

19711105 TZHC Mwanza2

COURT
TZHC

DECIDED
5 November 1971

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IN THE HIGH COURT OF TANZANIA AT MWANZA Appellate Jurisdiction CRJ\ANAL APPEAL NO 458 OP 1970 (Original Criminal Case No. 347 of 1970 of the District Court of Geita before C. H. Msnati Esq., District Magistrate). CTAIAGTA NDAVUKA. 9 and) APPIITTS (oie.ii AcJSHD) versus TT-E PJPT,JBLIC . . . , , , • PTONDENT(OPI(TIITAL PRECUT011 , CHAI?C-E:— Assault Causing actual bodily harm c/s 241 of the Penal Code. J1JDINT ErJ—ICEIY, . The appellants, Chambagula Ndavuka and Kahabi Kazungu, were jointly charged with and convicted of assault causing actual bodily harm contrary to section 241 of the Penal Code s Cap.161 The appellant Chnbad -uia was sentenced to imprisonment for 18 months subject to confirmation by the High Court, and the appellant Kahabi was sentenced to a fine of ,300/ or 4 months imprisonment. However, as Kahabi could not pay the fine she served the term of imprisonment. They appealed against their conviction and sentence The record showed that both appellants pleaded guilty to the charge The recorded facts, which were accepted by the appellants, alleged that on the 17th of August, 1970 at about 10.15 p.m., the complainant, who suspected that the appellant Kaabi was unfaithful with her husband, went to the house of the appellants She began to question both appellants and this, apparently, annoyed the appellants wherefore the appellant Chambagula picked up a stick and began to assault the complainant, and the appellant Kahabi also did the same with a stick. The complainant sustained several injuries (Exhibit A) Not satisfied with using a stick the appellant produced his bow and arrows but he did not have the opportunity to use them as some people, who answered the door, disarmed him, For this, they were charged for assault causing actual bodily

- harm - As it can be seen 9 the facts fully supported the chiargo There was no doubt at all that the appellants unequivocally pleaded guilty to the charc The facts showed that tho complain -it simply went to cheek the allegation of rumour, arid this seaiecl to have annoyed thoappeflant Chambagula. Their attitude was unreasonable in the extreme Their-appeal. ageAnsi conviction is incompetent as per section 313(1) C.P.a., Cap,201 In passing sentences 9 the trial court took into accaunt the fact that offences of violence were prevalcot in the area. In addition to this, the apppclcnt suffered a lot in their hands Even so- the sant once of 18 months awarded to the appellant Chambagula was excessive However no useful purpoec would be served-in reducing it as the appellant had already served his icr-ri of imprisonment. It appears that the appellant received a lesser sentence because he took a nino- part, and more so because she had a tender child to her ORDER:— As a result 9 this

appeal against conviction and sentence is Delivered on the 5th day of Novembcr1971. (z N. E1.Kiciy) JuDgE - -

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