

**IN THE HIGH COURT ZANZIBAR
HOLDEN AT VUGA
CRIMINAL CASE No. 71 OF 2009**

DPP

VS

- 1. MOHAMED ALI ABDULLATIF**
- 2. OTHMAN HAMAD KHAMIS.....ACCUSED**

JUDGMENT.

Date of last order: 21/02/2012

Date of Judgment: 03/04/2012

MWAMPASHI, J.

This is a murder case wherein two accused persons namely Mohamed Ali Abdullatif alias Bosto (1st Accused) and Othman Hamad Khamis (2nd accused) are being charged with the offence of murder C/ss 196 and 197 both of the Penal Act, 2004 (Act No. 6 of 2004). The two are being accused of murdering an Irish subject one Mr. Robert Stringer Dicourcer (deceased). It has been alleged in the information that on 07/08/2009 at unknown time at Sazani Nungwi within the North A district in the Northern Region Unguja the accused persons did murder Mr. Robert Stringer Dicourcer (deceased).

This trial has however proceeded in respect of only the 2nd accused person Mr. Othman Hamad Khamis hereinafter to be referred to as the accused person because the 1st accused person i.e Mr. Mohamed Ali Abdullatif alias Bosto who in

this judgment where necessary will simply be referred to as Bosto, was not brought before this court to face the trial.

In this trial the court has been assisted by three gentlemen assessors namely Mr. Juma Ali Issa, Mr. Ahmed Abdul-Majid and Mr. Khamis Malik Akili hereinafter to be referred to as Assessor No. 1, 2 and 3 respectively.

The accused person i.e Othman Hamad Khamis has pleaded not guilty to the charge of murder facing him and to prove the charge the Prosecution has called the total of 15 witnesses. The first witness who testified as PW1 has been one Mr. Peter Jonathan Minchin, a South African businessman based at Nungwi who has told this court that the accused person is his friend and also that he came to know the deceased on 05/08/2009 after being introduced to him by the accused person who did also tell him that the deceased was a good musician who would like to play some music at his (PW1's) birthday party that was to take place that evening. They therefore had drinks at Mangis Bar with his other friends and later before going at his place for the party they passed at Paradise Hotel where the deceased collected his music equipments including a lap top and an ipod with its speakers. They therefore got at his place and they started partying up to about

01.00 am when he retired to bed leaving the deceased, other friends of his and the accused person continuing partying.

PW1 has also told this court that during the party he had some business conversation with the deceased and that they did agreed to meet on the next day for further discussions but the deceased never turned up. In the evening at about 22.00pm he met the accused person who asked him about the whereabouts of the deceased and who told him that he himself had not seen the deceased the whole day and that he was also looking for him. On 07/08/2009 he was informed that the body of the deceased dead has been found at the beach.

When asked in cross examination by the accused person's advocate Mr. Abdalla Juma PW1 has stated that the deceased was barefooted when they were at the birth day party and that when at the beach it is common for people not to wear shoes adding that he himself does not wear shoes whenever he is there.

PW2 has been one Mr. Shaaban Khamis Makame the General Manager of Paradise Hotel. This witness has testified that the deceased was their guest in Room No. 107 since on 04/08/2009 when he was brought at the hotel by the accused person till when his dead body was found laying on the beach on 07/08/2009. He has also told this court that on 05/08/2009 he was in his office

when the accused person introduced the deceased to him telling him that the deceased wanted to do business with the hotel and that he would bring about 4000 tourists every year. Because the Hotel Director was not around he asked the deceased to meet him and the manager on the next day for further discussions. On the next day he and his boss waited for the accused person and his friend the deceased to turn up but they did not. On 07/08/2009 PW2 he was home when he was called to go at the hotel where he met two police officers who had the key to Room 107. He was then informed by the officers that their guest in Room 107 has been found dead at Sazani beach. They then went at the beach where the body was identified and collected. From there they went back to the hotel where the deceased room was opened and his belongings including a mobile phone, a bag and some documents were collected by the officers.

Ms. Fatma Hassan Mwakayage has been called by the Prosecution as PW3 and she has told this court that she knows the accused person and also that she used to know the deceased. She has also testified that on one Tuesday night she and her friends had been at Choro Bar drinking and at about 04.00 am they were on their way home when the deceased approached her and asked her to go with him at his hotel. She agreed and she spent the night with him and was with him till at about 03.00 pm next day when she left the deceased promising to meet him again at Choro Bar at 10.0 pm. They later met at Choro Bar as agreed where the deceased introduced to her the accused person as his friend. Few minutes

later she was surprised when the deceased changed and told him that their love affair was over and that they will remain just as ordinary friends. That night she spent the night with one Alex and on Friday she was close to Nungwi School when she saw a police car in which there was a dead body of the deceased.

