

TANZANIA / JUDGMENT

19770614 TZHC Arusha

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TZHCDECIDED
14 June 1977

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- .. IN THi., HIGH COU OF i!dTZLiTIA AT LIWSHA LPPELLLTE JURISDICTION HIGH COUIT CRIIINLL APPEAL NO. 64 OF 1976 ORIGINAL CRIMINAL CASE NO. 415 OF 1975 OF THE DITRICT.OUT?LT OF ARIJSHA DISTRICT T Id.USHA BEFORE: J. S. T.51TCRUTO, Escj., Resident Magistrate NO • B. 2517 D.0 iCiLL :iv.LIIGA .. APPELi1NT (Original Accused) versus THE RERLIC. . " ... * RESPOENT (Original Prosecutor) JUDGJ.TEITT JONATHJT ih the Resident Magistrate's Couit, iusha Detective
- Constab O MICHLL vias coriviôtod of corrupt±oh c/s 3(1) of the '!' Prveir'ion of Corru.ption Act and given tho. ninimu sentence..
- . .Frdia the fOonvictioh ho has apoa1odto this court. Ther is no d L5 te b hat P. J .6 JOH!tSON PAUL and others wor arested by the olice as suspects. in a burglary inclLlont an. Gha me ie.vc.stigati o ns ioro bci iir conducted •by the apollant It ias alleged by P.VI.6 that, the appellant" . .solit'ed:rcin ,hin L500 as an inducenont to drop the charge that 'es mpen.din: He coLa1sind of this to P.1,1 A .5 .P. MIIAY who ras Ghe oñ±cor coiiianJing the police scation and t4a latter docijc jO lay a t'ap-. Accordingly, P.1.1 ins bruO tcd P.J.6 c s inc Etcl]enL anc' orgroo on the time
- andvenuo. PVT6 later reported back that the ag±ed' venue wos a boor sGc'rc. E.aoro is io vor sono coAflit as to the agreed u±no. P,d.6 SEJJ ib was o o'clock t.aat aitornoon butP, 1J.1 said 1I,V.6 uoid Jaifi the agroed uiUC was 2.30 p.m.
- . Some iinutos bóoro this iino..he had comnandeered Police constgib1os GASAR (P.N.2) and MATIKU (P\7.4) and took them bo inc central., hue s band ihien overlooke. ih agreed venue. There P.1 •hane.oa o ,].6 two currency notes of &i.100 which he was tO.iV.L: the apoliant., They hEid already been photostatod bthc iolice'statjon by P.W.5. The three S police officers.also took down their serial nubers' • . According to P.W.6 in his', evidence the appdllaiit found him in the boor store e together they then *onb into the court 'yard vihre the wi1ncss handed the aprcllan - the two
- . . notes. Ho received tho4l 'and itv.'as agreed that the'witness should jy hin tzic. balanco at another place later that day. •P.W•..6 went out. of t- ho store followed by ihc appellant. The three 'police officers all in civilian clothes had been keeping watch a short distance fro.ç.. the beer store and upon P.W.6 giving the agreed signal,. that is, 'sratchinr his head they

hastened up towards the appellant who, upon seeing them, doubled up, being pursued by the police officers as they called for help. This was corroborated by a number of civilians including P.J. MARIJA. 1, 2- All the civilian officers testified that 2.7.1 loading the chase soon caught up with the appellant and that at the place and time of apprehension the latter throw the two notes on the ground. - According to P.71 he picked up the two notes and showed them to 2.7.3. P.1. said on the other hand that they were picked up by 2.7.3 on the request of

- There was however agreement that these were the two notes handed to 2.7.6 by P.71. The appellant in his evidence denied the offence. He said he had that afternoon gone to that beer bar. He did not however find his brand oil bar, so he left at once. In the street outside: he met D.7.3 MLOHI whom he greeted and together they walked in the same direction. He then heard shouts behind them. He turned and saw the three policemen following him. Many people responding to the alarm surrounded him and it seems they would have beaten him up but for their intervention. After that, however, 2.7.1 ran or rushed to the left edge of the road and soon came back to him holding the two notes and forced them upon him alleging
- that he had only just received money from 2.7.6. This he promptly denied. 2.7.1 he claimed had taken offence to the arrest of him, and of P. 7, 6 victim of the same crime. He called three witnesses of whom only D.W.3 and D.W.4, would appear relevant. According to the former he met the appellant and they were in the street when they heard three people shouting behind them. They followed them and caught and beat the appellant. Then one of them ran a little distance away. A little later he came back holding some money and alleging 1G was Ghoagollat. The evidence of P.74 is to the effect that, upon the appellant coming into that beer store and finding no beer of his taste he left at once. He did not see any one apart from the store attendant. In agreement with the judgment of the learned resident
- 'The magistrate I find the appellant's version of the incident and that of his witness MLOKI rather unrealistic. They both say the appellant was not running. Had that been so there would undoubtedly have been no necessity for the four prosecution witnesses to raise any alarm for assistance. They would merely have taken the appellant by surprise. It seems doubtful that the appellant upon seeing the police-men doubled up and had to be pursued. The defence has then alleged that 2.7.1 after approaching the appellant ran away to come back having the two notes. If it was intended to plant them on him obviously he would have had the money handy for the purpose and would not have rushed back for it only after arrest. The learned ODGO attorney is inclined to support the conviction because there are contradictions in the prosecution evidence, especially having regard to the great variance between the evidence of 2.7.3 MARIJMTI and that of the police officers. Some conflicts have already been pointed out above. To them...../3 To them there may be added another. While P.7.1 said the appellant after receiving the money put it in the right hand pocket of his trousers, P.1.2 and P.W.4 testified he had the money in his left hand. All those conflicts

are however immaterial for they do not in my view relate to any important aspect of the prosecution case. The learned trial magistrate had full regard to them in her judgment but considered, and I agree, that the discrepancies or conflicts are attributable to either loss of memory or a lack of detailed observation and that the witnesses had otherwise testified truthfully and reliably. As regards the evidence of P.W.43 he was effectively shown to be a hostile witness and his evidence became practically of no value and accordingly, the contradictions such evidence bears with the other prosecution evidence cannot properly be taken into account. The conviction appears founded on ample evidence and I see no reason to interfere. Accordingly, the appeal is dismissed in its entirety'. Delivered in open court this 14th day of June, 1977. (P. M0 JONA TIL PMJ/MTPM. ').

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