

TANZANIA / JUDGMENT

19860329 TZHC Tabora

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29 March 1986

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AT TABORA  
APPELLATE JURISDICTION  
(Tabora Registry)  
(HO) CRIMINAL APPEAL NO. 95 OF 1985  
ORIGINAL CRUITNAL CASE NO. 114 OF 1985  
OF THE DISTRICT COURT OF URATuIBO DISTRICT  
AT URAMBO  
Before: J .S. MW.AMI 'Esq., PRINCIPAL DISTRICT MAGISTRATE  
.ADAM HAMISI ..... ~ ..... APPELL.ANT  
(Original Accused)  
Versus I  
THE REPUBLIC ..... , , .RESPONDENT  
(Original Prosecutor}

1st Count:                      Bree.king into building and stealing c/s 296 (1) of the  
                                        Penal Code Cap.16 Vol.1 of the Laws.  
2nd Counts ·  
                                        Brea.king into bl.lilding and stealing c/s 296 (1) of iihe  
                                        Penal Code Cap. 16 Vol.1 of the Laws.

## JUDGMENT

OHil?ETA, J. In Urambo District Court, the appellant, Adam Hamisi, was jointly charged with two others with the sfences of breaking into a building and stealing in two counts c/ss 296 (1) and 265 of the Penal Code. The appellant was convicted as charged on the first oount but was acquitted on the second count. He was sentenced to three years imprisonment. He now appeals against both the conviction and sentence. The prosecution l s·evidence was that during the night of 25th/26th November, 1984\$ a c.c .M\_. office. at ·rmalamakoye village was broken into and several articles, including 10 corrug\_ated iron sheets, 195 empty gunny bags and other articles were stole:., therefrom.. Some three weeks later, the ·same office was broken into and 200 exercise books were

stolen therefrom: The matter was thereafter reported to police and investigations started. .... On 26th October 1984, the appellant went to the L. Lagoho Kahalwe (P.W.1) and found P.W.1 at his butchery in Urambo township. The appellant told P.W.1 that he had eight corrugated iron sheets which he was offering for sale. The appellant told P.W.1 that the iron sheets remained after he had completed building his house, P.W.1 told the appellant to go and bring the iron sheets and the appellant did so. In the presence of an elderly man (P.W.5) P.W.1 handed to the appellant the agreed sum of Shs. 1,000/= and took the iron sheets to his home. On 13th March, 1985" information was received by Villagers of Senda Kanoge village that the appellant was believed to have stolen the iron sheets. One Fanston Edward (P.W.3) then summoned members of Sungusungu. The appellant and two others were summoned and interrogated in the bush. The appellant then admitted that/stole the iron sheets and gunny bags and disclosed that he had sold eight of the iron sheets to P.W.1. P.W.1 was then summoned and he readily told them that it was the appellant who had sold the eight iron sheets to him. The iron sheets were then seized. In his defence, the appellant denied having stolen the iron sheets to P.W.1, and added that he confessed because he was tortured. The learned trial magistrate believed the evidence of P.W.1, P.W.3 and P.W.5, and after considering the law regarding confessions, he was satisfied that the prosecution had proved its case beyond reasonable doubt. He accordingly convicted the appellant as charged. During the hearing of this appeal, Mr. Ntabaye, learned counsel for the appellant submitted that the conviction was bad because it was largely based on the appellant's retracted confession which had itself been extracted by torture. Et, and that P.W.1 was an accomplice. Mr. Musa, learned state attorney, on the other hand, supported the conviction. In his submission, the confession was admissible and that the question of torture, which was never put to the prosecution witnesses and was only raised at the stage of the defence, was a mere afterthought. In any case, the learned state attorney submitted as the confession led to discovery of the stolen property it was admissible and was correctly relied on by the trial court. With regard to the evidence of P.W.1 he submitted that there was no evidence that P.W.1 was an accomplice. I will start with the question whether or not P.W.1 was an accomplice. P.W.1 bought the iron sheets in broad daylight, in a public place and in the presence of at least one witness. When contacted by Sungusungu people, P.W.1 readily told them that the appellant was the person who had sold the eight iron sheets to him. In the circumstances, therefore, P.W.1 and P.W.5 cannot be said to have aided or abated the commission of the crime, let alone that they assisted the guilty to escape punishment. In my view, therefore, P.W.1 was not an accomplice in any sense. As for his credibility, I think that his evidence was corroborated by other witnesses and there is nothing to make Likiep P.W.5 was equally reliable. his evidence is not suspect. The learned magistrate, therefore, was justified in believing these witnesses. I now turn to the appellant's confession, and I will proceed on the assumption, as did the trial magistrate, that the confession was induced by torture. The undisputed fact is that the appellant's confession led to the discovery of the stolen articles. such confessions are clearly relevant and admissible under section 31 of the Evidence Act, Jr., 1967, (See also Nalika v.R., (1971) H.C.D. 314). That being the position in law, the appellant's confession was admissible and could be acted upon. In view of the corroborative evidence of P.W.1 and P.W.5, there cannot be any doubt at all that the evidence justifies the appellant's conviction.

As for the sentence, I had at first felt that the sentence was illegal. But on perusal of the record, I note that although the charge alleges the value of property to be about 7,000/= odd, no evidence at all was led by the prosecution as to the value of the property, That being so, I will resolve the matter in the appellant's favour. The sentence, therefore, will remain undisturbed. p. 1.

'...;... • In fine, this appeal, is 'dismissed in its entirety. J ... , ' ,Jt.1::1 ;,~li ...

... ;B:~...D., CHIPETA , ,• . ,Delivered in . ,; ,• 'i....

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