

TANZANIA / JUDGMENT

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4914 / IN THE HIGH COURT OF TANZANIA AT DODOMA APPELLATE' JURISDICTION HIGH COURT CRIMINAL APPEAL NO. 252J13 ORIGINAL CRIMINAL CASE NO. 231 OF 1972 OF THE DISTRICT COURT OF IRINGA DISTRICT AT IRINGA Before P.P. Noyo..Eii •,•••• •00 •, •,..... Resident Magistrate ANANYISYE MWINDIGA000a. a0000eoo.00 0e ao.o a .ao ao Appellants 3 (Original Accused) Versus THE REPUBLIC..... a .o a . o.a. a . So ao .o a 0Respondent (Original Prosecutor) Charge: 1st Count: Robbery with violence contrary to sections 285 and 2886of the Penal Code, 2nd Count: Personating a Public Officer contrary to sections 100(2) of the Penal Code.

JUDGMENT

MNZAVAS J, The appellants John s/o Seleman, John Mwarnbodya, Ramadhani sb Issa, Raphael s/o Egid @ John Davis and Arnanyisye /o Nwandiga were jointly charged with and convicted of Personating a public officer and robbery with violence c/ss 100(2) 285 and 286 of the Penal Code and each sentenced to 9 months imprisonment on the count of personating a public officer and 7 years imprisonment each on the count of robbery. The sentences were made to run concurrently, They have appealed against the conviction and the sentences, In their memoranda of appeal the accused persons have argued that the learned trial magistrate erred in his assessment of the evidence, that evidence of identification of the accuseds as the robbers was insufficient, that a police identification parade was improperly conducted and that the learned resident magistrate relied on an uncorro- borated evidence of an accomplice who was initially jointly charged with the appellants but who at a later stage of the trial had the charge agaiins' him withdrawn and was produced as a prosecution witness. The undisputed facts which led to the arrest and charging of the appellants are, in brief as follows:- One, Yohana Sanga owns a shop at Nziki village in Iringa. On 23/5/72 he was away and left the business of the shop to his shop- assistant one s Amon Msungu - (PW2). Amon testified to the court that on that day he was in the shop when at about 9 a.m a taxi—cab pulled to a halt outside the shop. In the taxi there were six people including the driver. It was his evidence and that of Decina Sanga (VW1) that the six people introduced themselves as policemen and said that the owner of the shop, Yohana Sanga, was in Iringa.. police—custody, as he was being suspected of having stolen goods from Iringa Trading Company. They told Amon (PW2) that they had come to search Sanga's shop for suspected stolen merchandise. Amon (PW2), Decina (PW1) and Elias Mdeta (PW3) testified to the Lower court that the six people then started serching the shop and took shs. 5101= they found in the bed—room. They also related to the... court that two of the six people were in police uniform, It was their evidence that

