

TANZANIA / JUDGMENT

19710325 TZHC Mwanza

COURT
TZHCDECIDED
25 March 1971

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" IN THE HIGH COURT OF TANZANIA, AT Mwanza. Appellate Jurisdiction. IMI I APPEAL NC. 688 OF 1970 Original Criminal Case No. 1 of 1970 of the District Court of Mwanza District at Mwanza Before H. J. T'katte Esq., Resident Magistrate. CHACHA. KING' O3BE. APPELLANT (Original Accused) vs. THE REPUBLIC. RESPONDENT (Original Prosecution) CHARGE: Causing Grievous Harm s/s 225 of the Penal Code. JUDGE: J. A. J. The appellant was charged with and convicted of assault causing grievous harm contrary to section 225 of the Penal Code and sentenced to 18 months imprisonment. He has now appealed to this Court against the conviction and sentence. On 20/4/69 at about 8 p.m. Malogo Masagulo, the complainant in this case, was proceeding to his home in Mgeta from Isenye village, On the way he met six people who suddenly started assaulting him with sticks and an axe. He fell unconscious and was, with the help of villagers who came to the scene, carried to a cell-leader's house. On 22/4/69 he reported what had happened to the police and mentioned the appellant as one of the six people who had attacked him on the material night. He was given POF.3 and sent to hospital for examination and treatment.) The appellant was arrested on 1/1/70 i.e. 8 months after the incident. The evidence shows that the only person who identified the appellant as one of his assailants is the complainant (P.3). He told the Court that he could identify the appellant because there was moon-light and that the appellant is his neighbour. The learned Resident Magistrate accepted complainant's story regarding identification of the appellant as one of the assailants. There can be no doubt that the complainant was subjected to violence on the material night. The only question which this Court has to decide is whether there was sufficient identification of the appellant by the complainant as one of the six people who attacked him. The learned State Attorney who argued this appeal did not support the conviction on the ground that it was doubtful whether the complainant's story to the lower court was wholly truthful. He told the Court that although the complainant told the court that the appellant was one of his assailants, the evidence of Corporal Pearson (P.1) shows that the complainant did not mention the appellant as one of the people who attacked him. It was also argued that the testimony of the complainant and that of the cell-leader (P.4) that the appellant could not be arrested earlier than eight months after the incident because he had left his village after the incident is inconsistent with the replies of the complainant when cross-examined by the accused. As I have already said identification of the appellant as one of the assailants is solely based on the word of the complainant. From the replies of the complainant to questions put to him by the appellant it is amply clear that although the two lived as neighbours, they did so inharmoniously and they were clearly at loggerheads

with each other. It is argued by the Republic it would appear from the answers of the complainant when cross-examined by the appellant, that the appellant did not leave the village after the incident - Indeed the complainant told the court that he could see him in the village after the incident and that the appellant one day, after the alleged incident, destroyed his (complainant's) fence. If this is so, it is therefore most surprising that the appellant was not arrested till eight months after the incident. The learned Resident Magistrate was entitled to accept the testimony of the complainant regarding identification of the appellant - But it has been repeatedly held by this Court as well as the Court of Appeal that where the prosecution relies on the identification of an accused by a single witness, the Court should consider not only the credibility of the identifying witness but also the possibility of the witness having made a mistake - see U30U1T.LH WEfCvR (195) E.L.C. [page 116 / D TH1IRUitJHORO_yR (1954) fl:,,',C,,", 187. In this case over and above the possibility of a mistaken identification the evidence shows that the appellant and the complainant were not particularly in good terms. Taking these two facts into account I could tend to agree with the prosecution that it would be extremely unsafe to uphold the conviction. I am also of the view that if the learned magistrate had paid more attention to the parts of the evidence which tend to show that the complainant is not all that reliable he would have come to a totally different conclusion from the one he came to. The conviction which is not supported by the Republic is hereby quashed, and the sentence is accordingly set aside. 3: The appellant is to be set at liberty forthwith unless he is lawfully held in custody in connection with another charge. Delivered in Court on 25th March, 1971. L INC JUDGE Ifl5 25-3-71. Mr. D'Souza for the Republic Accused absent and unrepresented.

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Prepared on 23 October 2026 · Esheria