

19890425 TZHC Dar es Salaam

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TZHC

DECIDED
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IN THE HIGHT COURT OF TANZANIA AT DA.IL.ES SALAAM APPELLATE JURISDICTION . HIGH COURT' CIU!IDIALJi.PPEAL N0.169 OF 1988

- (~ ~iginal CriainaJ. Case N .u6 of ·1900 o-r th.a ~ - CoUri 0 . . of Morogoro District at laoragoro) ~IADIIAllI Jma " ' ..,..... I ,L.PPEI,IJUF'T ·· (Or.k,""inal .Accused) versus- Tlllll UNITED REPUBLIC.~::~~, .. ~::~....., .. -, TIESPOJ:tDm.TT . (~"illal rnseoutar) / ·.JUDGMEUT W;i@lt Jt RamadheJJJ. Juna and Kassin .Ally ~~,o~Ged. ~ with five ~ s µ1 ~ · ~ ·.O~ C:ri raj nal Case Uo,.116 of 1988 of va:rious . ott.e·s· There were a total.. of 7 accused persons and Bama<l.baui and Xassim were 7th and 6th aJJou.sed. rGspootivelzy", . . The accused . 1 to 5 were o ~ d with two counts of robbery with viol.au.oa while Raclailhani ond. Xa.s~ were oha:rged 'ld th being accessory a;f'ter the second robbe:cy. The ' .f:l'a a0ousod were oonvic';ed 2,s charged -while Ramadha.ni and Kassio were .also oonvioted as charged. Ranail.hani and Kassim are no~ appoa.liDs" ~sz t.hoi:I: O-Ollvictions eJld sell1tonoes of 4 yea:rs ~nment eaoh. The· faots which ware i'-o'llnd to be t1'Ue are that there were two ,:obbsries with violence in two villages in Morogoro _Distriot.. The SGQond robbery· was on 26/4/88 at night which was aotually on '21/4/88- a.t around 2.15 a.~ Tho first aocuaed was one of the robbers and. he was shot by his 01-m gun ~t his le~a· He managed to go to the homo of
- a. fellow robber one Boni whose hooe was· near the house which was robbed,. NOX'b .dcVI the· sixth accused, vm.o was a taJd. driV°3r of taxi oar Ho· TZ 3548 tdth number 50 at its do01'1 · was hired by B011i to go to Boni' s plaoe 4'o ~ tho ·first acouood. The 6th accused drove ;there in oOiiPcm.Y of tho 7th accused. . Thq found the 1st acousec1. tb.GJ:e and he· - was P'..tii: :ln thei,1," VGB.i,ole end they drove hi.? from this plaoe wh:ich is ~aJ.led IG.lo~ Village ~ Tungi vU~age l e ~ him® -the ma.i.ll road to D~ es S~aan. - Phe· ta.xi oab d:riven-by- 6th aocv..sod wns seen by one Chuld.a Pi,:S a.t t.'1:le hcsu.ae 0£ Boni on it/4/88, ,·rho al~ ~-G1.1esscci ona person~ e;,:a-ied into tho vebiole by three people.. PW5 also. saw that this oan who ·was oaxriad. 1ras blcoding froo the legs,.. In their defence the 6th and 7th accused adnitted. tha.t they were hi.rred by one Borii · to go and tako a siclc porso11 from. his hol'!18 to '!l'u.:no~ .V'ii.,~e-- - - lJ:Q.~. ~ seej::a,,,:_ 'f:!W b:J:~oqq.. ~ l~o,~. that :this ~ok 2 ... J.n his. jUdgment .the learned. senioi· Resident Magistr.lte first of all wond~red why. on)j>the ·6th.· accused was selected to go to Kiloka. He also said that there vtere:~stancli;ng instructions from the owner. of the taxi' c.ab driven by ,;he 6th' accused ,not to drive' it f~ from the town

and the bad roads. The accused broke these instructions and though they were learned Magistrate. /V, why the accused would want to do that. The learned Magistrate also found that since the 1st accused who was carried into the car had bullet wounds the two accused must have seen these wounds. He concluded that the two accused must have had a common intention hence the illegal concoction. The accused persons set out very long petitions of appeal. The Republic did not support the conviction. The only point for decision here is whether the accused aided the robbers knowing that a robbery had been committed. With due respect to the learned Magistrate, there is no evidence to establish that. At most there are only suspicions that the accused might have known of the robbery and that they were assisting robbers. Even the fact that the 1st accused could not walk does not conclusively prove that the 1st accused person had been shot in the course of a robbery. There is no evidence that the accused were aware of what had happened. Indeed it would be strange if those who were assisting the wounded robber were to disclose the facts to strangers, for there is no evidence to show that the accused and those who hired the taxi were loyal to one another. The sixth accused was driving a commercial vehicle which could be hired by anyone who could pay. Even the fact that the 6th accused drove a long distance outside the town contrary to his employment does not establish that he was acting in concert with robbers knowing that a robbery was taken place. For the above reasons, it would be erroneous to uphold these convictions. I, therefore, quash the conviction against 6th and 7th accused and the sentences passed. In consequence to these convictions are set aside. The two appellants Ramadhani Junia and Kassim Ally should be released from custody forthwith unless otherwise lawfully justified. 25/4/1989. Mr. for Republic's appearance. for Appellants.

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