Ms. Bishara Hamoud Nassor and Ms. Mafida Ali Abdillatif who have testified as PW4 and PW10 respectively have told this court that they are mother and sister to Bosto respectively and that during those material days there had been some rumors that Bosto was involved in the killing of someone at Nungwi. Then at different times few days after the incident Bosto went at their respective homes. When she got at PW4's though he denied being involved in the killing but was asked by PW4 to leave. At PW10's house Bosto left his paper bag containing his certificates to PW10 before he vanished to unknown place till when he later called her from South Africa firstly accusing her of spreading rumors that he has killed a man and later apologizing on making the accusations.

PW5 has been Mr. Mohamed Juma Mungia who has testified that in 2009 he was working at Choro Bar as a barman. On 06/08/2009 at about 08.00 pm he was at the bar when the accused person who was their regular customer and who was in the company of a white man approached him and settled his bills for drinks he had consumed on credit the previous night.

Mr. Omar Mohamed Mussa a medical doctor from Mnazimmoja Government Hospital has testified as PW6 telling the court that he is in the surgical department for 12 years and that among his duties is to do potmortem of dead bodies. He has then told the court that on 07/08/2009 he attended the dead body of the deceased. He abserved that the dead body had some bruises around the neck and had a depressed skull. From his observations the death has been caused by the head injury or asyphysia. PW6 has also told the

court that he filled his observations in a postmortem form which has been tendered to the court and admitted as Prosecution Exhibit P1.

In cross examination by Mr. Abdalla Juma PW6 has admitted that he is not a pathologist but the he can perform some pathologists duties. He has also admitted that no internal examination was done on the dead body and that they did send some specimen to the Government Chemist to check possibilities of poisoning but that till then there has been no results communicated to him.

PW7 has been S/Stg. Khamis Abdulrahman of Mkokotoni Police Station who has testified that on 07/08/2009 it was reported by the officer in charge of Nungwi Police Station that there had been found a dead body of a white man at Sazani beach. Thereafter he with Inspector Abdallah, Stg. Haji Haji and other officers

rushed to the scene where they found the body lying on the beach close to Sazani Hotel. He observed that at the scene there car tyre marks and that the dead body had an injury on the head and also that a hotel key was found over there. He then prepared a sketch map of the scene which has been tendered and admitted by the court as Prosecution Exhibit P2.

PW7 has further testified that the hotel key found at the scene was identified by the manager of Paradise Hotel as a key to Room No. 107. They started their investigations by looking at who were with the deceased before the deceased met his death. The prime suspects were one Bosto, Ms. Fatma Hassan and the accused person. On their way to Nungwi Police Station they received a phone call informing them that the accused person and Fatma Hassan had been arrested. When they got there they found the accused person and were informed by the OCS ASS/INSP. Abdalla that after arresting the accused person his house had been searched and different deceased's properties including a lap top, camera, a

pair of training shoes, a number of credit and bank cards etc have been found in his house. He then interrogated the accused person who explained to him that it was the deceased who had given those belongings of his to him before his death. The explanation given by the accused person was however not believed by the officers.

St/Stg. Ali Haji Khamis of Nungwi Police Station has testified as PW8 telling the court that on 07/08/2009 at about 08.00am he was at the station when his boss Ass/Insp. Abdalla called him informing and ordering him to rush at Sazani beach where a dead body of white tourist had been found. He therefore rushed to the scene with Cpl. Ali and D/C Mikidadi where they found the sheha of Nungwi with his team already there. They observed that the dead body was in a jeans pair of trousers and a black T-shirt. They also found a key to room 107 of Paradise Hotel. Then he and D/C Mikidadi went at the hotel where one Mr. Shaaban Mati checked in the room but there was no one in the room. They then checked the registration book and observed that Room 107 was on 03/08/2009 rented to one Mr. Robert Stringer an Irish whose passport number was R.412313. The hotel manager Mr. Shaaban Khamis was then called and he identified the dead body as being of the deceased before the same was sent to the hospital.

