

TANZANIA / JUDGMENT

19771101 TZHC Arusha

COURT
TZHCDECIDED
1 November 1977

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IN THE 'HIGH COURT OF TJNZA 1A AT RUSHJL j r ELL TE JU1LDICl. HIGH COURT CRIMINtL r 1
L Co 56 OF 1976 ORIGINJL CRI'iLi.L C. SE NO0 '182 OF 1975 OF THE DITRICT COURT CF U 4 i
O'3T°ICT 4T IRUSHA Before B. MunUo (Mrs) ----- Resident Magistrate SILVFR JOHN -----
---£1-'ELLNT (Original Accused) THE RSV3LIC ----- R'SPON3 NT (Original
Prosecutor) JU'DGEM"NT ,.. 0•

- "•:• Mwesiumo, J. On 20th Septem.er 1977 1 dismissed thct appecl of Si1vr John immediately r.learing böth'siddSbut"l reserved my reasons fot so doing whichrl now propose to give0 The appeal arose from Arusha District Court Criminal Case No. 182 of. 1975 in wh.,ch two people, namely, Gabriel' N. JacOo ind L SilvL.r John stcod cherged with sixteen Counts of fôrc'..ry plus stealing and destroying evidence and Silver Johrialone . ,stooa charged with thL 17th Count of being ,in unlawfulpossession of a Stamp Contrary
- 'toSectiCti' 365of'thePálCcK1e.,
- "" The ttmcdu operandi" pursued by the to accused persons demonstrates 'an advnced' manner in "trminals can evade detection for a fairly long time ahd by the time th' are discovered considerable -. damage has been effected to the c'ompiainn,.t., as was the rsii1t in the istañt case. ' S : .•' " ' Evideflce,,adduc2d ef ore the t.ri.a'l ,€Oürtrevaldd the following facts which were held so by the trial' Court, 2nd in thaview of this Court rihtly s. The 1st accused at the material.t±ma was workinf.or Emslis LimiLod, Arusha Dranchan hd-was,4eS1gfla.td' •meSsener.,• That firm Which sells air tickets' has its main office at Mshi where on Ashak Mohomed Taki works as the 4anoger who also occEsioñally travels to Arusha to chock the official affairs of' their b±mnch' This manager who was sum .oned as p.' 4 testified that the first accUSed p.rson in his capacity as a meenocr was assign,,A'thed;ty, ambng.'others, of taking the money: of -the firm and banking it in their accounts with the Natianal Bank of Commerc Uhuru Road branch, Ar ush.
- The 2nd accused was just a town dweller, apparently unemploy.d, residing in the area commonly known arid 'called Unga Ltd; most' likely because. of themillin activities going on in that industrial area of Arusha town. On a numbe': of occasions as enumrated in th- "harge-Shet .the: 1st accused, when h'was sent to bank th'; money, in fctt did not do so. He pocketed it but very qunningly, as it would' appear, he stamped the pay-in slips in such a manner that one who sw, such. pay-in sli.,ps would he mace to believe that the money was properly

Banked d receiptA. This sort of mihief went' on undetected till 'the complainant, came to disco'rer'from the bank statement that the money shown th,reon vry much fell short of the amounts rufic:cted on the pay-in slips.

2. 7,44 wrote to the bank to seek clarification about that discrepancy and the bank on checking confirmed that several sums 'had not been banked with them. J V) after was red - the o'clock The start of the year is if the accused was first accused pocketed the money and so they were covered and the accused had the bank's policy was used to pay in; of the the third high ... V : - Vory cler evilrrc. was civil on this point the bank - It was projected - the 2nd accused was caught in the subsequent was red-handed in the said stamp sent to handwriting experts in Dar es Salaam for comparison study in opinion. An expert from Dar es Salaam testified that the stamp was similar to the one in the possession of the 2nd accused and ' - a' is the signature on the disputed pay-in slips, T;tro.. similar to the specimen signatures of ' - the 2nd co-accused to J, the square. we were of the fact of the actual number of the 44th detainee in the stage the 1st accused admitted help of son's brother who - he could be an accomplice, the 4 stamp. The judge is satisfied in the possible absence of the 2nd accused's alleged witness Le F6't uedoitFcQ has - the witness was an irresistible inference which the 1st or 2nd detainee Resident - the judge has the 4th witness Stamp which was used and the two accused persons are aptly in usury There we have also further ample evidence that he two destroyed
- som.. The VSI in the exoneration themselves. This is reflected in the '16th Co. in the Charge-Sheet. V V, - : - V ' ., in the judgment of the court into account typed V pages the learned trial 'Resident Magistrate, VE Munup (Mrs.). V has sorted out all the V via, 31 uostisiV th.cs.a, The analysis of the evidence was thoroughly; the Vough and the V find, - the there is no substance on which her judgement. could be sustainably faulted, V V Notwithstanding that the 2nd of judgment Silver John now would like to have this Court believe that he was wrongly convicted. in my view his remembrance of the proceedings before this Court, in spite of the lengthy elzlor jitions, have not brought up anything new, in defence or complaint. The 1st is mainly vituperative language only succeeds in portraying him as a vulgar and witty criminal V Suffice it to conclude that the appeal against convictions is of no merit at all and therefore it must fail in regards sentences imposed by the learned trial Magistrate, if anything, they erred over leniency. However this problem already attended by this court as can be seen from this Court's order of enhancement of 12th February 1976 (FOLO Nyalali, g. J. as he then was). V There being no further question to be sorted out V this, appeal - ends in its entire dismissal. - V V Deliver the open court at Arusha this 1st day of November 1977, V •
 - , V •. V V • • • • • Eoio, JikSIUMO,. V V ..
 - JVUDG, V V V For Appellant.: in Person. V V For Respondent (Republic) Mr. MSeChU, State ; attorney. EAM/GKK • V • V

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