

TANZANIA / JUDGMENT

na TZHC Mwanza 5

COURT
TZHCDECIDED
19 September 1969

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- r- r - ""- - ---:-. - -:- .- IN TI HIGH COURT OP TA1ZANIA :... .T WAZA, ORILJ No 99 B OP 1969 OF T1 DISTRICT COTmT 01 1 }a GOMA k\$ AT XIGMU BEFORE B D. CHIPEA Ms , MGISTRATT -THE., REPUBLIC . . . ,. FROSECUTWRESPo11DE1T
- yersus JUMA SHAABAI'II • . . • APEELIAET/ACCIJSED "iit o section 294 (1) of the Penal Ccd Q1AREt let Count. Hosebreaki corary 2nd Count: Sterling c/s 265 of the Penal Code. JThG1T .ISATGA, Ag. J. .. The appeflt,i, JS.1abani; was cQeted.Qn.wocounts __ o house breaking end sealirg eontrQ.ty to Sections 294 (i) end 2\$5 respektively of the TPen1 Code and was serteieed to a prson te of two years nd iine Lontno j plus 24 strokes of the cane on the first count and 12 months rnprisomnt on the second count to run concurrently with thet on the first count 4 He ha.s now appealed. P.V.1 left and went i a wedding after loQking all the doors end Windo\is of)er house. On coning 'sack she found that one wind was broken and one door was open. On entering th house she fou,nd t nizaber of articles .nc-ludng a tepo recorde to be stolen thçrefr. Oi the night of the sane day. P.W.2 saw the appellcnt and three others going to the hone of Athiiiari Xabwobwe (D.W.J.) The appellant was carrying a tape recorder and one of the other three was carrying a handbag. Onarrjng at the hone of D.W.1 the three other persons said that they had esoorted the..ppe1lant who said he was the guest of D.W.1. They then went the1ttnd bag with the appellant and saying that it belongd.to)jn. P.V.1 identfid the tape recorder together with the hand bag arid it contents as belonging to her. In his unaworn statonent the appellant denied the charges. He adnits to have been at the hone ofP.W.1 but claims that as he was going a/ay after leaving the hone of P.W.1 he net one Moshi carrying a hand bag and he helped him with it • Moshi was going to the hone of D.W.1, his host, and on arriving at the hone of D.W.1, both Moshi and the appellant deposited the bag there and went away, Moshi saying that he would cone back there on the following day. The appellant also celled two witnesses in his defence. The learned trial Magistrate rejected the story of the appullànt and I tlaink that he was entitled to do so • P.W.2 said that when the appellant and the three persons reached the hone of D.W.J. the three persons handad the bag to the appellant saying that it belonged to him. The trial Magistrate accepted this evidence and there is nothing on the record to show that he arrod in doing so. If the appellant had merely helped the said Moshi to carry the baç one would expectthe appellant to say there and then that the bag was not his. It is strange, however, that he did not say any -thing. Again if the artibles belonged to the sid Moshi one would

expect the appellant to say so to D.W.1, his host... , But D.VT.1 said that the appellant claimed the tape recorder to be his property and that on the following morning the appellant opened the hrid bag and took out some clothes and wore then which were later identified by the orner. This cannot be consistent with the appellantts claim that the stolen property were in the possession of the said Moshi and that he merely helped Mesh, to carry it. On perusing the record during. the appeal it appeared as if the appellant might be a person of unsound mind,. For exonpie, when on 19th September, 1969, the accused was brought. before. the trial court the prosecution is recorded to have made the following remark: -

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Prepared on 23 October 2026 · Esheria