

TANZANIA / JUDGMENT

19761012 TZHC Arusha

COURT
TZHCDECIDED
12 October 1976

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IN THE HIGH COURT OF TANZANIA AT ARUSHA IPPELLAE JURISDICTION HIGH COURT
CRLINLL LPPL NO. 247 OF 1974 ORIGINAL CRIMINAL CASE NO. 55 OF 1974 5 OF THE DISTRICT
COURT OF TANGA DISTRICT AT TANGA BEFORE: A. H. T. NYMOMO (Miss), Esq., Resident
Magistrate. S.t.IDI iINI . . . aaaaaa . . aa . a . aaa . aa . . a . . a . aaa . iPELINT (Original 2nd
Accused) versus THE REPUTABLE . . . , aa . . . RESPONDENT (Original Prosecutor) JUDGE N.T . .
MAKAME, J. The appellant SAIDI IITA and another person called HASSJI SI IJU were each
sentenced to imprisonment for seven years, subsequently following their convictions for
Entering a dwelling house with intent, Looting Robbery, and Being in Unlawful possession of
ammunition. The appellant appealed to this Court, challenging the convictions as well as the
punishment imposed. P.W.3 JTHA RSHIDI, a domestic servant rather discreetly referred to as a
housekeeper, was working in the house of his employers, the Shivji, P.W.7 and P.N.9, when two
people entered the house and one of them pointed at P. 1,7.3's stomach what appeared to be a
pistol. This was in Tanga Township in the afternoon around 5 p.m. According to P.W.3 this person
was the appellant who led him into the sitting room in the witness's presence. The
person, the appellant's co-accused, who was rostraining, Mrs. Shivji and who cut both P.W.3 and
first Shivji with a sword. When the alarm was raised and people converged upon the scene in
response, the appellant fled. The other accused did not so lucky end by the time the Police
arrived he was lying on the veranda in a sorry state as he had been severely assaulted. The
testimony of P.W.5 SKLII NJTJA helped very much to establish the identity of the appellant as
one of the people who entered the Shivi homestead and as being also the person who was armed
with what was in fact a toy pistol. According to P.W.5, when the appellant left the scene he went
towards Bombo Hospital after he had threatened him, P.W.6, with the 'pistol'. Then members of
the public, including school children from Popatlal Secondary School, stoned the appellant P.W.6
was present as he had joined the crowd in pursuit right up to Bombo and the appellant was still
carrying the "weapon" which indeed got seized during the assault, and when Assistant
Superintendent IGTL, P.W.11, went to the scene he found the appellant not only with the "pistol"
but also two bullets, including one which was fake. The appellant was wearing a greenish shirt as
was also the person P.W.10 MJI SANJI saw coming down Shivji's house carrying a pistol. There
was,...../2 -2- There was, further, the incriminating shoes. - In defence the appellant said he
was in fact out on a run in Raskazono area when he saw someone running and being chased
by a group of school children. The crowd said the appellant was one of the thieves and that he was
found unconscious. He was found with a pistol and also refused to give a statement. Prosecution, story

about the shoes. -- Tn 1 rad trll L1rts found t1 t bhoru wv's

- enough reliable evidenc.; on vthih to convict and, with
- 'cjct, I . cannot say she: erred. The scdiucnco of ovonts and the cirthmstancce sufficiently established the identity of the ap:pollont as one of , tha -intruders 'who terrorised the Shivjis and their servants. Tnorc arc aaintbedly slight disharmonics in sac oviaoncc bu b.cro are such as would not surprise one and. they do not in ny view detract from the reliability of th: case against the appellant as a whole.. There are not any new matters of substance raised in the apDoal which I accordingly dismiss. I wish to rL,rk t- the Chre Shoot could hova boon drawn wit.lcss. inproc.ioion and that the Polico photographer could.have made it more. economical usc; of his niatorials. !rusha: October 12, 1976. ,(L. M. CTUDGE... . Judcinccit d liv. r .d in open Coui b at Arneho on uhe 28th dny of.January, 197 . .*,. / / . UnT/NTHT.

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