PW8 has lastly told the court that he did not observe anything abnormal on the dead body till when the body was being examined by Dr. Omar at the hospital when he was shown a swollen part on the head of the dead body.

Another Prosecution witness has been Mr. Al-nnor Mohamed Ikaji who has testified as PW9 telling the court that in August 2009 he was working at Choro Bar as the Bar Manager. He has went on testifying that he knows the accused

person and that on 04/08/2009 the accused person went at the Bar with his friend the deceased. The two had their drinks and before leaving they agreed with him

that they would see him on the next day for business discussions. On the next day only the accused person turned up at about 12.00 noon and he paid the previous night' bills. PW9 did again see the accused person 06/08/2009 at about 24.00 midnight. The accused person was at the Bar and was dancing with a white woman. Then on 07/08/2009 he came to learn that the accused person's friend has died.

D/C. Ali of Mkokotoni Police Station has testified as PW11 telling the court that on 08/08/2009 he was at Nungwi Police Station where he had been ordered to join a team of officers to deal with the death of the deceased. While there he with some of the officers including PC. Mkeni, and Stg. Shukurani were ordered to go and conduct a search in one house close to Sharp Boys football ground. PW11 has either told the court that he was the one who was ordered to prepare a search order for that purpose and that the search order was filled by him. Before entering in the house they called one Mr. Azan to witness the search and when they got in the house in the presence of the accused person they found a lap top with serial No. KBFCVLT 309, a silver in colour Canon digital camera with serial No. 133627538 which was in a red small bag, a block ipod (AE1838) with

its two speakers bearing serial No. MIP 107 K0801297473, a pair of training shoes, a wallet brown in colour in which there were 30 USD, Tshs. 1000 bank. Identify, visa and health insurance cards all bearing the name of the deceased. They also found the deceased address book and a pair of black sun glasses. This witness has identified all the above mentioned items. Later the Prosecution did recall this witness for purposes of tendering the search order which has been admitted as Prosecution Exh.P4.

In cross examination by the accused person's advocate PW11 has stated that the accused person willingly told them that the items

found in his room belonged to the deceased and that the items were not hidden but were found lying on the floor.

The Presecution's PW12 has been D/Stg. Shukurani of Mahonda Police Station who has testified that on 08/08/2009 at about 08.00 am he was at his station when with Cpl. Ame Kundi, D/C. Mkeni and some other officers were ordered to go at Nungwi where a murder had been committed. They got at Nungwi and their investigations revealed that the deceased's close friend was the accused person who has also been seen in the deceased's company in a motor vehicle with Reg No. ZNZ 50783 a Suzuki Escudo on the last night. They started looking for the accused person and at about 11.00 am they found him at Jambo Brothers

Hotel. He has further testified that they arrested the accused person and took him at Nungwi Police Station. Then an immediate search of his house was ordered to be conducted. A search order was therefore prepared by D/C Ali (PW11) and he (PW12) led the team to the accused person's house where the search was conducted in his presence and in the presence of one civilian witness Mr. Haji Azan Haji. In the accused person's room a number of property belonging to the deceased like one lap top, a digital camera, an ipod with its speakers, a pair of black glasses, a pair of training shoes and a wallet in which there was Tshs. 100 and 30 USD and different cards were found. This witness has identified the mentioned items in court and has said that the same were handed over to Nungwi Police Station. PW12 has either lastly told this court that the accused person's explanations was that the items were given to him by the deceased.

Mr. Haji Azan Haji has testified as PW13 telling the court that on 08/08/2009 at about 10.00 am he was involved by the Police as a witness in the search which was conducted in the accused person's house at Nungwi close to Sharp Boys football ground. He has also told the court that he witnesses the Police finding a black laptop, a

pair of training shoes, a camera and a wallet in which there 30 USD, Tshs. 1000 and different cards.

The Prosecution has also called PC Mkeni of Mkokotoni Police Station who has testified as PW14. This witness has testified that he was among the team of police officers who were on 08/08/2012 ordered to go to Nungwi for investigation following the murder of the deceased. They firstly got to Paradise Hotel where the deceased had been staying. There they were informed that the deceased's friend was the accused person. They later arrested the accused person at Jambo Brothers Hotel and thereafter they went to the accused person's house for searching. When they got to the house the accused person took them to his room where they found different properties of the deceased including a laptop, a digital camera, an iPod with its two speakers, sun glasses and a wallet containing different cards, 30 USD and Tshs. 1000/= . PW14 has lastly properly identified all the items found in the accused person's room.

