

TANZANIA / JUDGMENT

19710219 TZHC Mwanza4

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TZHCDECIDED
19 February 1971

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I.- IN THE HIGH COURT OF TANZANIA AT MWANZA APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 365 OF 1970 Original Criminal Case No0 897 of 1969 of the District court
of Mwanza District at Mwanza Before J.A. Mrosso, Ee.q., Resident Magistrate, JOHNNGUNA) . . \$
• . . APPELLANTS JUMA SAIDI) * Versus REPUBLIC • • • • • 0 0 0 S *5 4 0 • • 00 0* • 0
• • • • • S'S Se • • • . Ei\$PONDENT#. CHARGE: Aaault causing actual bodily harm c/s 241 of the
Penal Code : Cap. 16 Vol.. I of the Laws.. " JUDGMENT. 197 FS EL-KINDY, AG.J. The appellant
(John Nguna and Juffia Saidi) The first and second appellants and. Andreas Bahabe (3rd
add.sed in the trial Court) were jointly charged for assault causing actual bodily harm 61s 241 of the
Penal Code. The appellants were convicted but Andreas Bahabe was acquitted. Each appellant
was sentenced to 18 months imprisonment subject to confirmation by the High Court. They are
now appealing against their conviction and sentence. Selemani (p.w. .2),... the complainant, knew
both appellants very well. On the 26th of September, 1969, at about 10 p.m., Selemani was
walking back to his house. On the way, he said he met the first appellant. He claimed that he
greeted him as usual. When he passed the first appellant, the latter produced a stick from his back
and assaulted him. (Selemani) with it. When he was about to run away, he said
the second appellant and the 3rd accused appeared from in front of him. He alleged that the
second appellant then struck him with a knife on the right side. ..of his head.. The first appellant
he, 1d. a stone and he was hitting him with it on the upper part of his left eye. He alleged that the
3rd accused then threw him on the ground., and he cried out for help. Rashidi (p.w. .3) and
Hassani (P.W.4) went to his aid. Selemani said that the first appellant and the 3rd accused
took heels and disappeared in the direction of the hill. The second appellant remained and
threw stones at people who were going to his aid, ..but later he ran into his house which was
about 70 paces from the scene of the incident. Selemani said that he could see clearly because it
was moonlit night. . Rashidi..said that: as he approached the scene, in answer to the call for
help, he saw the two appellants and the 3rd.. accused and that when he went nearer the second
appellant threw stones at him, but the stones missed him. He alleged that he could see clearly
through the aid of a street lamp. light. . He claimed, that the night was not moonlit... He also
alleged, that he saw the second appellant run into his house. . Hassani (p.w. 4) said. that he saw
the second appellant run into his house.. He said he was able to see him because there was
moonlight and light from a street lamp. S L. & LU £1.10 evidence, but first CL. LUB
said bL1. L JULI 4. Li. UU 1LL arm and hurt himself on a stone. He alleged that Selemani was the
one who went to attack him but he avoided the blows and then Selemani fell on the ground. The

second appellant said that he knew nothing about the alleged fight. On his evidence, the learned magistrate found as a fact that Selemani and the other two witnesses could see during that night as there was moonlight as well as light from the street lamp. There is adequate evidence to support this finding of fact. He accepted the evidence of the complainant in so far as the two appellants were convicted, but he felt doubtful whether Selemani was able to identify the third accused. He held that as Selemani knew the two appellants for a considerable length of time he could not have mistaken them, but he felt that Selemani could have mistaken the third accused, and he gave the accused benefit of doubt to the third accused and him. I think these findings of the learned magistrate as sound and as fully supported by the evidence. Both appellants are now alleging that Selemani, Rashidi and Hassani gave false testimony in Court. I can find nothing on record to imply as suggested this. I am satisfied that the learned trial magistrate was entitled to accept the evidence of the 3rd witness. I see no good reason to differ with his conclusion. As a result of the joint attack, Selemani suffered actual bodily harm, to wit; a cut wound of -fr by * as parietal harm and caused by a sharp weapon. He also suffered abrasions on the face and head. There was caused by a blunt weapon. The sentence imposed is one of 18 months on each appellant. This sentence is justified bearing in mind that this was unprovoked attack by the appellants, at night time, and sharp weapons were used. I see no reason to interfere with it. Order: Appeal is dismissed in its entirety and the sentences are confirmed. Delivered in Court on 19th February, 1971 - (Z.N. El-Kin & y) AG., JUDGE. N-tabay State Attorney for Republic. Appellants - absent - unrepresented.

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