

TANZANIA / JUDGMENT

19770629 TZHC Arusha

COURT
TZHCDECIDED
29 June 1977

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- . IN TITLE O.TfTf(Jp(T1 (T I'TT FPELLT HIGH COt) CRf INL_t2PPHL NO 12 O 1974 (Original Criminal Case No0 943 bf 1973 of the District Court. of T2ngo District ht TangaJ Befdre: T. Me I. NGITtMI Esq, - District Mgi'strcte0. AM s/O) LUC.S. .APPELLhN' .0 0 C 0 0 0 0 C 0 0 0 0 0 0 0
- r. 0 0 0 0 0 0 C. versus ,,,... THE REPUBLIC 0000 00 0 0 0 0' 0 000 0 C 0000 0 000 0'0 00000000 Li,jONDjNT d UDGeJ . MNZAVS, J. - In this case the appellant and two other
- people who have not appealed were charged with bn,icted of workahon breakng c/s 296(1) of thb Penal Code'he' appellant who'odmitted t -iree previous conVictiOns involving moro1 turpitude ws sOntonced to 5 years imprisonment0 The other two acused who wore found to' be' first offenders were each so' ',nced to three yc:rs imr'Lsonment0
- The appellant is a 'lira ; ainat l3oth. th. Oonvict ion and the sentence0 In his submission the lcrncd tate t'orney suoorted the conviction in so far as the aapeli'ahnt was concerned but declined to support the conviction of tb': two a caused who hav-e not appealed. There was no di'spuie' in thin c'ac that in the night of 2/12/73 a workshop Of. one, Remadhani'Mohemed, PWO2, was brokon into and two 'tableO and a frmC of 'an office chair stolen0 cording to the evidence of Zuberi Bokero,' (PW.5), on the morning of 2/12/73 he was driving a .!goVO.rnri'cnt 'landrover
- to Tanga from Korogwe when he' met thO 'people who' asked for a lift to Tango. He gave thena lift The itncas told the court' that one of the three pco1e said th t' thc two tables and a frame S'or. on' office choir they were carrying belonged to him and th't S '.s he whoa cskc1 for a lift on his own behalf and on b.ch '5f: oh the others0 He, in court, identified this man cc tot. :iwcl1 nt The witnc;s fine identified the othco t'c DoOple as the the people whohave not appealed0 ' The complainant iticot i od ti-ic tvic tables and the frame for an office chair as the vary ones' which bad ben stolen fr m his workshop after the breaking on the material night. As rightly argued by the learned Stpte htorney there was in this case ample avidence implicating the appellot, dom Lucès, with the offence of workshop breakinge cording to the evt:enco of the arresting Officer, (PW.7), when intorroc t. 5 the c'owolknt sid tht the two tables and the f'rw fiona S to him0 ThTO: the 2'mjallant claimed ownership of t'u O'i (jr , a is ' o a'viont from hc driv a r PW05', the person arfi gave a lift to the accused0 Though.i: could •;'a ;"; "r - - -2- Though it could possibly be argued that arresting officer (w0i), was

an interested party in the outcome of the case and therefore prone to giving evidence in support of the prosecution case, there was no suggestion, alone evidence, that the driver, (PW.5), had reason to tell lies. Again at the appellant I agree with the learned Resident Magistrate's finding of fact that the appellant claimed ownership of the goods as the goods were traced identified by the complainant, (PW02), as the same goods stolen from his workshop after the breaking, and as the appellant was found in possession of them only a matter of hours after the breaking, the only reasonable inference under the circumstances of the case is that the appellant 50 - not only the thief but also the person who broke into the workshop. The appeal against conviction is dismissed for the sentence of 5 years imprisonment, but the appellant admitted three previous convictions involving moral turpitude. Taking the appellant's nasty record into account I agree with the learned Senior Magistrate that the sentence of 5 years imprisonment is not too long. The sentence which needs confirmation by this court is hereby confirmed. Regarding, the appellant who avowed that only I agree with the Republic's submission that the witness's evidence implicating them with the offence is not reliable. That the appellant's testimony created the reasonable suspicion against them but as it has times without number been pronounced by this court and the court of appeal suspicion no matter how grave cannot be the basis of a conviction in a criminal charge. The learned Resident Magistrate's remark in paragraph three of the typical judgment that "because the two accused told the court lies when they said that they were not with the appellant when they were arrested showed that they were implicated with the offence" was clearly a misdirection on the burden of proof in a criminal charge. I agree with the learned trial magistrate's observation that the two appellants' defences were not very impressive but as repeatedly mentioned in other judgments by this court in a criminal case an accused is convicted not on the weakness of the defence case but on the strength of the prosecution case. On the evidence I agree with the learned trial judge that the appellant's submission that there was no evidence connecting the two other accused, Rashidi s/o Saidi and Fathil s/o Hsenni with the offence charged is not supported. Unfortunately the two accused have by now already served their sentences and I therefore make no order. Arusha. ... 29/6/77 (N/3/77) JJJJT \ Appellant 41 Atsot and unrepresented. Kibola - for the Republic/Representant

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Prepared on 23 October 2026 · Esheria