

TANZANIA / JUDGMENT

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23 November 1978

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- IN THE HIGH COURT OF TANZANIA
- AP DuD MA APPELLATE JURISDICTION CRIMINAL APPEAL NO. 90 OF 1978
- •, (ORIGINAL CRIMINAL CASE. O. 325 OF 1977) OF THE DISTRICT COURT OF SINGIDA) SAIDI s/o MWANTANDU. Appellant (Original Accused) Versus THE REPUBLIC. Respondent (Original prosecutor) charge: Robbery with violence c/ss 285 and 286 of the Penal Code., JU D G M E MT CHIPETA, J. The appellant, Saidi L&ssso Mwantandu, was charged with and convicted of the offence of robbery with violence c/ss 285 and 286 of the Penal Code, and was sentenced to seven years' imprisonment under the Minimum Sentences Act, 1972. He now appeals against both the conviction and sentence. The prosecution's evidence was that on or about 26th October 1977, the complainant, one Zena. d/o AmaSi (P.W01) was stranded in Singida Township on her way to Moshi. In the course of looking for transport to take her to Moshi, she met a man who introduced himself to her and told her that he too was proceeding to Moshi. It was then at about 3.00 p.m. The appellant then told her that there would be a bus going to Moshi that evening and the two then agreed to travel by that bus. Later in the evening the appellant returned and told her that the bus which was supposed to leave for Moshi that evening was out of order, and so there was no hope of leaving that evening. He then suggested to her that they should go and spend the night at his brother's house at Mwenge and leave for Moshi the following day. The unsuspecting complainant accepted the generous offer, and so she accompanied the appellant towards Mwenge. On their way in some bushy cassava shade, the appellant offered to carry the complainant's When the complainant refused to part with her luggage, the appellant snatched it from her, threw it down, rubbed for the complainant's neck and tried to throw her to the ground. He could not, however, succeed in forcing her to the ground. He then started caressing her breasts with one hand as he pulled up the complainant's clothes with the other. As he did so, he suggested to her that she should have sexual intercourse with her. The complainant, however, declined, saying, that she was suffering from a serious venereal disease. Thereupon, the appellant pulled out a pouch from the complainant's breasts and walked away with it saying that she could go her way as he had accomplished his mission. In the pouch was shs. 257/25. . . . The complainant then proceeded to Mwenge where she met someone who took her to a tenement cell (P.W02). The complainant told P.W.2 what had happened to her, and she spent the night at P.W.2's house. Next morning, and as chance would have it, the appellant

want to house to drink pone. As soon as the complainant saw the appellant, she pounced on him and raised alarm saying that the appellant was the man who stole her money. P.W.2 and many other people approached the appellant and interrupted the appellant. He admitted having stolen the complainant's money, and added that he had spent all of it. He was then taken to police station. In his defence, the appellant denied having stolen the money and further denied having ever met the complainant. The learned trial resident magistrate accepted the prosecution's evidence and rejected the appellant's bare denial. He accordingly found as a fact that it was the appellant who stole the complainant's money and so convicted him as charged. Having considered fully the evidence and circumstances, I am in no doubt at all that the appellant was the person who stole the complainant's money. P.W.1 had seen the appellant in broad daylight, and the two were together for sometime before the theft occurred. P.W.1 identified the appellant hardly a day later. Then there was the appellant's own admission before several people including P.W.2, P.W.3 and P.W.4. The only question left for consideration is whether the evidence established the offence of Larceny. It seems to me that the violence, if any inflicted on the person of the complainant was purely for the purpose of overpowering the complainant with a view to knowing her carnally. The taking of the money was not accompanied by any violence, and at the time of the taking the appellant used no violence nor did he threaten the use of any violence. He just walked away confidently as he told her to go away. Such violence as there might have been therefore, cannot be said to have had any connection, let alone a rational connection with the taking of the complainant's pouch. The offence committed, therefore, was not robbery but that of stealing from the person of another. For these reasons, the conviction for robbery is hereby quashed, and substituted therefore by a conviction for stealing from the person of another (s. 269(a) and 265 of the Penal Code. Consequently, the sentence of Seven years imprisonment is hereby set aside. The appellant is now sentenced to three (3) years imprisonment. The order as to compensation, however, is upheld. To the extent indicated herein, the appeal succeeds, but it is otherwise dismissed. DCDOMA B D CHIPETI, 23rd November, 1978 JUDGE - ft

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