

TANZANIA / JUDGMENT

19790514 TZHC Tanga1

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TZHCDECIDED
14 May 1979

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[c IN THE HIGH COURT OF TANZANIA ATTANGA (Tanga Registry) APPELLATE JURISDICTION
DR CRIMINAL APPEAL NO. . 33 OF 1978 (Oriinai Criminal Case No0 34 of 1978 of;the District
Court of Handeni DIstrict at Handeni) BEFORE: M.H. BAKARI, Esq,' District Magistrate I. ASHA d/
o ALLY • SPPETLA NTS ,' ASHA d/o MHANDOA (Original Accused) MARIAM
d/o SALEHE) - versus THE REPUBLIC. ::::: : : : : ' : : : :RESPONDENT (Original Prosecutor)
CHARGE: Store-breaking and stealing * contrary to section 1' 296(1) of the Penal Code. . J U D G M
E N T . NYALALI, C.J. - This criminal appeal originates in the District Court of Handeni District
where-the appellaflts Asha d/o Ally, Asha d/o Mhando andMariamSalehe werjoi.ntly charged and
convicted with .the, offence. of store-breaking' 'and stealing - contrary to section 296(1) of
th:Penai .Code ' ' ... Asha d/o Ally together wi4h A,shad/o Mhandote.re each, sentenced' to nine
months' imprisnment Put,.Mariam Salehe 'was entence&to'" three years' imprisonment une. the
Minimum, ;'S,entences Act.."1972 They were aggrieved by , Jhe convictions and the sentenced
atidhence this joint appeal to this.Court0. In their joint-memorandumof I appeal they elected not
to appear or,. be repres:en,ted - at the-hearing of the appeal. The Republic was, however,
represented by Mr.' sekule, learned Principal State Attorne.' I hav6 carefully examñirjedthe
evidence 'addicd at the-trial in the District Court, the judgnnt. of the trial court',...thejoi'nt
memorandum of appeal submitteçl, by the appellant,s to this Court and the brief
submissionsrflade by the learned Principal : State:AttOrney, and it seems - there is no dispute
btween the parti { esxthatJduring the night of the 31st January, 1978,...;the..il-lage's store of Nkama
Village was broken into and,.ei.git bags of sorghum were - stolen therefrom. Furthermore, there
is no dispute that the stolen bags of sorghum were found in a room adjoining the village store.

-2 -2,- Again, there is no dispute that the three appellants were residing in that room.
Furthermore, there is no dispute that the three appellants were involved in taking the bags
of sorghum from the' vil:lage store into 'their room. - With regard to matters which.are in
dispute in this case, it was the prosecution case as laid out at the trial in the Distrit Court that
the appellants were the persons who broke into the village-store and stole the eight bags of
sorghum. On the. other hand, when the appellants were given opportunity to 'defeiid
themselves and éxplained. their rights of deferice, 'they elected to keep silent.. The first
point for consideration and decision in this case, is whether the appellants are the persons
who broke into the village-store and stole the eight bags of sorghum. In their joint
memorandum of appeal they state that they were coming from a customary ceremony,

when they found P.W03, namely, Omari Hussein, who is the son of the Village Chairman (P.W.1), had broken into the village-store and had taken out the bags of sorghum. They further state that P.W.3 requested them to assist him and allow him to keep the sorghum in their room. The appellants agreed to do so but as a trick aimed at inducing P.W.3 to enter their room together with the bags of sorghum and then lock him up and subsequently raise an alarm. U :., ' ' ' ' . I do not think that what the appellants now tell this Court has any basis of truth, because if it was the case, they would not have elected to keep silent when given opportunity to explain themselves at their trial in the District Court. This explanation given in their joint memorandum of appeal must be an afterthought. The next point for consideration and decision in this case, is whether the appellants were properly convicted. On the evidence adduced at the trial, the lower court could not have come to any 1- -3- other reasonable conclusion except" finding the appellants guilty as charged 0 ' With regard to the .sentenées, the lower court sentenced the first and éohd .acused, wn6ac'h was aged tixteenyets, -to.ninemonths iinprisnmeriton the basis that they were not covered by the MirimumSentences Aêt, 1972. "Aithotigh admittedly the Minimum Sentences Act, 1972 1 does riot apply to a person whose age is under -eighteen years; itwas unferttinate that the lower court •found it fit to send these youn-g girls to jail since they were at the material time attending school. As a matter of fact, the first accused appearto haveexpécting to sit for her final primary sthcl examinations 0 B'i sending her to jail, the lowr court cdthpletely clod all the examination doors to here I. fail to understand why the learned trial District Maisrate acted so harshly, especially when there was evidence that the off ences were committed at t ie time when the village was faminine stricken. This was a fit case for the lower court to discharge the first and accused either absolutely or conditionally under sectid 38 of the Penal Code 0 I also fail to understand why it was thought proper to prosecute these young girls In the first case under circumstances of faminine. Appropriate warnings could have been given by the village authorities or the police 0 With regard to the sentence of three years.! imprisonment imposed one third accused, namely, Mariam Salehe., the lower court appears to have had the view that she was twenty years old, and therefore covered, by the provisions of the Minimum Sentences Act, 1972. The third accused, however, in the joint memorandum of 'appeal indicates that she is currently aged eighteen years old. There is nothing on the record in the lower court, apart from the assertion in the charge sheet, to show that the third accused was, in fact, not under eighteen years. The lower court does not even suggest in its judgment whether the appearance of the third accused suggested that she was aged above eighteen years. ... /4 0 ON

- 4- Thërei thus an eement of doubt which, under the circumstances, should be. resolved in the favourof the third.accused. I will, therefore, ind.s. afatthat:the third accused, who is :!the third appellant in the.presnt appeai, was under eighteen years0 This means the Minimum Sentences Act, 1972, will not apply to her and the sentence will have to be reduced. In the final analysis, therefore, bearing in mind what I have already stated earlier regardirg the convictions and ntences, the appeal .against the convictions is dismissed, but the appeal aganst,theSentences succeeds by reducinthe sePtences ied upon the p.eIIants to. such

sentence as will; result in 2their immediate eleseftom..jail, unless detnd the61n for some;; other lawful cause. •(F. .L. N?ALAtI.) CHIEF. :USTiCE •,... Delivered in Court at Tanga this 14th day of May, 1979, in the presence of Mr. Sekule, learned Principal State Attorney for the Republic, and in the absence of the appellants duly notified. .. ' , ..! , J H' (F. L. NYALALI CHIEF JUSTICE

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