

TANZANIA / JUDGMENT

19720811 TZHC Dodoma

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TZHCDECIDED
11 August 1972

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IN Ti-IE IIIGtH 0', OU;7.T UP TANZJ.NIA 4 5iV\ AIPLATE JUil3.)IC High Court Criminal AppeaJ. I\TO.56 of 1972 Original Criminal Case No.31 of 1972 Of the District Court of Mbeya District at Mbeya. Before; B.H. Mhagama..... District Magistrate. Festo s/o Sudi Appellant (Original Accused) versus The Republic..... Respondent (Original Prosecutor) This is really a dispute over a shamba. The appellant was unlucky enough to be disbelieved by the Police and the trial court, though his story was as good as the prosecution's and his conviction was not properly had. The complainant was the very person with whom the appellant had long been at logger heads over a shamba. On the material day the appellant went to report to the Police that thieves had broken into his house and stolen his gun. Soon after this the complainant arrived at the Police station with a complainant that the appellant had pointed, his gan at him and that he the complainant had seized it from him. The complainant was in poseession of the appellant's gun at the time. The Police immeditely charged the appellant for giving them false information and pointing his gun at the complainant. 41 There were many disturbing features to this case. Firstly be trial court received two conflicting accounts. The complainant and two others supported each other in their allegation against the appellant. On his part the appellant was supported in all material particulars by his wife, his mother and three independent witnesses whom the learned trial Maristra'be chose to disbelieve on the unconvi- ncing grounds that they contradicted each other on points of minor detail. But the fact that the appellant was backed in his evidence given on oath was sufficient reason to put the case against him in doubt. The complainant ' s allegation that he grabbed the gun from the ID appellant who had pointed it at him is a story of unbelievable gallantry. It would require a man of super human courage to face up a gun man who has the muzzle already pointed at him. If anyone was telling a tall story,. it was the complainant and his team. If anyone had rehearsed ltheir evidence, it was the complainant and his team who had a grudge against the appellant whose shamba they coveted. Even assuming that their story was not so fantastic as to amount to fiction the appellant's defence ut it into so much doubt that a criminal court could not be so certain as to convict the appellant. The :nbstigatin officer did not give evidence to discredit the appellant's report. The fact that he did not see any marks of intrusion at the window could not exclude the possibility of intrusiorl through the same window. The prosecution evi.dexice on the whole left so much to be desired that the appellant should not hav bèén convicted even if he had not called forth such cogent defence as he 4 :4 ,. — 2 — The learned trial magistrate on hispart fell into the common error of convicting the appellant because he disbelieved his defence. This was a serious

misdirection 1 It is settled law, often repeated by this court 'in its numerous pronouncements, that the guilt of a person is provable by the prosecution. The person charged is under no obligation to demonstrate his innocence. All he has to do is to give a story which would cast a shadow of doubt on the case against him. It is my considered view that the appellant's evidence demolished what was a very weak case against him. In the defective circumstances of this case, bearing in mind the land dispute between him and the complainant, his corroborated defence was quite reasonable. One can only say that he was arraigned only because the complainant was influential to a Police officer. Otherwise the charge of false information could easily have been levelled against the complainant. All those considerations dilute the prosecution case to such extent that it would be a patent failure of Justice not to quash the appellant's conviction. Had the trial court not placed his story at the same level as the prosecution's, he would certainly have not been convicted. His conviction was a mistake in law because the greater burden is on the prosecution. This burden is at no time of the same weight as the defence, which is always light in comparison and should never be equated with the prosecution's burden. In the circumstances therefore, there is nothing but to quash the conviction, neither count and set aside the sentence, as it is so ordered. The appellant should be set at liberty forthwith unless on account of some other lawful cause he has forfeited his freedom. (/ .H.A. .KIKIME DODOMA 2 Read and delivered in open Court at Dodoma this 11th day of August, 1972. M. H. A. KWIKIITA 9 AG. JUDGE. ,---. - - - -

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