

TANZANIA / JUDGMENT

19710514 TZHC Arusha3

COURT
TZHCDECIDED
14 May 1971

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WC - . - IN ISE Tff OH COURT OT TANZANIA AT ARU;RA APPELLATE JURISDICTION CRI!!INAL APPEAL NO, 38 OP 1971 ORIGINAL CRIMINAL CASE NO. 1555 OF 1970 OF THE DISTRICT COURT OP TANCA DISTRICT AT TANOA Bof ore L.A. Mwesiwno, Esq., Resident Magistrate RASSAN /o MOflAMED,.....,.....,....., APPELLMrJAccusED versus THE REPUBLIC,.....,....., RESPONDIN/PROSBCLJTQR CHARGED 1. Rouse-breaking contrary to section 294 of the Penal Code Cap. 16 Vol. 1 of the law.

2. Stealing contrary to eection 265 of the Penal Code Cap. 16 Vol. 1 of the law. J tJDQM E N P KWIKIMA, AG. J. - The appellant was convicted of housebreaking and stealing. He was sentenced to two years and twenty f oar strokes. Be is now appealing against both conviction and sentence. The proocution uatisfied the court as to the following facts. On 915/70 the complainant, a lady, left her room to attend a call of nature. This was at 11.00 p.m. Whenhe returned to her rom, she found the appellant inside it. As the appellant was a complete stranger to her, the complainant cried for help, whereupon the appellant took to his heels, making off with the oomplainant's handbag in the same process. The alarm was raised. The appellant was given hot pursuit and captured wit!zoat being lost eight of. The complainant's handbag was found on him at the time of his capture. The trial court believed the eye witnesses of the prosecution, and not without justification. The appellant's denial of guilt was so unreasonable that the evIdence on record confounded him. This appeal would not have been admitted for hearin but for the fact that whereas the appellant was convicted of house-breaking the evidence showa that the offence committed was burglary in as much as the time when it was committed was held to be 11.00 p.m* which is an hoar of darkenesa. This defect is however, curable under sections 346 and 186 of the Criminal Procedure Code. The latter section makes it possible for a court to convlct a person charged of housebreaking or a kindred offence under sections 294 - 298 with another kindred offence. Accordingly the conviction of the trial court is hereby quashed and substituted with one of burglary contrary to section 294 of the Penal Code. The sen*enoe will not be affected. Save as herein stated the appeal fails in its entirety and it is hereby dismissed. Aruaha 14/5/71 (H.H.AI KUXIaMA) AG. J tJ D 0 E jsm

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