The last Prosecution witness has been ASP. Mohamed Yussuf of Mkokotoni Police Station. This witness who has testified as PW15 has told the court that on 10/08/2009 the file of this case was assigned to him for investigations. From the file he learnt that the accused person who had already been arrested and one Mohamed Ali Abdul-latif alias Bosto were the prime suspects. He also learnt that a number of witnesses had already been interrogated and the accused person's house had been searched. PW15 has further testified that to his consideration there was enough evidence to link the murder with the accused

persons and Bosto. To PW15 the accused person was involved in the murder not only because he was a close friend of the deceased but also because different properties of the deceased were found in his house and because he did not report to the Police that he had those properties of the deceased after learning that his friend has died. As for Bosto PW15 has testified that his conduct after the incident connect him to the

murder. He has told the court that Bosto was seen in the company of the deceased on the night of 06/08/2012 and he vanished after the incident. PW15 has lastly properly identified all the items which were found in the accused person's room namely the lap top, the ipod with its two speakers, the pair of sun glasses, the digital camera, the wallet and its contents i.e Tshs. 1000/-, 30 USD and different deceased cards and the pair of training shoes. All these have been tendered to the court and have been collectively admitted as Prosecution Exhibit P3.

In his sworn defence the accused person Othman Hamad Khamis (DW1) has totally denied to have committed the murder in question. He has either given detailed accounts on how he came to know the deceased, their relationship and how the deceased's properties' (pros. Exh.P3) came into his possession. DW1 has told this court that he is a hotelier by profession specializing in water sport,

human relations, excursion e.t.c and that during the material time he used to do his business at Nungwi.

As to his relationship with the deceased DW1 has testified that he met the deceased at Nungwi for the first time on 01/08/2009. He took the deceased to different places at Nungwi and the two became friends. The deceased did also express his wishes on how he liked Zanzibar and that he would like to settle and do business in Zanzibar. On 02/08/2009 the two were together the whole day and in the evening he took him at Kendwa Rocks for drink and music but he lost the deceased and could not see him till the next day i.e on 03/08/2009 when he met him at Bagamoyo Guest House where he was staying. Thereafter on the deceased's request DW1 took the deceased to Paradise Hotel and after renting a room the two came to town where the deceased was taken around the Stone Town till at about 11.00 pm when they got back to Nungwi. After getting in his room the two sat down and by using his lap top the deceased explained and showed to him how he successfully used to

do music business and organize music events in Ireland. They then agreed to start a joint business project and the deceased, using his lap top prepared the business plan for their intended project.

DW1 has further told this court that on 04/08/2009 for purposes of executing their business plan they firstly saw and had discussions with Mr. Shaaban (PW2) the Paradise Hotel Manager and later with Zeena who agreed to join the project through her company known as One Stop Tour.

On 05/08/2009 at about 10.00am Dw1 followed the deceased at the hotel but nothing of any importance proceeded because the deceased was in his room with Fatma (PW3) till later when he took the deceased to Barclays Bank in town where the deceased withdrew Tshs. 400,000/= from his account. Thereafter the deceased was taken to different places where among other things the deceased was looking for music equipment to buy. Because the deceased could not find the equipments he wanted when they got back to Nungwi DW2 took the deceased to Mr. Peter (PW1) who he knew had some music equipments. The deceased talked to Peter and later they all went at Mangis Bar where they joined a group of Peter's friend. It was when they were at the bar when the deceased took off his pair of shoes and handed it to DW1. He did so after seeing that those who were there were bare footed. DW1 has went on telling the court that from mangis Bar they proceeded to Matuta Restaurant where they had dinner. Because it was Peter's birthday and also because Peter had arranged a birthday party at his place the group left for Peter's place but they had to pass at the deceased's hotel where the deceased who was to play some music at the party, fetched his lap top, ipod and its speakers for that purpose.

It has also been testified by DW1 that after getting at Peter's place the party started. The deceased using his laptop and ipod played

some music but those whom who were there did not like his music as they preferred live music. That being the case the deceased collected his laptop, ipod and the speakers and handed them to him and he (DW1) kept them in his bag where he had kept the deceased's pair of shoes. Then at about 02.00 am after Peter had retired to bed they decided to go at Choro Bar. The group took a short cut way on foot to Choro bar but he (DW1) went there by his car using another different way. When he got there the deceased who was at the beach called him and gave him a camera, wallet and sun glasses. The deceased asked him to keep them in his bag till the morning. Because early in the morning he (DW1) would be taking some guests to the port he asked deceased if that would not be an inconvenience to him but the deceased insisted him to keep them. He therefore kept them in his bag and went home leaving the deceased at the beach.

