

TANZANIA / JUDGMENT

19750815 TZHC Mwanza

COURT
TZHCDECIDED
15 August 1975

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IN THE HIGH COURT OF TANZANIA

- - AT MWANZA
- APPELLATE JURISDICTION HIGH COURT CRIMINAL APPEAL NO 92 OF 1974 Cf0 CR0
REVISTO NO. 4000000000F 1974 ORIGINAL CtI1V1NAL CASE 140.323/73 OF HE: - DISTRICT
COURT OF GEITA DISTRICT ATOOOGEITA. BEFORE L.G.RUGIMBANA Eso.. 0 0 DISTRICT
MAGISTRATE DEUSDEDITMALANDAC 0 e 0 0 0 0 00-0 0 a 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0APPELLANT 00 0
- . S (Original Acused) versus THE REPUBUL-IC 0000 00
0 .,0000000000•00-0-.0000000000000000.00....00RESPONDENT (Original Prosecutor) CHARGE 1st
Count - Robbery c/s 285 and 286 of the Penal Code 0 -, - 2nd Count .-Personating..a. public
offidr c/Os 100(2). of .• - the Penal Code 0 3rd Count - Wrongful confinement c/s 253 of the
Penal Cod.e0
- J U D: G E H E T LUGAKINGIRA, Ag.J.: - The appellant was convicted of robbery, personati-
ing and wrongful confinement0 .He was awarded sentences of eight, two and one years
respectively, all running concurrently0 On revision the sentences on the first and second
counts were reduced to seven years and one year respectively0 He has now appealed against
convictions and sen- tences. It is the robbery offence which presents some difficulty0 There
- was otherwise more than enough evidence to establish the personating and confinement
offences. On 9 September, 1973 the complainant, an aged man, was selling folding knives at
Gengesaba Market in Geita District. - The appellant approached him and offered to buy a
knife 0 He produced a 20-shilling note which he gave to the complainant. The latter gave him a
knife, but in a twinkling the appellant snatched the money back0 It appears that the
complainant protested but the appellant held on to the money and the knife, threatening to
arrest the complainant for carrying on business without a licence0 Indeed, he did exactly
that, after introduc- ing himself as a policeman, and led the complainant to the Ward
Executive Officer0 It would also appear that this process was not without a strug- gle0 From
the Ward Executive Officer the appellant demanded and was given handcuffs with which he
handcuffed the complainant0 He then purported to lead the complainant to the Police
Station but brought him back some two hours later. As luck would have it at this moment
true police officers happened to be driving by0 The Ward Executive Officer, who had now

become suspicious, called them to the scene. They interrogated the appellant who repeated his claim that he was a police officer. As he could not substantiate his claim he was arrested and accordingly charged. The evidence about personating and wrongful confinement was given by the complainant (PW01), the Ward Executive Officer (PW2), a school teacher (PW03) and the arresting police officer (PW5). I cannot imagine these people conspiring to concoct stories against the appellant. The trial magistrate was justified in believing and acting on their evidence. I will in consequence uphold the convictions on the second and third counts. As indicated above, the evidence of robbery presents some difficulty. It comes from the complainant alone and it is exceedingly confused. The material part states: "I told him that I was selling 20/= each knife and he produced 20/= and then seized them by force from my hand and he took my knife and he pushed me I fell down with my bicycle, and immediately he told me that I would collect my stock, and I collected my articles, I wrapped them in one bundle." That story was not corroborated by PW4 who happened to be at the scene. According to him when the appellant learned that the price of a knife was Shs. 20/= he complained that it was exorbitant and demanded a receipt. The complainant wrote out one. The appellant then took the receipt, the knife and the money which was lying on the ground and "arrested" the complainant. There was a test but PW4 advised the complainant to obey the appellant's orders as he, too, thought that he was a genuine policeman. It would then appear that whatever struggle there was had nothing to do with the taking or retaining of the knife or money but was a result of the complainant's resistance to arrest. This view of the evidence finds some support in the fact that the complainant fell with his bicycle which suggests that he was being forcibly conveyed. In robbery the violence or the threat of it must be directed at facilitating theft. If the two are unconnected the culprit should be severally charged with theft and assault. It does not appear in this case that the appellant used violence for the purpose of taking or retaining the knife. Incidentally, if the appellant held on to the knife against the complainant's efforts to regain the same, that was passive resistance which I apprehend to be different from positive violence. I therefore find it unsafe to sustain the conviction on the first count which I hereby quash and set aside. The sentence imposed. There is no doubt, however, that the appellant was a thief. He did not have to retain the money and the knife if he did not intend to steal the latter. I will, therefore, substitute a conviction for simple theft and a sentence equivalent to the term already served which I note is over nineteen months. The appeal, therefore, fails in its entirety and is dismissed with the above variation. As the sentences for personating and confinement have already been served, however, it means that the appellant should now be set free unless he is lawfully held.

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