

TANZANIA / JUDGMENT

19710720 TZHC Arusha

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TZHCDECIDED
20 July 1971

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I #, IN THE HIGH COURT OF TANZANIA AT ARIJSHA APPELLATE JURISDICTION CRIMINAL APPEAL NO. 178 OF 1971 ORIGINAL CRIMINAL CASE NO. 19 OF 1971 OF THE DISTRICT COURT OF MBULU DISTRICT AT MBULU Before L.A.L. Mgonja, Esqa, District Magistrate REMI s/a MARAYARNANZA APPELLANTACCUSED versus TH REPUBLIC RESPONDENT/PROSECUTOR CHARGE: 1. Criminal trespass contrary to section 299 (a) Indecent Assault on Females contrary to section 135 (i) \. Indecent Assault on Females contrary to section 135 (1) Creating disturbance contrary to section 89 (l)(b) Stealing contrary to section 265 of the Penal Code. t JUDGMENT _J ' KWIKIMA AG. J. - On 9/7/71 I allowed tis appeal and ordered the immediate release of the appellant. I give below the reasons for my decision. Before the appeal was lod.cd, this case was to come for revision It appearedeven.at that time that the appellant's conviction was not supported by tie evidence on the rerrd. Colnts 1 and 4 on ti'e fact: of them appeared to. be duplex. The sentence was manifestly excessive There was considerabl1dowt as tothethër the appellant intended to assault the complainant indencent.ly or whefthër he intended to steal her hurricane lamp. In his judgment thO learned magistrate who tried this case failed to address his mihd to these issues which were crucial to the ent.±e case.. I propose to handle the issues in the order in which I have set them out. The particulars to the 1st counts read as follows:- "The person charged on the 21st day of January, 1971 at about 2.00 hours at Llbalu Minor Settlement. •Mbulu District Arusha Region unlawfully entered into the house. of one Vic'tor'ia' MzaVa' with iitent to ahoy the said VICTORIA Mzava." Those on count 4 read as follows;- "The same perscn chargei on the same date, place and time, created disturbaae to one Victoria Mzava in such manner as likely to CUI.30 a breach of the peace, to wit he forced the door of .ie said Victoria Mzava shut to prevent her (Victoria ;ava) to go out." These two counts appear to be founde on the same facts. The appel1nt has suffered a dousle conviction on lential facts and this has preudicod him. The distrbacc whi: i is the basis of the fourth count apoears to be the same "annoyance' w it oh the apeliant is alleged to have intended then he entered the cc.ilainant's house. The evidence on indecent a,4 ult lacks ccnviction. Whereas the complainant' gives considerable rietail on how the appellant wont about touching her breasts and priv[c parts, her friend who was in the same room at the time of tie ci ged assault repeated no such detail. he simply told the Court t at the ap:c1lant did at one time touch the complainant's private pai The learned magistrate who

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- 2 - who convicted the appellant did not say whether he took this to be corroboration but even had he addressed himself to this question, as he was bound to do, indecent assault being a sexual offence, he could have hardly concluded that the appellant's acts and the circumstances of the case supported the conclusion that the appellant indecently assaulted the complainant. There were two girls in the room. The appellant was alone. He was unarmed and he has not been reported to have threatened them with violence. All he did was to "threaten" sleeping with them both. From the evidence on record it appears that the girls were not worried with his threats, otherwise they should have cried for help. Then the tenants in other rooms in the same house would have come to their rescue. The complainant herself admitted that the appellant had previously been to her room apparently without any objection from her.
- If this be the case, is it not likely that the appellant and the complainant had agreed or were negotiating to become lovers? Is it not likely that the complainant was hiding the truth from the court before which she discredited herself by alleging that Chausiku was also indecently assaulted when Chausiku herself denied the allegation to her face? The accused is alleged to have stolen the complainant's hurricane lamp by walking away with it after this incident. He did not take it to his home to use it. Instead he left it at someone's place where the police seized it. Such act cannot with any certainty amount to theft. It leaves one in doubt whether the appellant intended to deprive the complainant of her lamp permanently. It is likely that the appellant seized the lamp and carried it away for a motive other than theft. It would serve no purpose to speculate as to what motive the appellant had at that time. The prosecution evidence was not sufficient to support the appellant's conviction. The complainant's story lacked conviction. The acts of the appellant as related by the witnesses did not strictly amount to the charge preferred against him. The evidence against the appellant was defeated by legal and factual doubts which had only to be resolved in his favour had the trial court examined the evidence more closely. It is clear that the conviction of the appellant could not have been properly founded and it is hereby quashed and the sentence thereof set aside. The appellant should have been released by now unless he is being held in some other lawful connexion.. Delivered in court at Arusha the 20th day of July, 1971. (M H 11. KWIKIMII) . ~ AG. J U B G E j sm

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