

TANZANIA / JUDGMENT

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TZHCDECIDED
21 May 1977

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IN THE HIGH COURT OF TANZANIA AT DODOMA APPELLATE JURISDICTION HIGH COURT
CRIMINAL \PPEAL NO0 12 OF 1977 ORIGINAL CRIMINAL CASE NO. 433 OF 1976 OF THE
DISTRICT COURT OF KONDOA DI[TRICT AT KONDOA Before M. A. Upaga0 0 - 0 0 0 • District
Magistrat SELENANI s/o OMARI 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 APPELLANT 0 (original Accused) Versus THE
REPUBLIC 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 RESPONDENT 0 (Original Prosecutcr' Charge: Robbery c/s
286 and 288 of the P::na]. Code. JU D G M E N T CHIPETA, J. The appellant, Selemani Oman, was
convicted by Kondoa district court of the offence of robbery. c/s 286 of the Penal Code, and was
sentenced to seven y. ars imprisonment under the Minimum Sentences Act, 1972. He now
appeals. The appellant, however, has since escaped from prison, and his appeal had heard in
absentia0 The prosecutions evidence was that on 10th September, 1976 7 at about 3.00 p.m., the
appe.lant, who was a total stranger to the complainant, entered the complainantts room where he
found the complainant and her young sister. On entering the room the appellant demanded
money from the complainant and threatened that he would destroy her if she did not give him
money. He then held her hands, and thereupon the complainant's young sister rushed out of the
room and went to report to their mother (P.W.2) that there was an intruder in the complainant's
room. In the meantime, the complainant herself raised an alarm : but before P.W,2 and other
people arrived at the scene, the appellant grabbed shs. 30/-, which the complainant had kept in a
bag and put it in his pockets. When P.W,2 and other women arrived at the scene s the appellant
disappeared from the scene. He was p however, found in a certain guest house later that evening,
n'id with the aasistance of a militia man he was apprehended and takni to police station. In his
defence the appellant told the trial court that he had had an affair with the complainant the
previous night, and that they had age'eed that he- should visit her house the next day. On the day
in question he went to h:r hOUSE at 3.00 p.m. ile there he drunk local liquor and then left. Later
while he was in a guest house waiting for the complainant, he was surprised to see a group of
people who came for him and apprehended him. -. As correctly submitted by the learned state
attorney, this case depended almost entirely on th, credibility of the complai-- nant. The learned
district magistrate, who had the advantage of -2- hearing and observing the witness, accepted the
complainant's evidence as the truth. On findings of fact based on the credibility of witnesses, an
appellate court will not lightly interfere with such findings unless it is satisfied on its own view of
the evidnce that the triai judge or magistrate has plain. iy gone wrong. This is as it should be
because a trial court has had the advantage of having heard the witnesses and observed their
demanour, an advantage not available to an appellat coirt In the words of Lord Shaw, afterwards

Lord Dunedin in *Clark V. Edinburgh Tramway CO.* (1919) S. C. (H.L.) 35: "Witnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the force of their expressions and even the turn of an eyelid, left an impression upon the man who saw and heard them which could never be reproduced in the printed page. What in such circumstances thus psychologically put is the duty of an appellate Court? In my opinion the duty of an appellate court in these circumstances is for each judge to put to himself, as I now do in this case, this question; 'Am I, who sit here without these advantages, sometimes broad and sometimes subtle, which are the privileges of the judge who heard and tried the case, in a position, not having these privileges, to come to a clear conclusion that the judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the judge who had them was plainly wrong, then it appears to me to be my duty to defer to his judgment'. In the instant case, as the incident happened in broad daylight, there can be no question of mistaken identity. Could the complainant, then, have framed the appellant? I do not think so. While saying that he had had a love affair with the complainant, the appellant admitted that she was a total stranger to him, and added that there was no grudge between him and any of the witnesses. If the appellant had gone there at the invitation of the complainant. I cannot see why he should have been found by P O W.2 quelling with the complainant in her room. Indeed, if he was an innocent invitee of the complainant, I cannot see why the complainant's young sister should have rushed out of the room and gone to report to their mother that there was an intruder in the complainant's room. In my considered opinion, therefore, the learned magistrate's finding that the complainant was a truthful witness cannot be faulted. Was the offence of robbery committed? I will answer that question in the affirmative. Not only did the appellant threaten the use of violence, but he actually assaulted the complainant in order to steal the money or retain it. In all the circumstances, therefore, I find that the conviction was well-founded. The sentence, as noted, is the statutory minimum. In the result, the appeal fails and is hereby dismissed. //• ;' / , DODOMA CHETA 21/5/77 JUDGE Appellant, absent and unrepresented. Mr. Nchora, Counsel for the Republic.

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