

TANZANIA / JUDGMENT

19710524 TZHC Arusha

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TZHCDECIDED
24 May 1971

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IN THE HIGH COURT OF TANZANIA AT ARUSHA CRIMINAL APPEAL NO. 46 OF 1971 ORIGINAL CRIMINAL CASE NO. 807 OF 1970 OF THE DISTRICT COURT OF KILIMANJARO DISTRICT AT MOSHI Before I.H.M. Magessa Esq., Resident Magistrate PETER s/o THOBIAS APPELLANT/ACCUSED versus THE REPUBLIC RESPONJENT/PROSECUTOR CHARGE: 1. Burglary contrary to section 294 o1) of the Penal Code Cap. 16 V ol. 1 of the Laws0

2. Robbery with violence contrary to sections 285 and 286 of the Penal Code. J U D C M E N T
- BRAMBLE, J. The appellant was charged jointly with two other persons on two counts of Burglary and Robbery with violence and was convicted and given the minimum sentence on each count with the sentences running concurrently. These are appeals against conviction and sentence. It was proved that the complainant's house was broken into and certain articles stolen; in the course of the burglary two of the occupants of the house were assaulted. The appellant denied that he took part in the offences and the only question in issue is whether he was properly identified.. PW 4, gave evidence that he saw the appellant and another of the accused at a pombe shop and heard them planning to attack the complainant that night. The information was conveyed to her and she sat up until 3.00 a.m. After she went to bed the attack came. The complainant and the person who kept her company said that the assailants used a torch and they were able to identify the appellant by means of it. The appellant admitted that he was in the pombe shop on the day in question and the third accused confirmed that she was together with him thereby corroborating the evidence of PW 4 to some extent as to the plan to attack the complainant. The appellant's case was that he was at the pombe shop and left about 3.00 p.m. for home; he did not know anything about the incident but his house was searched the following day; nothing was found and he was arrested. He called no witnesses to prove his whereabouts at the time of the offences which were alleged to have taken place. The learned trial magistrate was satisfied as to the identification since the statement of the appellant raised no doubt in his mind. This was a question of fact and there are no grounds to interfere with the decision. In his memorandum of appeal the appellant states that the evidence of the complainant was false. He alleged certain reasons why he was framed and in particular jealousy of the complainant towards the third accused who was his girlfriend. No evidence was adduced in this point nor any other grounds stated in the memorandum. The trial magistrate could only act on the evidence before him and a party must put forward at a trial all the evidence on

which he relies and which is within his knowledge at the time. - . /2. ' JUIfl971 CAR 5 su;

- 2 - a . - •X will uphold the convictions. As to the sentence it was ordered that the appellant serve two years imprisonment with twenty-four strokes of corporal punishment on each count, sentence to run concurrently. Only one order for corporal punishment can be made and I will vary the order to read - accused to serve two years imprisonment on each count, sentences to run concurrently, . He will further receive twenty-four strokes of corporal punishment. Subject to this variation the appeal is dismissed. delivered In Court at Arusha the 24th day, May, 1971- ee (C .E. BR/AMBLE) JUDGE jsm tc -ji XT T11 oll OU1V1 GF TAX2L AT ARL4A APP LI JU.RIDC?1OW CfITHAL APAL (). 28 OF 1971 0111)M CfIXNINAL CR3E O, 540 OP 1970 OF TA COU? or KILDtN3ARO AT ROMIX I flef are P.I4I. Okonkwo Resident Magistrate's EffNT Off'TIR FP)LLAJT/COUSED verau • CARGE Stealing by servant or clerk contrary to sections 265 and 271 of the Penal Code b ru 4 WKIA, Ag. J. - he appellant was convicted of theft from his employer tto ITAIM Toath League. B. was sentenced to two years imprisonment with an order that he should suffer 24 strokes of the lash under the Minimum Sentences Act. The conviction is fully supported by the evidence on record. The learned judge who dismissed this appeal commented that "loss of exhibits may be fatal. At first I was under the impression that exhibits were lost before the appellant was tried and that the appellant had raised this issue in his petition. It now transpires that the trial court had all the exhibits before it. They were lost after the appellant was convicted. The learned judge made his comment after calling for them and being informed of their disappearance from the District Court at Moshi. Being less experienced than my learned brother who made the comment I have searched for authority to support the suggestion, that an appellant could be acquitted if the exhibits are not available at the time of appeal even if they were available at the time of his conviction. My search has been in vain. I am thus unable to follow up the suggestion raised by my learned brother because in my humble opinion the evidence against the appellant was so strong that the trial court had no alternative except to convict him. I will therefore not interfere with the conviction which is undoubtedly upheld. I am not sure, though, that the offence with which the appellant was convicted falls within the ambit of the Minimum Sentences Act. Though the offspring of ITANUO the Tanu Youth League does not fall into the category of a Political party, a trade Union or even a charity. I therefore find it hard to justify a sentence under the Minimum Sentences Act for stealing by a servant of the Tanu Youth League, the learned District Attorney's submission to the contrary notwithstanding. Having found no authority in support of the proposition that the TANU Youth League is a scheduled organ under cap 526 9 I remain in considerable doubt. It is a cardinal principle of our law that any doubt must be resolved in favour of the appellant. Accordingly I set aside the sentence and order for corporal punishment imposed on the appellant. In substitution, I sentence the accused to fifteen months imprisonment. The appellant shall not suffer any corporal punishment. I do not propose to interfere with the order for detention, which I confirm. Save as herein directed I dismiss the appeal. Arusha 1/10/71 (M.R.A. KJIKIA) AU. 3J1 ILO I jam

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Prepared on 23 October 2026 · Esheria