

TANZANIA / JUDGMENT

19831106 TZHC Mbeya

COURT
TZHCDECIDED
6 November 1983

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-71k çì-' HIGH COURT OIYPAN:'uiIttA AT i']BYA. i:r:11rTT1 StT3DICTION c :LL NO. 53 OF 198)llICLOLL c:I1wTAL C!03E NO. 75 OP 1983 CF PH D1. LICT CYJ :T OF IHINGA DITrJCT AT IRflTGA SHAIDtTLI:?.I :. r.r-, V . .iJU TIR1XEiIC1IC POIU)JJ.1T 0 J U P G ri i'i i' H Charge: Breaking into a building and cornrnitting.a felony therein c/s 296 of the Penal Code cap. 16, ICatiti, J. Iringa District Court was witness, to the indictLlent of c3ha1b.i Amir hereIn the appellant for ft o'2fence of breaking into a building and stealinr therefrori, - the allegations being that the said appellant, on or about 4'211982 , cUd break into the olico buildiug at Ruaiia, and stole an electri o machine, and a water UJ! therefrom. The trial that followed'on heels, culminated in the apelaut!s cons -ition, and hence a sentence of five yuars imprisonneri, he is serving He is apYcaling against convictior . cha1?.engin •h of witnesses, and capitalising on c:cC11i1ty his alibi, that he st;:od in :iis .ofcnoe, arL called ritnesaec to substa- ntiate the same, - The evidence seons to be straiht forward, 1yin tilthifl ashort compass. That the policeuil:iin; ua brokqn into and an electric machine and water unip stolen in the month of Fbiary 1983 does seriously defr challene and that an electric uachine and a water pump were subse4uently recovered by P1J. Inspector ligemera from 3.: J3 noadhani Ilakanga, and fl14 Omary Manglene respectively does not attract contversy, not even from the appellant himself. . . . Who then took the electric machine to i3 and the water punip to 14 alternatively, how. did. PJ3 and P114 et these machines is the qu stion or is sue under our microscope. On the oviC.ence, as the trial court riitly appreciated, the sources icr the a3wor are not fcr to seek. . - a

- . 2. .. To be appreciated first, as inded. I hope the trial ma4strnto did, although he macie specific ncnticn on it, is the legal fact, that the case stands on circumstantia-1 evidence, and that is, to convict the appilant the circumstantial chain of evidence, of events nut irxesistably point at the appeJlant as the guilty person. In this chain joints, we have T2 Clemnce iTwitula a driver of Land Rover Rag, No., IiJ 518, who testified how he was hired at the instance of the a - ')ellant for ohs. 400/=. P12 claimed he was lcd to Ruaha bush area by the a"-)ellant,. where an electrical machine having been loaded on to the said Land hover, the a.mc 12 and. the appellant delivered the sare at 1T3 1 s home, to F-43 hi:isalf. Thu apuollunt has in his memo of aua1 attac!:od rocucution witnesses 11l, 1!3 and P114 with vernon'ious hotiitiy, hut ...pt a. benevolent silence on rN2, I can easily allow my cel the liharty, to CONCIUC.O that 17 12 was spared the attac1 because of the truth contents of Lie t"stiuony. I vculd threfore conclude and find as d±itho Trial court, that truthfully, P12 'ras

hired by the appellant for, b: cansporthtion end delivery of the electric machine from Ruaha area, to 11,, 3's place ° hhi this P12 did in th company of the appellant, for sale at a prior ad upon price of sho 10,000/=, From the testimony of P11 and 1V4 the electric machine, was recovered from 174 3, while ths: water pump wac recovered frau P1142 an there is no earthly heavenly or even .7,. force, that can change the truth of it. Jga'in' on the question of icientificationhy P11, that the eleotri raachin bore No 02/141131, while the water pua's Pos were 'C 82067 - 4 were as visible to the nahud eye, and as the police station ledger hook uneivocal]y bore the same numbersAvas hot witnessed challenge. om• this evidence I entertain no qualms a all, and confidence does easily pronel me into concluding, that the machines in questions, were the ones that were stolen - from the police building, and the same, that were reoovrcd from P13 and P14 by W1.Y As poused before above..how".-13 and 111 4 got the'machinec is the hauning question. Th, .qvidendeof P12, Pfl3 and P14 lead to. Dne person and that is the' 'aapellant - ie. th'at it was the appellant who sod the electric machine to P13 — that it was again -the same a• ollant who left the water pump at the home of P14. f3ince both P13 and P14, were each found in possession of ouch stolen property, regardless as td'howthey the same first circumspection need to be ap' - lid to their testimony, 7

