

TANZANIA / JUDGMENT

19800527 TZHC Tanga

COURT
TZHCDECIDED
27 May 1980

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h1 7 fr1— C 0 LI -- IN THE HIGH COURT OF PANZANIA AT TANGA APPELLATE J1IR IS DICTION
CRIMINAL APPEAL NO. 85 OP 1979 ' \$ORIGINAL CRIMINAL CASE NO. 769 OF 1977) (OF THE
DISTRICT COURT OF TANGA DISTRICT (i..... AT T/tNGA..... LDAMDAUDI ::::u::::::::::
APPELLANT versus THE REPUBLIC :: ::::::::::: RESPOIDSNT JUDGENENT Sisya, J: The appellant
and two others who were acquitted at the trial were charged on two counts of Uttering a false
d.ocwnent contrary to section 342 of the Penal Codo and attempting to obtain goods by false
pretenoes contrary to se.tions 381 and 302 of the Pontl Code, respectively. The appellant was also
acquitted in CouPt two but he was convicted in count one and he was sentensod to eighteen
months imprisonment. He is now appealing to this Court and the appeal is against both
conviction and sentence. On grounds of expediency I will retain the docrption of the appellant
and his co—accused at the trial: the appellant being the first accused, At the hearing of the appeal
1?he Counsel for the first accused, Mr. Bishota, informed the Couhat the first accused has since
been discharged from prison on a Presidential Clemency during the 1980 Union Day
celebrations, He, therefore, quite correctly in my view, withdrew the appeal against sentence as
any orders thereon would no longer servo any useful purpose. Now, turning to the factual
background of the case, it was not disputed at the trial nor is it in dispute now on appeal that the
invoice, Exh, P.9, which, incidentally, is the offending object in the case (count one) is not a
genuine invoice issued, as it purports to show, by the R.T.C., Tanga. Like the learned trial
Magistrate I, therefore, also find the same to be false. Evidence was given by one HABIBU
SELENANI (PW3) who described himself as a free lane turn boy to the effect that on 15/12/77 at
about 8.00 a.rn. he was with third accused at street No.15. The first and second accused then
arrived on a motor cycle and thereafter second accused handed over to third accused an invoice
for cement. After that he and first accused proceeded to Gofu Jun and on their arrival the third,
accused intimated that he would hand over the invoice to the Clerk "to see if it was correct." As
aforesaid the invoice was not correct. . . I I •.. 2 PW3 went on to say that on 21/12/77 he was called
to the Police station where an identification parade was conducted. He was asked to identify the
person who gave thorn the invoice. He identified the first accused. However when cross-
examined by first accused and re-examined, by the learned public prosecutor PW3 said that it
was actually second accused who handed over the said invoice to the first accused. One MASOUD
BU1DALA (PW9) who described himself as a labourer testified that on 15/12/77 while he and
Habibu (PW3) were at the Tanga Cinema the third, accused hired thorn to go and load, some
cement belong- ing to first accused at the R.T.C. F19 wont on to say and I quote from the record of

proceedings of the lower Court:- "The first accused came with the second accused and gave the third accused the cash sale for cement 0 I was with Habibu. When the third accused got the cash sale he took us to go to the R.T.C. anc', it the first and second accused would follow0 Lt o R.T.C. we had to wait for first and second, accused, first before loading. We waited from 10000 to noon. They did not come. Third accused then gave the cash sale to R.T.C. workers 0 It was later said this cash sale was not proper .." When cross-examined by the first accused P149 said that it was first accused who produced the cash sale. in his statement in defence which he gave upon affirmction the first accused stated that on 15/12/77 at about 100 p.m. he left on his way to street No.14. On the way he met the second accused who, on his request, gave him a ride to his destination. On 19/12/77 he was arrested. He told the Police that second accused dropped him at street no.14 and that they did not go farther than that 0 In his judgomont the learned trial Magistrate states that there is evidence that it was the first accused "who at all times was talking." With respect, this is wrong. As I think I have sufficiently demonstrated above the principal witnesses in this case, PW3 and PJI9, contradicted, each other on who of first and second accused actually handed over

- h. P.9 to third accused. This is important because the learned rial1 Magistrate does not seem to have addressed his mind as to whether or not the first and second accused were showing a common intention. If he did and consequently found that those two were acting in concert, pursuing a common design then it would have mattered, not as to who exactly handed over Exh. P.9 to third accused. Since ho, however, did not do so it was incumbent on the learned Magistrate to make a specific finding as to who actually handed over the invoico in question to third accused. The evidence of the principal witnesses is far from being satisfactory on this point. This raises a doubt the benofit of which the first accused, is entitled according to law. . . .13 I Even assuming, whichI am not prepa'eti, to do, that the fiz'st aocusod's idontif.cation as the parson who hand.od over
- h. P9 to the third aocused was sufficiently established then I hasten to point out that thota is not a grain of evidence to show that he also told him, i.e e third accused, to present it to PW1. Even third, accused hImself in his defence at the trial never said so. All]. there is in oiridonco is that first accused gave ch I'Ô I to third accused and told him to go to the R.P.C. and that he himself was also coming. The third accused t apparently bocausô of being overzealous, presented. Bxh P.1 to PH].. He was never told or instructed to do so then the most that can be said of first accused is that he was simply preparing to utter Eh P.1 to PH].. A more preparation to commit an offence is not charge- able under our Penal law. The first aocusod could. not therefore be charged, let alone convicte', ±' or thist AU in all this appeal must sucàood. The conviction is accordingly quashed and sot aside. It is ordered accordingly. Delivered in open Court at Tanga this 27th May, 198. Ls a)~

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Prepared on 14 October 2026 · Esheria