DW1 has went on telling the court that he was on bed when Bosto called him telling him that the deceased wanted to be taken at Kendwa. He asked Bosto not to take the deceased to Kendwa and he even talked to the deceased telling him that on that day and at time there was nothing going on at Kendwa. The deceased heard him and they agreed to meet later after he (DW1) returns from

the port. In the morning of 06/08/2009 he therefore took Mr. Dan and Ms. Belon to the part and on his way back to Nungwi he called the deceased but he could not reach him. At about 12.30 pm he met Bosto at Choro Bar who told him that he had parted with the deceased at Kimyakimya Restaurant. He went at the restaurant and at Paradise hotel but the deceased was not there and his mobile phone was still not reachable. He kept on looking for the deceased at every possible places the whole day but all in vain. He even asked the deceased room to be opened but the deceased was not in. He also saw Peter (PW1) asked him not to worry as the deceased might have been having fun somewhere.

DW1 has further defended himself by telling the court that on 07/08/2009 at about 09.00 am he was still in bed when he got the information that the deceased dead body has been found at the beach and that the dead body had already been collected by the Police. He got confused and rushed to town to see his relatives for advice. He was in town the whole day and returned back home at about 08.00 pm still worried and confused. In the morning of 08/08/2009 he decided to see Peter (PW1) and was advised by him to go and report to the police. He therefore asked his friend Mandela to accompany him to the police and was waiting for Mandela when the police officers arrested him and took him at Nungwi Police Station where he found many other people including Fatma

(PW3) also arrested in connection of the same case. he was interrogated but he denied the allegations and maintained that it was not him who had killed the deceased. He either told the officers that some of the deceased properties were at his house and he was taken at the house where he handed to the police the said deceased's properties.

DW1 has lastly testified that he lastly saw the deceased on 05/08/2009 at night when the deceased gave him the wallet and other things and that he later on that night talked to him through Bosto's phone. He has insisted that he never killed the deceased and that he had no reason to do so. DW1 has therefore asked the court to find him not guilty.

Three witnesses has been called to support the accused person's defence. Ms. Zainab Hamad Khamis who is the accused prose's sister has testified as DW2 telling the court that the deceased was introduced to her by the accused person. She therefore has discussions with the deceased as the later wanted to do business with her through her company known as One Tour Company. The deceased promised to be arranging for groups tourist from Ireland

through the company. DW2 therefore accepted the deceased and made him one of the company partners. DW2 has further testified that on 07/08/2009 she was in town attending the wedding of her relative when she was informed that the

deceased dead body had been found lying at the beach. Later the accused person who looked sad joined them and told them that in the following day he would go to the police to inquire on what was going on. In the evening she and the accused person went back to Nungwi and on the next day he was informed by the police that the accused person was being arrested because he had in his possession some of the deceased's properties.

Another defence witness has been Ms. Saada Shaibu Ahmada who has testified as DW3 telling the court that she is an artist dealing in painting henna at Nungwi. She has also admitted to know the accused person as well as the deceased and Bosto. DW3 has said that she had seen the deceased twice at Choro Bar before she lastly saw him on the night Bosto and him went at her house. She has explained that on the night of 05/08/2009 (i.e in the morning hours of 06/08/2009) at about 03.00 am Bosto who was in the company of the deceased went at her house and when she asked what she can do for them they told her that they had gone there looking for Sabrina. She told them that Sabrina was not there and off they went.

The last defence witness has been Mr. Kombo Faki Kombo who has testified as DW4. This witness has testified that the accused person who is well known to him once went at his house while in the company the deceased who was looking

for a house to rent. The deceased inspected the house but they did not agree on the rent. Two days later he came to learn that the deceased has died.

This court finds as a fact that from the evidence on record there is no dispute at all there had happened a death of a human being. It is

not in dispute that the deceased Mr. Robert Stringer died. It is also not in dispute that the death of the deceased was not natural. The evidence from the doctor who examined the dead body of the deceased and from his report (Prosecution Exhibit P1) the death of the deceased was caused by the head injury the deceased had sustained. It is the said head injury that consequently did cause the death of the deceased. The question here is who did inflict that head injury and hence cause the death of the deceased? The Prosecution allegation is that it is the accused person who did kill the deceased.

