

TANZANIA / JUDGMENT

19750930 TZHC Dar es Salaam

COURT
TZHCDECIDED
30 September 1975

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IN THE HIGH COURT OF TANZANIA T NWANZA ELi,iTE JURISD1CT.C1 IGFi CCU T'C i-- ~ Ii Ii'ij
PEAL N O 215 OF 1974 . QhIGIN .ININ CASE NO0. 161 OF 1974 Befor ivi S TaeiDi, Esq , District
Magistrate Y'.JSUFU Sb JALLAP 00000 0000000AIPELLANT versus .C1A4GE Stealing
from.:the.person;of. :aothr C/S 269

- (a) of the Penal Code Cap0 1 NANJ\ING, iiG J. The apn1lantwth another nerson who was
acauitted was charged with steliig from the person of another contrary to section 269(a) of
the Penal Code0 He was convicted and.sentence'd-to• twelve months' imprisonment0 He
±. .eöw 'appealing against both cnvction and sentence. ,.:Thefacts.of this case dre asfoilow.
Thecompláinant (PW.1) on 15/1/74was. at,theKahama bus. tand, waiting for a bus lgoing
i:toij,iWaf1za :Hc: was: iinq:a handbag and 'healso:carind a wallet ein:his back touser.
pockdt• The.w11let contained sh560/-, a ;ANU':crd and. several receipts bearing his naina.
At:bout 8.30p.m. bus: artived and the complainant. together 'with othCr pop1e .1 the started
topush oCch - .other.in order to'be:àble.to board the bus. f tat pushing for-sometime he
managed todmhark in tI:bu5, in y: which.he'fdund a:.seat:andafter sitting .dOwn'he
decidddto check
- inhis pockets, so as to ascertain whethereverthing'was'in his pockets. : 'Whi3,o .cbeckiing his
pockets he •foun4€hat:he tiadJiost his wallet, lich'contained shs.560/- and
hethende.disdmbarkdd from .t"the bus in order to search for the thief0 He then saw the
second ccused.stnding;;cIono to. him and he suspected hi5'movemCnts. ShortlY:.'afterwards
the .second'.ccused disappeared from the vicinity0 Since tha..lcomplainaht had
lost':his'rnoney, .he"c.ancelied hi.s trip to Mwanza and proceeded to a nearby bar,
belon(qing to Julius '0tsh, where he met Erasto, to whom he narrated the story of his loss
and :then Hamis.Uledi (PJ.3) artived during their, discussion0 After Ham .sUladi!. (.PJ3):,had
l,istened,;to, 'thei'r •discuIsion he tol.d them that he had seen two young men drinking very
heavily in tine bar and he":.theef ore suspected that tiney could have been the thieves0
MCM&s-the:refor"took him (the complaiPant) in his car'.to the police station, where he
reported the matter0 They. then .eturned to the bar, accompanied by one police officer0
When they entered the bar, tby founc1 the apellant drinking pombe and the second .1
accusdd was eatlnghis meat, The 'pOlice 'offiqer then 'drested both the appellant and the
second accused and took them to the police station, where they war questioned and
searched0 The appellant was found with the complainant's wallet, containing shs. 120/-, t.he--

complainant's TANU membership card and various cash sale receipts, all of which bearing the complainant's name and a key, which the complainant alleged to be his house. All these items were found on the appellant.

- 2 S were tendered in court as exhibits. It may be noted that the appellant was searched in the presence of the complainant and Hamisi Uledi (P.W.2), whose evidence at the trial, supported the complainant's evidence in all the material particulars. At the trial the appellant, who chose to give evidence on oath, denied the charge saying that on the evening of 15/1/74 he was in Julius Brush's bar drinking beer and while there he was arrested by a police officer, who had a gun in his hands. He was told to go into a police land rover (standing outside the bar), which took him to the police station, where he was duly searched and then the police took his shs. 120/=. They also stripped his clothes off leaving him naked. A little while later, the second accused was also brought in and searched. He denied that the complainant's wallet was found in his pockets. He called Daudi Masanja (D.W.2), Fares Makori (D.W.3) and Mboneko Edward (D.W.4), whose evidence supported his story. Both D.W. 2 and D.W. 3 denied that the complainant's wallet was found on the person of the appellant. In his memorandum of appeal, the appellant complained that he was not in any place near the bus stop when the alleged money was stolen and that the learned trial magistrate failed to reach a just conclusion because he rejected the evidence of the defence witnesses and accepted that of P.W.3, a driver, who worked in the same Division (Co-operative) with the complainant, who was a Co-operative Officer. After perusing through the file it is clear that the appellant stole the complainant's money, which was in a wallet since the wallet containing the complainant's TANU card and receipts bearing the complainant's name were found in the pocket of the appellant. The evidence of P.W.3 supported the evidence of P.W.1 and in fact the search took place in his (P.W.3) presence. There is no evidence to show that P.W. 1 and P.W.3 were working together and that P.W.1 was P.W.3's Senior Officer, so that P.W.3 would be anxious to please P.W.1 by giving favourable evidence on his behalf. Moreover, the appellant did not advance any reason to show why the complainant and the police should conspire together to charge him with this offence, or why they should lie in the court. Again, there is no evidence to suggest that the complainant and the appellant knew each other before so that they had quarrelled, hence, he (complainant) could have a grudge against him. However, there is nothing in the evidence before the court which seems to indicate that the appellant had removed the wallet from the person of the complainant. Therefore, the appellant is not guilty of stealing from the person of another but of simple theft contrary to section 265 of the Penal Code. I substitute conviction accordingly by virtue of section 181 of the Criminal Procedure Code. Therefore, the compensation order, that is the appellant should pay Shs. 440/= to the complainant is set aside. As regards the sentence imposed, I am very far from being persuaded that the imposition of a sentence of one year imprisonment is excessive. In the circumstances, with the exception of the cancellation of the order, the appeal is dismissed in its entirety. J.0 MANNING Judge - DARES sit at Aii 30th September, 1975 /

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