

TANZANIA / JUDGMENT

19710811 TZCA Dar es Salaam2

COURT
TZCADECIDED
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IN TNEJ VIGIR CU TA!IZLUA AT DAR ES ?iUAM. Crirnjrari Apteal Lo. 306 of 197 1 Original Cvlrninal Case ITo. 1631 of 1970 of the DistrIt Court cf Dar es Salaam, 1)istrict at Dar es Saiaam efore: C,1J, 0sakire, Voqo j &psior esident MaBtrate, •e*sIaq,a•, ,.o.,s.....,.....,.... A1IDLLAi' versus P 2PtThLIC CIIAt.GE: Breaking into a bUilding and oornrtting a felony therein 0/s 296(1) of the Penal C ode, JJ',r1T M1 ARA115END0 AG. T. - The appellant, Rashid. Harnisi, was oorvicted by the Zenior Resident Magistrate Dar es Salaam of breaking into a buildng and commtting a felony thrtn to wit, theft, contrary to zoation 296(1) of the Penal Code. He was subsequently sontonood to two years and 24 strokes of corporal punishmentto Ito now appeals against both oozwiction and sentence. The facts in this case are briefly as followes One 11aidorali Oulambustein ale flemtula (P.W.3) lives in a house situated along Malt &treet in Dar cc 3a1aam. In the same bouee lives Austafa sf0 Shaniff (P.W.4) who is the oornplainant in this case. The complainanit lies on the first floor of the building while Remtula's flat is just above that of the complainant. The complainant Bharfff owns a store which adjoIns his flat. The said store hao a door that faces the street on the owbeid.e with the door usually bolted but not locked, and was so bolted on the 30th of October 1970. AccordIng to Mustafa 8hariff (? e W.4) he used the store for keeping unwanted articles such as tables, toys etcetera. On the 31st October, 1970 at about 6.15 a.m. Reatuls (P.W.3) was returning to his flat from the mosue when he saw someone, that is, the appellant in this case, fidgeting with the contents of the oamp.lainants store. Remtula was at first not certain whether the apellant was an employee of the complainant or a trespasser bat decided to watt and see. Shortly he saw the appellant puiling out of the store a table and toys which could be identified as an aerplans and a oar. The appellant was then seen going away from the Store carrying the table on his bead and the toys in his hands. The witness deoided to follow him. The witness explained th4t he was afraid to apprehend the appellant single handed and that is why be decided to follow him. 'Remtual caught up with the appellant near a hotel at whcb point he challenged the appellant as to the owtier ship of the items, The appellant gave some cock and bull story which dd not satiety the witness who thoref ore docided to summon the polloek Mjuatafa Shariff (P.W.4) was subsequently contacted and he was able to Identify the table and the ts as his. In his unsorn statement the appellant narrated an incredible story as to how he came to be in possession of the stolen propertien. 2 2. e said inthe Qrning of 31øb Octobei, 1970 be had gone to eay goodbye to his une.e at Nawez1 Street but boforo he got there he met RU1a who aalted him if he wae in neød of, a sob. When the appellant eaid be Ud, he was given the artiO1a wbob are the øuboot mMt\$ of the charge vide 1&hibits A to 2, He wai asked to carry them to Jaturi Street for a reward

of 11hs05/- . fle was paid Sba.3/- in advanos, the remaining Sh,2/. being payou as aeon a ieintula found. ohane. On arv g at the hetel along Jamnburi \$treot appellant asked Rerntua to get change there but BntUIa doolinod aayin that the agreed payment was only e.3/ and not 5/, There then foUowed an argument between them ending in ReMula ikemanding his articles baok. The appellant refused to band the articles back to bin insisting to be paid the balance of hs.2/, Remtula then pretending to go to 'the hotel to get change went to call the polios who were quiu k to axrost 4i.mt and charge him of , the oU'encu, The appellant wehomently denied stealing the 'abls and the two toys, In bin memorsnduu of appeal the same story is repeated with only alibt but in3ignifieant variations. 1O learned senior Resident Magistrate after carefully reviewing the whole evidenoe in this oase rejected the defence put forward by the appellant, There can be no doubt that the learned senior Resident Xagiztvate was absolutely right in rejecting such a story which is so ludicrously hollow as to border in the realm of fantasy. I tind it bard to believe that any ordinary "dawaUa, whatever other, vioes he mibt have, would sink so low as to frame a case egainet a total stranger I am satisfied. on the avidennee that the Story put forward by the appellant is tota2ly unworthy of belie?, Rio conviction is fully supported by the evidence and therefore his appeal ainst eoviotion ails o. Jlowever 7 when it comes to sentence it is quite apparent from senior the record that the learnedLResident JJaSJ.\$'bPa .teL did not serIouSly direct his attention to the queptioA of whether there 0ouldL be special oroumstanoes in the case so as to bring it within the provisions of section 5(2) of the Minimum entenoea ot 1963. I mitigation the apeUant is recorded as saying be was a sobool boy of Nabiva College in !twara, Ile has repeated the same claim in bin memorandum of appeal. In the absonce of any evtdonce to the oontrary I am inclined to accept the appellant's claim that he is a school boy of Nahida College `Mtwarai and the only question that I have to decide is whether this factor amounts to a 'special circumstance' under the prov±sions of the inimum 3entenoe Act

1963. 5eotion (4) of the Act provides; "\$or the avoidance of doubt, the expression 'special circumstances' in paragraph () of aub-eeotion (1) shall include circumstances relating to the commission of the offence and to the person who committed tt.' In my, jadgomott the fact that one is a school boy pursuing full time course of instruction at a recognized institution may be a eppoisi oiroumstanoer which relates to the person who committed it and I so held. Thus it would sae' appellant satisfiea condition () of sub-section (2) of aotion 5 of the Ant, The appellant is also a young person allegedly ed. seventeen years. He is a first of fender and the value of the property ate len is definitely below bs.l0Q/- On consideration therefore it oald appear that appellant's case falls squarely within the ambit of section 5(2) a? the Enimum entenoe Act 1963 and pesuant to that section 1 will act aside the sentence imposed by the trial oourt and substitute theref or one of 'ten strokeS. f corporal punishment which in my view would adequately meet the justios of the casee 3 theyariations indioost hei'in this ppeal fells and is accordingly d rniseQtL. in Coart thia, 11th tay-, of Aujust, 1971. wANDo) A(. Ur JUDc. V

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