

TANZANIA / JUDGMENT

adolf chacha vs republic

2023 tzhc 17070 28 april 2023

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TZHCDECIDED
28 April 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF SHINYANGA AT SHINYANGA CRIMINAL APPEAL NO. 106 OF 2022 (Originating from Criminal case No.81/2018 Bariadi District Court) ADOLF CHACHA APPELLANT VERSUS THE REPUBLIC RESPONDENT

JUDGMENT

Date of last: 28/03/2023 Date of Judgment: 28/04/2023 A. MATUMA, J. The appellant stood charged in the District Court of Bariadi District for Unlawful possession of narcotic drugs commonly known as Bhangi. He was alleged to have on 5th June, 2018 at Lutubiga village within Bariadi District in Simiyu Region, found in possession of 470 grams of cannabis (bhangi). After a full trial he has found guilty convicted and sentenced to serve 30 years imprisonment. The appellant was aggrieved with such conviction and sentence hence this appeal with four grounds, all centering on the evidence on record to the effect that the prosecution case was not proved beyond reasonable doubts against him.) At the hearing of this appeal, the appellant was present in person while the respondent enjoyed the service of Wapumbulya Shani, learned State Attorney. The appellant made general submissions against his conviction and sentence lamenting that he was convicted in absentia thereby denied him the right to be heard. That, even taking into consideration the \ prosecution's evidence without himself having been heard the same was weak to warrant his conviction. He was of the arguments that this case was fabricated against him and that is why no any independent witness such as neighbors or local leaders who were involved in the alleged search and seizure at his home. He pointed out that PW1 and PW2 the police officers who alleged to have searched him at his home contradicted on the exact place where the alleged crime was committed between Lutubiga or. Mwalukonge in Lamadi village. ~ The learned State Attorney opposed this appeal standing firm that the prosecutions' evidence were strong enough and proved the case beyond any reasonable doubts. She argued that the appellant's right to be heard was violated by himself after jumping bail two times and that necessitated an ex-parte hearing against him but when he was later arrested, he was accorded opportunity to show cause for his absence. He did not sufficiently account for his absconding from the trial and it is when ,<- the trial court maintained his conviction and sentence in absentia. The learned State Attorney denied to have seen any contradiction in the prosecution's case. In regard to an

independent witness the learned State Attorney submitted that Meli Chalanga (PW5) was an independent witness who witnessed the search and seizure at the appellant's home. In his rejoinder, the appellant resisted that PWS was an independent witness but a militia who works with the police and used to serve at Mkula primary court. He argued this court to call the magistrate of Mkula primary court to find out that he was speaking the truth that PWS was not an independent witness but an extended arm of the police. .) He insisted that he was not searched but was arrested because they accused him to be a notorious criminal of theft incidences whereas Inspector Manase Seme PW1 told him that the only option remained was to fabricate him a case so that they rest by the time he will be struggling to rescue himself from such case; "Inspector Manase Seme ambaye ni shahidi Na. 1 aliniambia kwamba atanipa kesi ya madawa ya kulevya ili nihangaike nayo watu wapumizike kwamba mpaka nitakapoimaliza kesi hiyo nitakuwa nimejifunza na kujirekebisha." From the records of the trial court, the grounds of appeal and the submission of the parties, I find that this appeal was brought with sufficient cause. , }. Although I agree with the learned State Attorney that the appellant's right to be heard was not breached because he himself jumped bail two times and was duly heard after his arrest, I find that the evidence on record had material contradictions that could not warrant the appellant's conviction and sentence. According to PW1 Inspector Enock Manase Seme, he received information from his informer that the appellant was a drug dealer. He thus took his fellow officers and went to search the appellant at his home, On reaching there and after due processes they entered in the appellant's room. Thereat he saw a black plastic bag which had clothes put on top of; the plastic container commonly known as Sadolini. On opening that tin, the bhanghi was found which he seized. I find it in the interest of justice to • quote that piece of evidence' "We then entered into his room and conducted search. When we reached on one corner of the room, we saw one black plastic bag which had clothes and put over a certain container popularly known as sadolini. I opened the said tin and found drug leaves of bhanghi which we estimated as one kilogram. " In accordance to this piece of evidence the bhanghi was found in the sadolini which they saw at the corner in the room of the appellant. That sadolini had a black plastic bag on top of it which had clothes. But PW2 F. 6524 CPL Sadik had a different story on the exact place where they found the bhanghi in the appellant's room. To him it was not on the corner of the room. The sadolini and black plastic bag were not even seeable when they entered the room. They thus had to search the room. In the course of such search, they lifted up the mattress which was on the ground and under it the first thing to see was a plastic bag, not a sadolini. On opening such black plastic bag it is when they saw the sadolini in it. ,l Inside the sadolini they found the bhanghi; -, "Having entered we searched under the mattress which was laid down and saw a certain black plastic bag. When we opened the plastic bag we saw a certain small tin commonly known as sadolini. Inside the said sadolini there were bhanghi of about 1 kiloarem": The inconsistency in evidence of these two witnesses is that while PW1 testified that they saw the sadolini straight away just in reaching to the corner of the room, PW2 stated that the sadolini was not seen until when they opened the black plastic bag. Again, while PW1 testified that it was a small plastic bag which was put on top of the sadolini, PW2 testified that it was the sadolini which was • put inside the small plastic bag. Not only that but also while PW1 testified that the small plastic bag and the sadolini were just on the corner of the room PW2 testified that the two were

under the ,ttfe:which was laid down on the ground. Under the circumstances the two witnesses had different visibility on the same thing at the same time. Construing their evidence, the conclusion would be that while PW1 maintained that the bhangi was found at the corner of the room, PW2 stood firm that such bhangi was under the mattress on the ground. Who was therefore speaking the truth? Was it PW1 or PW2? Nobody can exactly tell. Under the circumstances, I purchase the decision entered in the case of Jeremiah Shemweta versus Republic (1985) TLR 228 1 which held that the discrepancies in the various accounts of the story by the prosecution witnesses give raise to some reasonable doubts about the guilty of the appellant. The discrepancies herein cannot be ruled out to be minor. The same goes to the root of the case which is unlawful possession ! of the drugs. The appellant cannot be held liable for unlawful possession of ! the drugs while the alleged founders themselves are contradicting about J the place where the possession was allegedly found. If we have to believe PW1 that would imply that PW2 lied to the court when testified that the bhangi was found under the mattress in the sadolini which was covered into the black plastic bag. And if we have td believe PW2 then PW1 lied to the court that the bhangi was found at the corner of the room in the sadolini which was put just by the comer and on top of it was a black plastic bag. It is not for the court to find out who was Criminal Jurisprudence in this country that the accused be) benefited with the discrepancies and reasonable doubts arising from the prosecution case. I therefore find that the prosecution case under the herein above discrepancies was not proved beyond reasonable doubts against the appellant. But taking into consideration the statement of the appellant that he was fabricated this case for accusations that he was a notorious thief in the locality and that this case was just to do him away from the community so ') that people would at least live in piece, I argue the appellant to be a man of good behaviour when he joins back his community. All those having' been said, I allow this appeal and quash the conviction meted against the appellant. I as well set aside the sentence of thirty (30) years meted) against him of the offence. I order his immediate release from custody unless 0 erwise lawfully held. The rights of appeal to either party aggriev. with this judgment i~ hereby explained. It is so ordered. UMA DGE 8/04/2023 ., " 7

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Prepared on 13 October 2026 · Esheria