

TANZANIA / JUDGMENT

20181205 TZHC Dodoma1

COURT
TZHCDECIDED
5 December 2018

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IN THE HIGH COURT OF TANZANIA (DODOMA DISTRICT REGISTRY) AT DODOMA PC
CRIMINAL APPEAL NO. 9 OF 2018 (Original Criminal Appeal Case No. 44 of 2016 of the District
Court of Singida at Singida) AISIDREA

I...ANGLJ.....IU.U.....U.U..UI...U.....I..U.APPELLAN1" VERSUS WILBROAD LUCAS & 4
OTHERS.U.....II..II...RESPONDENTS 3111012018 & 511212018

JUDGEMENT

MASAJU, J. The Respondents, Wilbroad Lucas, Thomas Lucas, Joseph Petro, Aiphonce Paskal and Julius Sylivesta were together and jointly prosecuted by the Appellant, Andrea Langu, in the Primary Court of Ikungi at Ikungi for the offence of Assault Causing Actual Bodily Harm Contrary to section 241 of the Penal Code [Cap 16] of which offence they were acquitted of for want of proof beyond reasonable doubt. The Appellant then unsuccessfully appealed to the District Court of Singida. Hence this appeal in the Court vide the Petition of Appeal which bears three grounds of appeal namely; "1. That, the 15' appellate Court ought to have weighted the evidence and draw its own conclusions despite the fact that it has neither seen nor heard the witnesses. 1 2 That the Primaly Court ought to have convicted the Respondent had the trial Court and the 1st appellate court properly directed itself

3. That, the appellate court ought to have interfered with the trial Court Judgment' The Respondents filed in the Court the Reply to the Memorandum of Appeal and appeared in persons when the appeal was heard in the Court on the 31 day of October, 2018. The learned counsel, Mr. Fred Kalonga, appeared for the Appellant. The Appellant through the service of the said counsel submitted that in the trial court he adduced the evidence that he had been assaulted by the Respondents. That, his evidence was supported by Christopher Andrea (PW 2) and John Langu (PW3) who did eyewitness the incident. That, the said prosecution witnesses detailed how the Respondents played part in assaulting him thereby injuring him as so proved by the Medical Examination Report (PF3) Exhibit "P1". That, although the Respondent had defended themselves on oath and had three witnesses their defence was wanting. The 1st Respondent was at the scene of crime. The 2' through the 4th Respondent defended themselves that they were not at scene of crime during the incident. The 2 nd though the 3rd Respondents alleged that they were attending a meeting in the church but they did not produce any documentary evidence, say the minutes of the meeting, to that

effect to prove their alibi. That, the 4th Respondent who alleged that after the church service he went to Ikungu in order to change his money was not so supported by his witness Mohamed Malulu (DW 8). That, the 5th Respondent who defended himself that by the time of crime 2 a was committed he was grazing cattle did not bring evidence to support his defence. That, since the crime took place at about 14:30 hrs the Appellant and his witnesses were able to see and unmistakably identify the Respondents at the scene of crime. That being the case, the trial court ought to have convicted the respondents accordingly. The Appellant argued the trial Court did not involve the assessors in the process of decision making of the case contrary to section (1) (2) of the Magistrate Courts Act, [Cap 11]. That, the two assessors were not consulted by the trial Magistrate in the course of decision making of the trial courts Judgment. The Appellant prayed the court to allow his appeal, set aside the acquittal, of the Respondents, convict and sentence them accordingly.

- In their defence, the Respondents fully . adopted their Reply to Petition of Appeal to form part of the submissions in the Court. they argued that, the appeal was filed out of time and that the trial and 1st appellate courts were right in acquitting them for Want of proof of the case against them beyond reasonable doubt. The Respondents prayed the Court to consider their defence in the trial Court and dismiss the appeal for want of merit. The Appellant, in rejoinder, maintained his submissions in chief but added that his appeal was not time barred. He argued that the Judgment of the District Court was delivered on the 11th day of July, 2017 and that the Petition of Appeal was filed in the Court on the 7th day of August, 2017 3 well within the thirty (30) days provided by the law for one to lodge appeal in respect of the cases that originated from primary courts as per section 25 (1) (b) of the Magistrates' Court Act, [Cap 11]. In the first place the record of the trial court reveals so amply that the two court assessors were fully involved in the proceedings during the trial of the case as they were always there in the Court. The said assessors also signed, the Judgment of the trial Court. Their signatures on the Judgment signifies the Court assessors participation in reaching the decision of the trial Court, otherwise they could have declined to sign the Judgment bearing in mind that the decision of the cases in the .primary Courts are done by majority endorsement. Section 7 (1) (2) of the Magistrates' Court Act, [Cap 11] was not contravened by the trial Court. In any case, the irregularity, omissions etc, if any, that does not occasion failure of justice is cured under section 37 (2) of the Magistrates Courts. That being the case, the third ground of appeal crumbles. As regards the 1st and 2nd grounds of appeal which relate to the evidentiary facts of the case; there is no doubt the Appellant was assaulted by the mob of persons who were so many in number in such away that the Appellant himself (PW1) could not establish their number. The fact that the Appellant and one Michael Vitalis were badly beaten up by the mob of angry persons has been so confirmed by the Appellant's witnesses , Christopher Andrea (PW2) and John Langu (PW3) as well. The Appellant and one Michael Vitalis were beaten up by the mob of persons who accused the Appellant and his colleague Michael Vitalis of T\J, mattress and cattle theft. The police 4 officer who reached the scene of crime in response, to the 1st Respondent's call for intervention by the police force, E. 146 D/Cpl. Joseph (DW6) so confirmed. The 1st

Respondent is the one who was preventing the mob from assaulting the Appellant and he called the police officers to come to the scene of crime in order to rescue the Appellant and his colleague. Even the Appellant himself (PW1), his two witnesses ChristOpher Andrea (PW2) and his John Langu (PW3) together with E. 146 D/Cpl Joseph(DW6) so confirm. In such circumstances, - other things being - equal, the 1 Respondent couldn't have been held responsible for assaulting the Appellant. The 5th Respondent was not at the scene of crime, as such he couldn't have taken part in beating up the Appellant. The Appellant himself and his witnesses did not testify in the court that the Respondent was at the scene of crime and that he took part in beating him up. (PW1, PW2 & PW3); The said Respondent defended himself that by the time of the crime he was grazing cattle His alibi defence which hadn't-been contradicted by the prosecution must stand to benefit him accordingly. In fact he told the trial court that he was just prosecuted because he was related to the Respondents who are relatives. The 2nd 3rd and 4th Respondents' defence of alibi was corroborated by Alfred Ambrose (DW7) and Mohmaed Malulu (DW8) that, when the crime was being commitLed the 2nd and 3rd Respondents were attending a meeting of the Church building construction committee in the Church and that the 4th Respondent was at his business place at Ikungi village respectively. That being the case the' appellant's allegations that the said Respondents' defence of alibi was not corroborated has to be taken lightly 5;- by the Court. Although the crime took place at 14:30hrs, that is to say during day time, a person being beaten up by a life threatening mob of angry persons whose number could not be established can hardly be in a position of unmistakably identifying the persons who so assault him so inordinately. That is to say, it cannot be proved beyond reasonable doubt that the Respondents were at the scene of crime where they were unmistakably identified taking part in the beating up of the then overwhelmed Appellant. Both the trial and the Vt appellate courts were therefore right in the way they decided the case and the appeal thereof respectively. The upshot of all this' is that the appeal is hereby dismissed in its entirety for want of merit. dECIRGE M.MAU JUDGE 5/12/2018

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