It is also an agreed fact that one day after the recovery of the deceased dead body the accused person was found in possession of a number of properties belonging to the deceased (Prosecution Exh. 3). The accused person does not dispute the fact that he was found in possession of some of the properties belonging to the deceased but he has explained how he came into that possession. The other fact not in dispute is that for about five days preceding the

death of the deceased the accused person and the deceased had become friends and the two had been in each other's company almost all the time.

The main issue to be determined from the evidence on record is therefore whether it is the accused person who committed the murder in question. Has the prosecution adduced strong evidence to prove that it is the accused who did kill the deceased?

The Prosecution case as against the accused person is based wholly on circumstantial evidence. There has been adduced no direct evidence to connect the accused to the murder in question. The main piece of the circumstantial evidence against the accused person is that in regard of the properties of the deceased (Exh. P3) that was found in the accused person's possession. Other two pieces though minor that can be inferred from the prosecution case

is the accused person's conduct that after his friend the deceased has gone missing for the whole day of 06/08/2009 the accused person did not formally report the incident and that he did not immediately surrender the deceased's properties in his possession after learning about the death of his friend. These are the pieces of circumstantial evidence from which the Prosecution wants this court to draw an adverse inference and conclude that the accused person is the one responsible for the death of the deceased.

The general principle of criminal law is that the burden to prove its case against an accused person is upon the prosecution. The accused person has no duty at all to prove his/her innocence. The standard proof is proof beyond any reasonable doubt. For the court to find any accused person guilty of any criminal offence the court must be satisfied that the evidence adduced by the prosecution as against the accused person leaves no reasonable doubt as to the guilt of the accused person. Where any reasonable doubt is raised in the prosecution case the benefit of such a doubt is always in the accused person. It is also a cardinal principle of criminal law that where the evidence against the accused is wholly circumstantial, as it is in this case the facts from which an inference adverse to the accused is sought to be drawn must be proved beyond reasonable doubt and must be clearly connected with the facts from which the inference is to be inferred. The circumstantial evidence against the accused and on which the court is to base the conviction must be irresistibly pointing to the guilt of the accused. The evidence must lead to no other conclusion but that it is the accused who is responsible for the offence. (See **Ally Bakari & Pili Bakari vs. R**[1992] TLR, 10(AC), **Hamidu Mussa Thimotheo and Majid Mussa Thimotheo vs.R**[1993] TLR, 125,(CA)).

Coming to our case at hand and applying the above pointed out principle of law in regard to circumstantial evidence the issue to be determined here becomes whether putting into consideration of the

totality of the evidence on record particularly the relevant circumstantial evidence and also considering the accused person's defence and explanation on how he came into possession of the deceased's properties this court can draw an adverse inference and find that the relevant circumstantial evidence irresistibly point to no any other conclusion but that it is the accused person who killed the deceased.

Two of the three gentlemen assessors i.e Mr. Juma Ali Issa (Assessor No. 1) and Mr. Khamis Malik Akili (Assessor No. 3) have clearly opinioned that the accused person is not guilty because the prosecution has failed to prove the offence against him i.e that the circumstantial evidence against him is so weak to support the charge. As for the third assessor Mr. Ahmed Abdul-majid (Assessor No.2) to him the fact that the accused person was in possession of the deceased's properties is enough to find that the accused person did commit the offence. He has however been of mixed opinions as he has firstly found the accused person guilty of manslaughter and later he has changed and opined that the accused is guilty of murder.

The court with a very settled mind agrees with the two gentlemen assessors that looking at the prosecution circumstantial evidence against the accused person it is very clear that the evidence is far away from the standard of evidence required in finding the accused person guilty of murder. This court finds that the circumstantial evidence that the accused person was in possession of the deceased's properties is too weak and it cannot be said that such evidence irresistibly points to the guilt of the accused person. As it has been pointed out above the accused person does not deny that he has in his possession the deceased's properties in question. In his detailed defence evidence the accused person has given account not only on how he came into possession of the properties but also

when and how he lastly parted with the deceased in the early hours of 06/08/2009.