- 01 V. S
- ... arid this I have do'ie. a. duL- L. ort. But 3xpoeed the testimony of i3 aid 114 0 to tht of iF icP11, noting that at the time of loa.ing of the electric acrine in the ush P13 was not at the scene, and further noting that iJ4 rao a rsi. dent of i:ilosa, I amtisfléd VW4 and PJ3 did not nc rarely have a self—intcret to serve in the estiony they gave, I lie1ie as did the trial court,: t13 an& i14 did obtain the rnachines from the appellant. It shovld follow on heels tha's, the liant hd tho atolen property in his pomazion, lefore ho ,ert x4h the said aou1 V=oa weeks a'tor e iig Ir, e.,A the. t'ft. Th.o xhin arc 'iod at ghr, 50,000/ thcij 4VC ivaobinea thft, do no chfl t4,° and, VthO; iiaZ'e thô on3.ø jaebinc th at riø vr&Aum fet ak in, cjid that, the appellant should be rourA in p000 , -w ion of beth 'of " m, can not easil2, be explained by 13a docia of e13i - '4o óetine of cnt poszosion, whereby thu tiL2. O3a10 'd Va. i t5tic infc noe that, the appellant •vs guixty ag ch'i040, W(M in theCircm /&alies go,d. material for aPPlcation, I have C\$ 'the aVGV liieLon wItout bo:ng oblivious of the alibi tged irl t'c a ci14ri,, that ac Zrom 1,t/2/1983 he went to iciloraber, hiM wife 17' ioetag for P, modlcinman, and stayed there fo Qi3 ThLø iri 4Od 1v the ap:) eilant, as one uses a porMs ba-et for Ozawki,, ia;e'r It has to le.h. Hereunder I shall denioq trate how un,e eraie tliie alii ij '1hu1e th6 aprellant said, his wif vaø £ioiC, and watt to i3ero ui hie own claIued kiost Th12 Toba Elods tetifiel tEt, the !ifo wa not ic1, &no that th rcr1 rjth him in January 193, for tuc ree. If I have to r oly oi 3T5J2, the appellant 'View . in .X'Ifl(tt the ratorial t.11Me. Ju'c cv6ñ the apellant 1 s wife, while 1e2?iiflG the dat' th' t they went V hilombero on 1/2/1983, she added they were there oni:.;' for C. %rok, vlarouly disputing the two week ctay, givon by 1.12, lut)14)ai4 iitIg ccj;e' with his o)m dates that, the appellant and hI wifu went to Jilombro on 1312/19839 only to subsequently confO fthat I acthalJ.y it.was the annellant who tought him t)e dates. With this type evidence su:porting the alibi sta j'ed, one, needs heavenly iflspirti on . first to ia:e hc-d or -bail of it,

and eccxd to believe It. The alihi is nch worthless leakr material, not qualified to be beliiwed. It 5;as rightl- rjected.

- Of ôourco tho falluoo of an a1:i, ousnet itr;ôf iio:, the case has 'oen pt 6Ved beyoi- id ::easonale doubt, in the absence of iiependent
 - 4 —k evidence so proving. But in is case, on the evid.e revie reviewed abbve, I am satifie- d the cace was prove beyond reäonablo doi.ibt, and the conviction was c.esorved 1's the sentence is only a statutorr .mjnimu fox' the offeLoe, the pol ic tot ily cli.> ized, 6th ovembr, Delivered this.. , , . day ox.. • -. I93. Court *---- Presents .----. I. r. Kapinga IJtate Attorney for the Republic
2. Appellantabsont. • :2.Y0ELTITI, - 311:0GB I Certify tl:is to be tnle - copy of the OriginaJ. . I

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