

TANZANIA / JUDGMENT

19710611 TZHC Arusha2

COURT
TZHCDECIDED
11 June 1971

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HIGH COURT OF TANZANIA AT ARUSHA APPJLLATE JtJRID ICTI ON CRIMINAL APPEALS NoS. 103, 104, & 123 O1 1971 ORIGINAL CR.MINAL CASE NO. 337 OF 1970 OF TILE DISTRICT C QUIIT or Pa DISPRTCT AT OWIE B of ore C.H. Msaati , District Nagiatrate 1 • RMADHAN1 M.CTO 2, AThtThXANI\$oMUSA ..•....., APPELLANTS/ACCUSEDs

3. ATHtJTWI LHADI verou TIE REPUBLIC•..... RESPONSE1T/PROS1I0UP0R CflAR&E: Grevious harit eontry to section 225 of the Penal Code..Cap. 16 Vol. 1.

JUDGMENT

; BRML, 3. - The three appellants were charged jointly and convicted of grevious harm contrary to section 225 of, the penal Code. They were sentenced to 9 months imprisonment and have appealed against conviction and sentence. The complainant gave eidenoe that appellants No. 1 and No. 2 (Same order as in the charge) assaulted him with sticks as a result of which he aufferd some injuries including a broken finger. The medical certificate showed that besides a fracture of the finger there were only slight bruises. Appellant No. 3 had a panga and aimed at the complainant but, in fact, did not elxse. Pt4 2 saw the appellants boat.ng and kicking the complainant and supported the latter's statement as to the instruments they had in their possession. The first apellant's case was tat he mot the complainant running and he complained that he had been severely beaten. Scmeone came up and said that he had found the complainant committing adultery with his wife ariect had beaten him; the matter was referred to the cell leader and it wag ruled that there should be no compensation becau.e of the injury the complainant suffered; that the complainant was not telling the truth in court because he was afraid of a charge of adultery; the offended huabnd had told the police that the appellant had not assaulted the complainant. It was unfertunate that none of these ws put to the oomplai- nant.and neither side callod the husband in question, who was charged but had the charge against him withdrawn. The second appellant stated that he met appellant No. 1 holding the complainant and was told that ho had been assaulted. They left him and three days later they were charged but the police was informed that it was another person who committed the assault. The third appellant ølaimed that he knew nothin boat the incident except that he met a group of people holdinp, the complainant who said that he had been assaulted and someone admitted doing it. The trial magistrate was impressed by the ovideoe of the complai- nant and PW 2 and did not believe the stories of the appellants. Only questions of fact were involved and his decision can be supported by the

evidence. There is sufficient evidence to show that appellant No. 3 had a common intention with the others. The injuries inflicted on the complainant cannot be said to be grievous harm and I will substitute a conviction for assault causing actual bodily harm contrary to section 241 of the Tanzanian Penal Code. The attack seemed to have been without provocation. In all the circumstances a term of 9 months imprisonment was severe but cannot be said to have been excessive. Subject to the variation indicated above the appeals are dismissed. Delivered in Court at Arusha the 11th day of June, 1971- (c.. T3RAMBLE) J U D E

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