course it is not the law, and it would be unreasonable, and ridiculous, to hold that every time a person is at a scene of crime, or close to it, he becomes a suspect, with an interest to serve. In some cases, as in this one, there may be no sound reason for suspecting that the witness

might be involved, or for having a reasonable thought, or hunch, that a witness demonstrated anxiety or fear that he might be suspected or having committed the alleged crime, such as would lead one to hold that the witness has an interest to serve.

There was also the appellant's behaviour while in the house, inside the room. He was anxious that people should not reach and disturb the deceased, and he kept on demonstrating that frame of mind. Also there was no evidence that anyone entered the room where the deceased was, from the time the appellant left to the time the deceased's wife came home and found her husband covered with a blanket, and dead, as it turned out. In the light of all that no reasonable court would have failed to find the appellant guilty. As Georges C.J., as he then was, put it in R. v. DOURADO AND KIKAMBURO (Dsm H.C. Criminal Sessions No. 182 of 1969), it is enough if the court feels certain about an accused person's guilt. The law does not demand the establishment of absolute certainty.

We feel that in the course of saying what we have already said we have in effect already also dealt with Prof. Shaidi's two complaints - that the defence of alibi was not fairly considered and the lack of cogency in the prosecution case. It is not out of any disrespect that we do not desire to say any more on this.

We deliberately decided to deal last with the first ground in the appeal, that the cause of death had not been established. There is admittedly a touch of mystery thrown up by the additional evidence. The Chemist, Mr. Magembe, told this court that he found 486.84 mgms of alcohol in 100 ml. of the deceased's blood, the

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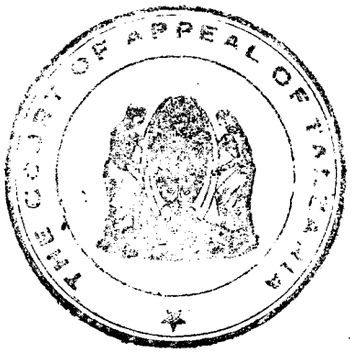
the equivalent of 0.32 litres of 70% proof spirit, or 9.5 litres of beer with 3% alcohol. He also informed us that 450 - 500 mgms would be dangerous to a normal 70 kg. person. Such a person would not be able to walk around, or sit at a table, or chat with a friend. We were told that the deceased was found with 486.84 mgms. It is not possible to fathom, nor is it immediately necessary to find out, how so much alcohol had entered the deceased's blood system. For all one knows, it might have been the modus operandi the appellant employed to disable the deceased. The immediately important piece of evidence is the post-mortem report, already mentioned earlier on in the course of this judgement, the evidence that made the learned trial judge remark that the deceased was butchered 'just like a cow'. We agree with the trial court's finding that the appellant was the slaughterman. As is the law, it was not necessary to prove motive. In the deepest recesses of the appellant's own mind would be hiding the reason, and motive, that propelled him to commit a deed so foul, callous and blood-chilling. While we are on this we wish also to remark, specifically, that we are satisfied that Mr. Kabonde, who was the prosecuting attorney, was in no way personally responsible for the Prosecution failure to make the Chemist's report feature during the trial.

The appellant's conviction was sound. His appeal has no merit and is accordingly dismissed.

DATED at DAR ES SALAAM this 20th day of May, 2002.

L. M. MAKAME
JUSTICE OF APPEAL



D. Z. LUBUVA
JUSTICE OF APPEAL

K.S.K. LUGAKINGIRA
JUSTICE OF APPEAL

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

(F.L.K. WAMBALI)
DEPUTY REGISTRAR