

TANZANIA / JUDGMENT

19750217 TZHC Dodoma

COURT
TZHCDECIDED
17 February 1975

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I f 4-4-1 c * • IN THE HIGH COURT OF TANZANIA AT DODOMI APPELLATE JURISDICTION HIGH COURT CRIMINAL APPEAL NO. 165 OF 1973 ORIGINAL CRIMINAL CASE NO.. 376 OF 1972 OF THE DISTRICT COURT OF KONDOA DISTRICT AT XONDOA 6 BEFORE S. H0 MSELE O , DISTRICT MAGISTILLTE CHAROKA i1-1EGOH1. ••• 0 •••• APPELLANT VERSUS THE REPUBLIC. •••• •••• , . . . RESPONDENT har: Burglary c/s 294(1) of the Penal Code Vol. I Cap.. 16 of the Penal Code. 2nd Count: Stealing c/s 265 of the Penal Code. JUDGMENT NNZAVAS - J. The appellant in this case was charged with and convicted of burglary and stealing c/ss 294(1) and 265 of the Penal Code and sentenced to three and one year imprisonment respectively

- concurrent sentences. He is appealing against the conviction and the sentence. As observed by this court when admitting the appeal to hearing the appeal against conviction is clearly incompetent as there was more than ample evidence in support of the conviction. The appeal was only admitted for argument as to the propriety of the sentence of 3 years imprisonment in respect of the offence of burglary. There was from the evidence of the doctor (P.F63 of accused) some doubt as to the exact age of the appellant at the time of his conviction. In his report the doctor says of accused's age: "He appears to be 17 - 18 years of age" The Minimum Sentences, Act, 1972 under which the appellant was sentenced to 3 years imprisonment for the offence of burglary. It says in section 2 that the provisions of the Minimum Sentences Act shall not apply to a juvenile. Section 3 of the Act defines a juvenile as "any person under the apparent age of eighteen years. On the evidence of the doctor appellant's age was anything between 17 and 18 years. Where there is a doubt as to an accused's age the court should resolve the doubt in favour of the accused and hold that he is under the apparent age of eighteen years and therefore not amenable to the rigors of the Minimum Sentences Act. . . That this is the law is evident from the decision of this court (dealing with the repealed Minimum Sentences Act - Cap 452) in R vs LJ DRELS MSAFIRI (1967) H.O.D.4Q. The learned state attorney concurred with this court's observation that the learned trial magistrate should have given the accused the benefit of the doubt and find him to be of the apparent age of 18 years but argued that the sentence of 3 years imprisonment should not be interfered with as, he argued, "the offence of burglary is a very serious one." I agree with the learned counsel's submission that burglary is a serious offence; but once an accused is found to be a juvenile and a first offender the relevant question to ask oneself is

whether a sentence equivalent to that under the Minimum Sentences Act would be appropriate. It is my view that taking into account the above mitigating factors and the further fact that the stolen bicycle was recovered; this was a case that deserved some leniency. First offender should, unless there are good reasons to the contrary, be treated with leniency. The sentence of 3 years imprisonment is accordingly set aside and in substitution thereof, the accused is sentenced to two years imprisonment. This sentence is to run concurrently with the sentence of one year imprisonment on the count of theft. As the accused started serving his sentences on 23/6/73 he has, with remission of sentence for good conduct, already served, more than the sentence of two years imprisonment. I therefore order that the accused be released from custody forthwith unless he is otherwise lawfully held. 11 DODOMA N. 17/2/75 JUDGE Appellant - Absent and unrepresented. Mbilinyi for the Rop/Reep.

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