

TANZANIA / JUDGMENT

19770824 TZHC Dodoma

COURT
TZHCDECIDED
24 August 1977

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IN THE EIGHTH COURT OF TAFZLNIA. I < AT • DOIX)JV"lf. ' • • ;' AI'ELLATE JURISDICTION H+GH COURT CRUJ-UU~L .1~:::'P:13:LL No •. 130 OF 1977 ORIG IN/1.1 CRIMIHJ;L CA8B .No. 493 OF 1976 OF THE • 1 DIS'!':RIC T::couRT OF SiTGIDA DISTRICT l~T SING-IDJ:... , ,1,, I • BEFORI~: . - • ... e • • • 0 0 . . I::PPELL~I.NT .. THE REPUBLIC •~;/ RESPONDENT -- CI-L'J1GE: .[JI D G N D N T .. 'I.

- .. t • • • .CHIPETL 1 • il • The ap:::1r-3llr111:::tl ,ms convicted by Sir1;5 ida diotriect court of th.3 offence 6f' :rcf~l;ery c/ ss 285 and 286 of •ch•J P;nal Code and was sex:i.-ccneed to s:0ven yc12,rs iDj_)l"ison;•1cnt under the Minirmm S°E.;ntenc, is Act, 1972 •. He is now a~_.,:)c:::..linc;. The 1;ros0cu.ticn's uVic1unce w~s'.t.ib,~ ~n--2-fj/10/76 o.t abm1~, 2.00 a.o. tho con.pl2,im:mt, one Mc~ria1.-:iu l\lun2. (Pv.1) end one Shaban Kindwa (Pw .2) Wl;re • sl-30::;iing in the sane houso. At about that tine- five_ pe-ople broke into the: house. Arnone those intrude~:s b.o•th -J?-w~ 1- and Pw .2 recognized •Ll.1 3 appellm'!t. The 2.;JiJella.n t h:::1.d c.. •c0nch anci was arr.1ed wi~lih o, knifo. The am;eliant told Pw. f ontl• Pv-f • _2' hot to raise any ~J,"1,rrJ or else th0y would be killed. • •Tho appellant then tied both Pw .1 o.nc Pw .2 against their b,~ds. He then stood cunrd over then as -::;'::; other culprits took 2.way the conpl;:i.inant 1 s oillct. The othr:r culprits went out of tho house with thair loot, but the nj):JC118-nt rorm,incd th8rG cuardinr, then. Lat or, he stnbi}, ,!l Pw .1 with his knifo on thG leg mid then went out. NGxt norninG a s:::arch was nounted. Tho search ~larty f olJ.owcd a trail of !"J.ill:~t which led than to the appollan-'~' ::; house. Fron the n:::,•cllp,nt's house tho trail of nillet led • theo to a distance .. of a.bout 100 yards from the: a;:-ipellant' :c: house where the senrch p2~rty found 2½ tins of r:lillot. The arpellant was then c.pprehr:mcd. The a:)pellant said nothinG in his defence, ;:::,nd. his ovm witness said nothing th2.t could be said to assist the appellant. The learned resident :o.elgistrate acce;_)ted t:.1r:: eihl:clence of Pw.1 o,nd Pw.2 ~nd found 2..s o, fact that the a:i)~1 oll2.nt wo,s one of the culprits. • I note that the o,_)pellsnt was known to both Pw .1 and Pw.2, 2.ncl the u__:_elle,n-c a,dnits it. Th3 culprits 1.-Tc~rc;; in the.house fore.. f:::drl:y.,long tii:-le. It is the z,-:~:iolent who, with the aid of the torch lif;ht, tif:::d up th;; conpl8.in._:~:~t with ropes ::.uid told the t•wo witnesses net to re,is0 any a],,;~:~:~. The appellant rew.z,ined in the house when his c ollo2,6uos le ft with the nillet. In support of the evidence of Pw.1 and Pw.2, the 2 trail of_n;illet ic;,d to tho :1~p0Tl::,nt's house cmd thence to thEJ •plr::cs whr:r'e• so;-e -:-f thG nillot• 1-r2.s found~ 'Al tno~th an P,CCUS

ed :)ors on hss ;no. cluty t (' r>rove his _innoc once, one. would h2.vo expect id tht~ ·
P..)]_iell2.nt to give sooe expl8.Ilr.>:.tion or to. contradict the accusnti011s levelled ~:gainst
hir:l. Ifc did, not do SC~ -. . . ' . ' _ , _ · In· all the. circuns:ta~:.ces, - ther(;fore, the Pv)l)-Jllc.,,nt'
s allegation in his n8Dornduii of 2.}IJE:P.l thr.t ho ·h2,d quarrelled with Pw .2 over
Pw .1 :is .clearly c..n afterthouc,it. JIG should havo raised that point duJ:i ng the tri2,l wl).are
he· h;.1,0: t<:11 the -ti.n~r and opportunity .to do so. _ · , < ' ' Onthesc.;:·grouncs, .- ~ 2-,
[;rer:1. with .the lec:1.rned st2,te attorney tl1ctt the conviction T:1ust 1J0 up}?0ld. -·~.-
As ·ina.Ic2;t°<)d'·:~,,bb~,e, tho sentence is the st~.tu·cory nini.nun. · Deli ve·red in of
Auc,t1st, 1977. ;,1, . , , ·' ' . . :,,.,:.... :.. ;~

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