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DECIDED
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cova IN THE HIGH COURT OF THE JUDICATURE OF THE STATE OF NEW YORK
IN SENATE
JANUARY 12, 1979 (Original Criminal Case No. 92 of the District Court of the City of New York)
Held:
111 :U3hIC .,eo hiPO1T3LIT/PROSECUTOR

- UTLLSIUE[O,J.: On 14th June, 1979 I alloid tho sipcel of 7iatibu Ha.mza, quashed his conviction and set esidc t he senienco with the result that he was allowed to resuLie his liberty unless further inLc rned for SOnG other known and lawfal c a so • U ievcr, I reserved J5 reasonsf so ordering bU promised. to dive them ma juddoment to be délirered in due course. Today I feel disosed to outline the said roasons in the- coarse of this jsne.et. 1L lObL iiril, 1979 i c/c d Liö by Tana D is- ot ie'rt f3 oo r j s, ariLonG iiaistrate, guilty c ealind D S sorrar •:.... 7... iL the etLic service, i 25) I sl sas sentoroed to and a half yari:...i1T:..rh arioved by that dcc isi: m bilc convict apcals7. t. :hs: c:...rt hirc.ath the services of Mr. T1raeib; a Tar::a soi. Th1s feo Iespondent (RenaThlic) w L 3 thly ro.rcs:.Ls by hr. .1 7arrnod State ttornoy It was in evidence boforo the treal C;;art thcat at the material -bLoc the appealan was a cashier with the Forestry Departarb in Tanda where 0110 Elireheen hthueiani was the Redio.nal Forest Officer and therefore ; the boss of the appe11at. The abpollant was handlind a fund known as "Forest Industries Production Unit tmd" and it was sbated in evidence that Shs.75,000/- had been handed out to the appellant in his capacity as cashier handlini bhe above named fund. The money would be asod for buyin. forest products which would then bc sold at a profit. The ap:ollant used to hand over se o ew1s to tio employees of ry Form the Dosart.aent ubon sinins, wiiaa u:s war..... 'Drcasur No. 10' entitled as 1e isibiuwe dew tear/Ohoqac" and they in turn weald dO out to bay :Lorosi r:redwet art resell them at a irofit and rofund the oritimal ar::...t ee hoc aeollant but bank the profiss. Upon sabceibtirh she cc. :..tal :co.aiere .ich had been ssuod c tno employees s toe Dpec seed tee aspollant would . -w
- ' . .. * J. - -2- hand over,. th Treaaury Fo s Io . , .. 0" . dcc; rsnncive :. epLoye .to certify the o te : .cLL12c of the said rienioe. The farlh ted. iate h. cis,a bek joald. be loched hC SEfO While t.JCSO CUI CotoC- WOIIIO 00 hODt in the drawei'. Oil 7 ofl OLI t;05 C0.L Sns.75 2 000/- and a sh.rtof oho. 25 2 73/35 eas dieeovered. few days prior to find -bi c a euLec; load. yrio i. hahez. rlhoroas he said thc' hit- e Po icic Th T oe (1 .i) d sent h]a thero the I bter edated that iho a. hand had ono there on

- his own. Darin that absence of the rappeh1a1; P7.1 rang to the Rerional Crime officer Tanr.a aj:k,. .ascod ho to check the ape11ant's books of accounts. It is tna ciccchin that revealed the aileded shortade. In hts defence the apeliant adjaitted havin roceived the Shs.75000/- and n1so conceded to the existence of a shoroie of Shs. 25 9 739/3 hut ho o unoen tiat one :oiiey coorisinfie shorteoo hod boon taJ:uei by officiols in the office for the roj oct and that ene :rLccJrcc ri filILind the TF 10 fear had been erdn fuobn:r oadr r fiat when he .H.wont aroe be liaezah icr I ft arcot:. if 10 ILL hin table dracr . ac ho c.ae beer: all orb tia..cad 3 had disappeared and he 'eria dma in cocc an aLh. L tb: nnollant tarthor 'i 'b .. ri iady iaatind that his hr on 1: aincu, etboer trio :1 co a. ac _ao:e from. him from lh' •ro cl 'and i b a. ai::i ic t. /r arcs ho iacb left-
- in the da:ar;aho'd bci daiLJrJy 2/ia an. J';r:arod. iicod all this bac0OaOLILOO ia. lerro trial naistrate
- .saw it f ii to find...he o:aorblani b:iity and sontoncod hin as indicated.aleovs1
- For the,appo1bLant ii was. c.niando by his learned
- . Comse1 I.ir. MraoJa that the learned trial Resident Madistrate
- arrived at wronC conclusion in view of the iackroi.uad of the case for it was further contended that the harden vine shifted to the appellant to prove hie innocence. Admittedly this was a fatal nisJiruotion arrh no wonder the learned State Attorney reTiedo: ca his reluctance to support the Conviction. It would erjpocar db.i :-: .e a saeoct himself f o r hr ajar: ransacked the ofic ,ri rho' i/and in the latter's absenco and taken no/arT sane ibri'no chon: oam'c::nod monies some of which bb:r:ood ins sabject .':atr Ci "ia coerm
- .•• o _ - t -3- He was the one who deliberately sent tee acliant to M1aoza to cause his aesonCo an. the Police. As did ar:ue the learned. Cooncl I. alJa.TL the case raised.a reat doubt in the Th•oseo ;±on OV1L0i1CC and in consonnance 111th Of13 CIU.L1J'C.aac;L -. O1rLOS CI cricnnal trials that dcaht should ha :on resolved. in favour of the appella.nt. This the trial count :o±l. to d.o. On his lart the lo ned State A;;tdrney, ac.iond other things, dated that P.1.1 had ec:os -ar ose f his own to serve and.ss such his evidence required soac corrobioation on the material points. In support of'his submission the learned State Attorneyinmy view, ridhtly cited. the se of Paulo Mri.jii v.Republic (1977) 111'& IV LOR.T. n.34 in which 'Hon.. N.S. Mnzavas, J. (as he then was) now J.X.held: "7here it appears that a witness rey have some purpose of his Own tOi:erv0 inivin evidence the Court should warn itelf as a matter of practice of the dancer. of actin, on his own uncorroborated evidence similar to that which is aivon in the case of accomplice&t
- In this case the evidence of the Police as to the checking could not be said to hác. corrcboDaed that of P[V.i for the latter had access to the drawer of the appellant before he called in the Police. Anythifj could have occurred, in between.. The learned State Attorney went on to point out that

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