

DECIDED
9 September 1987

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neighbour's house where the accused had lost a child. The third accused's alibi was during the material period, he was away to Tabora. The story of the two, the accused was corroborated by the learned father - D.W.5 In convicting the appellant, the second accused, the learned trial magistrate said that he believed P.W.1 to be a straightforward and truthful witness without in any way addressing himself as to the circumstances in which P.W.1 claimed to have identified the culprits. It is now well settled that to justify a conviction solely on evidence of identification of a culprit, each evidence must be watertight. (See R. v. Eria Sebwet, 1960 E.A. 174) "There the evidence is that of a single witness in circumstances not favouring a correct identification, the court should look, for other evidence, direct or circumstantial; and, if there is, show that the evidence of identification is free from any possibility of error. (See Abdulla bhi V. 1960 E.A. 166) It may be quite true that the witness may be quite truthful but he may be innocently mistaken. See Athumani v. 1960 E.A. 31. In the instant case, the evidence of identification of the culprits is weak. P.W.1 was asleep at about 2.00 am, and the only light was from a hurricane lamp, and there is no evidence as to how far it was from the culprits or how much light it provided. In other words, it is plain that the circumstances did not favour a correct identification. Besides, there is no other evidence in support of the identification. P.W.1, from which to infer that the evidence of identification by P.W.1 is free from any possibility of error. There is yet another weakness in P.W.1's evidence, Nowhere did this witness give a description of any of the culprits, either in his evidence in court or to a police officer or any other person. In the absence of such description, P.W.1's evidence of identification loses much of its value. (See R. v. J.J.J. v. R., 9 E.A.C.A., 1960 (See R. v. J.J.J. In short, the evidence of identification of the culprits in this case cannot be said to be watertight, and in the face of the accused's strong alibi, For the foregoing reasons, I respectfully agree with Matupa, learned state attorney, that it would not be safe to sustain any of the convictions in this case. Accordingly, the appellants' convictions are hereby quashed. I set aside their sentences and orders of compensation set aside. The two appellants shall be released from custody forthwith, unless otherwise further held in some other lawful connection. In the exercise of this constitutional jurisdiction, I also quash the conviction of Kilimba Masele, the second accused at the trial (who has not appeared) and set aside the sentence and order of compensation. He too shall be released from custody. Appellant absent. Mr. Matupa for Rep. 9/9/87. "I, the judge, do hereby quash the convictions of the appellants and set aside their sentences and orders of compensation. The two appellants shall be released from custody forthwith, unless otherwise further held in some other lawful connection. In the exercise of this constitutional jurisdiction, I also quash the conviction of Kilimba Masele, the second accused at the trial (who has not appeared) and set aside the sentence and order of compensation. He too shall be released from custody. Appellant absent. Mr. Matupa for Rep. 9/9/87."

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Prepared on 13 October 2026 · Esheria