The accused person's averment that the deceased took off his pair of training shoes and gave the same to him when they were having drinks at Mangi's Bar after seeing that all other people who were there were barefooted can be believed because even according to PW1 most of people do not wear shoes when at the beach. PW1 told this court that he himself never wear shoes while there. As for the laptop, ipod and its speakers there is also no good reasons for this court not to believe the accused person that the same were given to him at

the party after the deceased who attempted to play his music using the equipments had failed to satisfy those who were there. That on their way to PW1's place the deceased did pass at his hotel to fetch the said equipment has also been testified by PW1. Coming to other belonging i.e the wallet with its contents, the camera and sun glasses, once again this court finds the accused person explanation that the same were given to him by the deceased at the beach for self custody acceptable. Taking into consideration that the two were friends and also the fact that it was at about 02.00 am and the accused person was about to leave and go to bed, it is very possible that the deceased who has been drinking the whole night found it safe to give the said items to his friends so that he continues with his exploration of the beach freely. It is when the accused person's defence on how he came into possession of the properties belonging to the deceased is properly considered that it becomes very clear that the only fact of him being in possession of the properties does not in any way connect him to the deceased death.

Where an accused person is charged with any offence and in his defence he gives account or explanation on what did transpire in regard to the charge he faces, the explanation which, if believed, will disassociate him from committing the offence in question and where there is no any other evidence to the contrary then the court

may, unless there are any other good reasons, accept the account or the explanation given by the accused as the truth of what did transpire.

The court finding that the accused person's possession of the deceased's properties (Exh.P3) has no any evil element is also supported by the fact that the properties were openly found in the accused person's room. The properties were not found hidden. All the prosecution witnesses who participated in the exercise of collecting the properties from the accused person's room i.e PW11, PW12, PW13 and PW14 have told the court that the properties were found not hidden. They were found lying on the floor. The accused person had all the time to hide the properties if he had any evil intentions. It be remembered that the accused person was aware of the death of the deceased from 07/08/2009 and that he was arrested on 08/08/2009. The accused person could not have failed to hide the properties or in any way distort any evidence in his possession if the same had been illegally obtained by him. It not be forgotten that the accused person has told the court that he did tell his sister DW2 and his friend PW1 that he had in his possession some of the deceased's properties and that he repeated the same when he was being interrogated at Nungwi Police Station.

As for the prosecution's other complaints on the accused person's conduct as to why he did report the missing of the deceased and why did he not immediately surrender the deceased's properties this court does not find the conduct as

strong circumstantial evidence to support the murder charge. There is evidence that the accused person spent the whole day looking for the deceased and bearing in mind that the deceased was a tourist who could go anywhere in his tourist endeavors without a prior permit from the accused person then no adverse inference can be drawn from that failure by the accused person. The failure to surrender can be

associated by many things. One of them as it has been testified by the accused person himself is confusion but the other is the fear and uncertainty on how the police would have reacted when the accused person would have surrendered the properties belonging to the deceased.

Before it is concluded it is the observation of this court that the investigations of this case has been mostly artificial, so to say. The fact that the accused person was found in possession of some of the deceased's properties has been, to the prosecution, enough to prove that the accused person is the one who did commit the murder in question. The doctrine of recent possession cannot be applied in this case because there has been no evidence adduced to establish that the death of the deceased had occurred in the course of the said properties being robbed from the deceased. It is also a considered view of this court that the investigators has some leads that could probably helped in solving the mysterious death of the deceased. Since among the deceased's properties found

in the accused person's possession were the bank cards and credit cards one would have expected for the investigators to have tried to find out whether there were any doubtful transaction mainly within the period the deceased went missing until when the said cards were recovered from the accused person. The contents in the digital camera and the lap top could probably had any help but no attempt was made by the case investigators to retrieve and find out whatever was in those exhibits. All in all the circumstantial evidence the investigators had managed to gather in this case and on which the prosecution has relied in proving the case against the accused person is found by this court to be very weak that no conviction can be based on it.

For the above given reasons this court finds the 2nd accused person Othman Hamad Khamis not guilty of the offence of the murder of Mr. Rober Stringer Decourcey c/ss. 196 and 197 of the Penal Act, 2004 and accordingly acquits him.

Sdg: Abraham Mwampashi, J.

03/04/2012.

Delivered in open court this 03rd of April, 2012 in the presence of Mr. Mgeni Jailan Kombo (SA) for the DPP and in the presence of the accused person with his advocate Mr. Abdalla Juma. Also present are Assessor No. 1 and 3.

Sdg: Abraham Mwampashi, J.

03/04/2012.

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL.

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REGISTRAR

HIGH COURT

ZANZIBAR

Mbs/.