after they had searched the whole house they left taking Elias (PW3) with them.. On their way to Iringa town they stopped the taxi • • a /2 at a place called Machinjioni, They pulled Elias out of the cab and throttled and slapped him, Fortunately Elias managed to free himself and ran away. He later reported to the police what had happened⁰ Police investigations started and, on information received John Seleman and John Mwambodya (1st and 2nd accused) were arrested on the same day drinking beer in a store at Kihesa—within the township. On the same day Ramadhan Issa (3rd accused) was arrested as he was sipping a local brew, popularly known as ulanzi, at Itarnba—àXst" w.tbi the township. Raphael Egid and Junanyiahe (4th and 5th accused respectively) were apprehended on 26/5/72 at Kihesa. Paul libilinyi (PW4), a taxi—driver, was at first jointly charged"with the appellants but was later discharged and gave evidence for the prosecution. He testified to the court that on 23/5/72 at about 8 a.m. John Mwambdodya (2nd accused) approached him and asked to hire his taxi to Nziki village. He told him that the fare was shs. 40/= and that Mwambodya immediately paid. It was his evidence that he was taking Mwambodya to Nziki village, Mwambodya asked him - ' to stop at Mwangata where four people joined Mwambodya ⁰ He identified these four people as John Seleman, Ramadhan Issa, Raphael Egid and Mtanyisve slo Mwandiga (1st, 2nd, 4th and 5th accuseds respectively). The witness further testified to the court that they then drove to a shop in Nziki village where the five people searched the shop. He also told the court that just before they reached the shop John and Ramadhan (2nd and 3rd accuseds) changed into police uniform. It was his evidence that after the search his five passengers forced Elias (PW3) into the cab and they drove towards Iringa town. He said that when he reached a place called machinjioni he was asked to stop and that the five people got out of the cab together with Elias (PW3) and that he left them there and drove to the town. The witness identified all the appellants as the same people that hired his taxi to Nziki village where they conducted a search in a shop. He also identified the complainants (PW1, PW2 and PW3) as the people he saw in the shop. There can be no doubt that the main question that had to be decided by the lower court was one of identifications Were the five appellants adequately identified as the same people who on 23/5/72, masquerading as police—men searched the shop and used violence in stealing shs. 510/= from Elias (PW3) ⁷ In a long judgment the learned resident magistrate analysed the evidence and was satisfied that all the accused persons had been amply identified as the people who committed the offences charged. He found the taxi—driver (PW4) to be not an accomplice; and to quote him he says: "He (PW4) was no more no less than an innocent agent who helped to transport the five policemen ". With respect I do not, on the evidence s agree with the learned resident magistrate's conclusion that the taxi—driver - (PW4) was not an accomplice. On the evidence the behaviour of the accused persons (from the time they left Iringa to Nziki village and back to Machinjioni where the bandits got out of the taxi) should have aroused suspicion to any reasonable taxi driver that his passengers were not genuine police officers. On the facts as found by the lower court the taxj_drjve evidence needed to be treated with caution as he was clearly more of an accomplice in the commission of the offence than an innocent taxi—driver. His evidence needed, as a rule of practice, corroboration before being acted upon to the detriment of the accused persons. - The question this court has to decide is therefore whether there was sufficient evidence corroborative of the taxi—driver's testimony that the appellants were the same people who on the material day committed the offences

charged. With respect I agree with the learned state attorney's Ltax driver a .g ument, that there was other evidence in support ofLthe appellants evidence are the, same -people who committed the offences. - First and foremost that there is not the slightest dispute that the incident at Nziki village ./3 oeoeasoe3 took place in broad day light. From the evidence the bandits stayed at the shop for not less than half an hour if not more conducting their bogus search. This being the position the three complainants (PW1 9 PW2 and PW3) had ample opportunity to identify them. Aron (PW2) related to the court that he knew John Sangá (1st accused) for long time prior to the day of the incident as he was working with him (1st accused) in Iringa town. The taxi—driver's evidence that the second and the third accused persons were wearing police uniforms is corroborated by the evidence of Anioni (PW2), At the police identification parade all the appellants were identified by Anion and Elias (Pw2 and PW3) without any hesitation as the same people who searched the shop and robbed him.sh. 510/. from Elias (P'13) after assaulting him. The argument by the accused persons that the identification parade was isnproperly conducted was carefully looked into by the learned trial magistrate who came to the conclusion that the parade was properly conducted. On the evidence I see no reason to differ from his finding. Appellant' allegations that they were refused to call their witnesses are not supported by the record. Even if for the 1&Ce of argument the evidence of the taxi—driver (PW4) was to be excluded there was in my view sufficient evidence implicating the appellants with the offences charged. The evidence of Panofl (PW2), that of Decina (PW1) and the evidence of Elias (PW3) who remained with the bandits longer than anybody else, and the circumstances under which the offences were committed leaves no doubt at all that the five appellants were amply identified as the people who on the material day niasquarading as police officers, searched and robbed the shop..The convictions are fully supported by the evidence. In so far as the sentences are concerned I would say that John Mwambodya, Ramadhan Issa, and Raphael Egid (2nd, 3rd, and 4th accuseds respectively) who were found to have previous convictions are extremely lucky to have got away with the minimum sentence of.. 7 years imprisonment on the count of robbery. They are even luckier that this court has decided against enhancement of their sentences. Also lucky to receive the bearest minimum sentence is John Sanga (1st accused) who admitted a previous conviction for burglary and stealing. The sentence of 7 years imprisonment on the count of robbery is the bearest mandatory minimum under the Minimum Sentences Act, 1972, and as such this court lacks the power to interfere. In the event I agree with the Republic that these appeals should be dismissed in their entirety. Ilso order. DODOMA N. • MMZAVIS 19/9/74 JUDGE 4th and 5th appellants present in person Kinabo for the Republic/Respondent.

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