

19711015 TZHC Arusha

COURT
TZHC

DECIDED
15 October 1971

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1dP/ 7' Ai\ I IN THE HIFFI COURT OF TANZANIA AT ARUSHJ AI?ELLATE JIJRISDICTION
CRIMINAL RAPPEAL NO. 140 OF 1971 OIOINAL CRIMINAL CASE NO. 125 OF 1970 OF THE
DISTRICT COURT OF LRUSA DISTRICT AT ARUSHA 13sf ore C0. Mtenga, E4sq., Resident
Magistrate HAANs/orIOHAE1) ,.....,,,,,,•,•,•,• APPILLANP/AcicUSEDNo. 1 versus ttTt ttfll
4flajrUWk 'ti'I PROSECUTOR Tfl LLeJLiLJiL CHARGE: \$tea|n contrary to aeotion 265 of the
Penal Code Cap. 16. J U P. 0 X J N P . RALE, 3. -. In this case the appellant was convicted of
stealing a motor vehicle on the 22nd January, 1970 and sentenced to..ftive years imprisonment.
This ic an appeal against conviction and sertenoe. The pros•eoutiofU case was that a motor
vehiole ARC 558 was stolen and was later fund with its battery missing. The appellant offered a
battery for sale and a report was made to the polios who set a trap and two police officers heard
the appellant bargaining for the sale at the house of a witesø 1 PW 5, where he had left it; the
battery was identified as coming from the stolen oar. The appellant denied that he had anything
to do with the battery. He alleged that he had a quarrel with PW 5; that he went to his hoUSS on
being told that he was wanted there and the police beat him and tried to force dm to admit that
the battery was his. The person who was supposed to have given htm a message from PW 5 gave
evidence but was not questioned on the point. The trial magistrate found as a fact that the
appellant was attempting to sell the battery and that it came from the stolen oar. The evidence
supports these conclusions and I can see no grounds for interfering.. He XZ drew the inference
that as a result tne ppellant must have atolen the oar. I do not think that this was the only
inference that could be drawn. The facts of the case are more consistent with reoI the battery
knowing It to be niawfully obtained. As a result I will quash the conviction for stealing the
motor oar and substitute a conviction for receiving the battery. The sentence of 5 years imprison-
ment was illegal as the court could impose a maximum sentence of 3 years only. I will set aslue
the sentence and sabstitute a sentence of 18 months impiriucnmnt. Delivered in Court at Aru.sba
the 2nd day of July, 1971 (c .2. BRMiBLE) JU.DL jsm. xm COTIRT o A1iLATE \$URISDXCTION
ORIMIJJAL RAPPEAL NO. 140 OF 1971 ORIGINAL C1WIIAL CASE No. 125 0' 1970 0 TFM DISTRICT
COURT OP RUA bISTRICr AT ARUSI{ ef ore C.. Mtena, Re,ident Xagietrate ,,,,•,•,•,•,•,•, Amiz
aTlAccuum N0. I Versus YM RJPUBLIC I... ••, ... IE5PONDfIt PR0\$CTJT0R CUjIRG: Stealing
contrary to section 265 of the Peiel Code øap. 16. JUD.MJNr BRABL1, J. Th this oae the appellant
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- H C. ZN rai 1110VI cotm :i 174M4LA tU;A '-AW JLCIXOU CLLfltAL A2AL NO. 143 0JP 1911 0I011(*t CRIVINAL OA1 NO. 37 OP 1971 OP DiE I)TOT-iUCT COM' Q' Trr,440A Mlrs,1213T H ThEA Beora LA, Upaa, DUtrot Xagistrato JM V2'UU TH11 PJn3uc CAROz 1. in*ptMg *ff the train while in notion contery to *ectan 70 (g) of the Railways Gopoetton Act. 26 Asaaalting a Police Officer in aae execution of his duty contrary to aection 243 (b) of the Penal Code. S.ID 34fltIMA, M. 3. - ¶i%t4 appeilent wwe eenen -drqp ping from trein Alch was atill tioz. The cømpliin&it, a police officer, epprocheA Mi to quaution hL. The acoied heoaaee violent and abwiv,. Iie fioreel re&iete& iben Th* 3Mpl*intAt oujht to arreet hie. The learned triel ;egietratc who aew the complainant giving evtenOø boliev..d hii, There is nothing to render the comp1blusnVa evidence doubtful. There were some .vitneeees who e*w the appelleni eeeaultin the copleinnnt who euetained avas iAjdries in the prooeeee, in hig Petition the pelient çuarreli with the cool atone of the triel øourt. Such oonolueiotn3 are tully *upported by the eplethante ev4enoe, once he in be1tvd. The appe11 44 410 0 coniriction in fullLy Jw%ttie4 by the evionce on reood. The t'iei court iepeeod a cuetlative ietonce ef 12 eenths wMCh in wanifeatly, excew ve# although he wee net a firt off*cr. The fine hich wee iosed on his ought to have been ipoaei efter inutring into his meant. Accordingly te sentence is aet seine in respect of each count. The appellant is sentenced to three Montho on the fire't ccnt and seven months on the secouL* tentenees are to be served concrently. :15/10/71 (Ln.A. iii) Jos

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