

TANZANIA / JUDGMENT

19830316 TZCA Dar es Salaam

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM REVISIONAL JURISDICTION (DSM REGISTRY) CRIMINAL APPEAL NO. 164 OF 1974 ORIGINAL CRIMINAL CASE NO. K. 2409 OF 1972 OF THE DISTRICT COURT OF DAR ES SALAAM DISTRICT AT KIVUKOJI/DSM BEFORE H. J. MKATTE ESQ., :RESIDENT MAGISTRATE THE REPUBLICPROSECUTOR vrs. DOKWEIA DOHASA VIVUNGU ACCUSED. TITJDMi::NT MANNING - J. The appellant was charged with one count of burglary, two counts of stealing, two counts of being in possession of property suspected to have been stolen and two counts of being in possession of property suspected to have been stolen. He was convicted and sentenced to 4 years imprisonment for burglary, 3 years for each count of stealing, 1 year for each of the two counts of being in possession of property suspected to have been stolen and 6 months for each of the two counts, for being in possession of property suspected to have been stolen. He is appealing against conviction and sentence. The facts of the case are as follows: The complainant, one Inspector Mwaikali (PW.1) had on 7/11/72 gone to bed before 9.00 p.m. at about 9.45 p.m. he heard a noise outside, because thieves had jumped the fence and entered the court yard. He woke up and went outside, where he saw one of the thieves. He was running over the fence. Hence, he, and his wife (PW.2) his brother-in-law's wife (PW.3), living in an adjacent flat, within the same block, as well as the other people chased the thieves

- I but they did not catch [my 2nd they could not even identify them. After the fruitless chase, they went back home, where they found that there were bulbs, the children's clothes, a brassiere belonging to his wife (PW.2) tea cups, pans, plates bed cover and a bucket were stolen by the thieves. He did not report the theft to the police because there was no hope of finding the lost things again. On 24/11/72 at around 2.30 p.m., he (PW.1) had returned from work and he saw the appellant going towards his kitchen. He (the appellant) was a hawker, who used to visit his house to sell bananas.
- ... /2. ... Then he heard his wife shouting; that the appellant was a thief; . When he went to see what was happening, he saw the appellant running away holding a basket in his hand. They chased him but they failed to catch him. While running away from the complainant's house, the appellant threw down the basket, which they picked up. His wife then called the appellant a thief because he had found a knife belonging to his (PW.1) brother-in-law's wife (PW.3), a brassiere, belonging to his wife (PW.2) and a comb marked with a star belonging to his brother-in-law's wife (PW.4) He knew that comb because he used to borrow it. Moreover, on 25/12/72, at about 5-15 p.m. a neighbour of the complainant,

popularly called Iru11:,i, called him and told him that there was a person hiding near his house. When they went to look ' \ v ' at him, they found the appellant lying flat in the pit. The complainant touched him with his foot and then ordered him to stand up. The appellant said he was drunk, but he stood up and he had a basket, which contained bhang, a piece of kintance, one buibui, one .~:i tenL,e dress, which he had as evidence. D., B and F respectively; in the trial court. The bhang found in the basketJ' on 24/11/72., and that found on 25/11/72.9 in the baslrnt, was sent to the Government Chemist .9 and then the report was sent back to the police and the complainant tendered that report as exhibit G1. The evidence of PW.1 was supported by Pw.2., who identified her brassiere in the basket belonging to the appellant which he threw down on 24/11/72, while running away from the house of the complainant. He was able to identify such a brassiere because she had made it herself by hand since she could not identify the piece of khansa and her comb marked LT. At the trial the appellant chose to remain silent. In his memorandum of appeal he complained that no witness was called who saw him stealing. He denied ever having in his possession bhang, and the magistrate erred by not asking, who had in fact sent the bhang to the Government Chemist for the tests. There is evidence to support the charge of burglary, because both PW .1., PH "2 and PW. 3 could identify the comb, a brassiere and piece of kintance found in the basket of the appellant on 24/11/72; / -3- ,-\ "chn.t is, the theft occurred sixteen (17) days before the thief was caught, on 7/11/72. Therefore the doctrine of recent possession can be invoked, as in the case of William Maziku v.R. (1970) HCD, No. 174, where Kimicha J . ., as he then was stated 11

Though the appellant was arrested 25 months after the commission of the offence the lower court found that he was actually in possession of the radio three (3) weeks after the burglary and applying the doctrine of recent possession in relation to this period and the articles stolen he found that the appellant was in fact a burglar. 11 As far as the two counts of being in possession of property suspected to have been stolen are concerned he was found with the stolen properties near or at the complainant's house and he was a hawker by trade, that is in a course of a journey; he had such articles in his possession, and the things were of such nature or the circumstances were such that it might reasonably be suspected of having been stolen or unlawfully obtained and he refused to give an account to the court of how he came to possess such property. He was therefore properly convicted for being in possession of property suspected to have been stolen contrary to section 312 of the Penal Code - see Joseph s/o Michael V. R. (1970), HCD, No.166. As far as having bhang in his possession is concerned, he was caught with it hidden in his pockets and the Government Chemist examined it and certified that it was bhang. Such bhang was sent by the police officers so the tests could be made to determine whether or not it was bhang. As far as concerning the sentences being excessive, the sentence for burglary, that is 4 years imprisonment, is not excessive because the appellant had previous convictions, as far as the other counts were to run concurrently with the first sentence, there is no need of dwelling upon them because the appellant would actually serve a term of four years imprisonment. The appeal is therefore dismissed in its entirety. J. C. MANNING DAR ES SALAMU JUDGE 16/3/1983. This is

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