IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

CORAM: NYALALI, C.J., MAKAME, J.A., and KISANGA, J.A.

CRIMINAL APPEAL NO. 71 OF 1986

SUNGWA S/O BUNENGWA.....APPELLANT

and

THE REPUBLIC.....RESPONDENT

(Appeal from the conviction of the High Court of Tanzania at Mwanza)(Mwalusanya, J.) dated the 19th day of April, 1985

in

Criminal Appeal No. 26 of 1985

JUDGEMENT OF THE COURT

NYALALI, C.J.:

This is a second appeal in a case which originated in the District Court of Mwanza District at Mwanza, where the appellant was charged and convicted for the offence of robbery with violence, contrary to sections 285 and 286 of the Penal Code, and was sentenced to ten years' imprisonment. He was aggrieved by the conviction and sentence and he appealed to the High Court at Mwanza, where his first appeal was dismissed in its entirety, and the sentence was confirmed. The appellant was further aggrieved by the decision of the High Court, hence this appeal to this Court. He appeared in person before us and argued his appeal, whereas the respondent/Republic was represented by Mr. Teendwa, learned State Attorney.

From the proceedings in the two courts below, it was established that on the 29th November, 1983, at about 10 p.m. P.W.1, that is, No. MT 9167 Cpl. Almasi Hamisi, a soldier with the TPDF, was walking back to his military camp in Mwanza District from the village of Nyamilolelwa when he was set upon by three youths. He managed to escape and sought refuge in a house of his girl friend

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A Mashauri (P.W.2). Soon afterwards, as P.W.2 was om her house to a neighbour's house, she met the appellant other men all of whom were known to her. The appellant, was a fellow villager of P.W.2, was one of them and he nformed her that they were after the man who had gone to her house. P.W.2 managed to return to her house and advised P.W.1 to take a safe route back to his camp. P.W.1 complied and he departed. Soon after his departure, the appellant and his two colleagues arrived at P.W.2's house and searched her house for the man they were after. After failing to find the man, the appellant and his colleagues went away. Presently, the appellant and his companion caught up with P.W.1, beat him up unconscious and stole his shs. 340/-. P.W.1 did not regain consciousness until the following morning when he returned to his camp and was taken to hospital where he was admitted. A search was made by the soldiers for the assailant of P.W.1, and in the course of that search contacts were made with P.W.2 who mentioned the appellant and his companions as the prime suspects. As a result, the appellant was arrested but his colleagues managed to escape.

The main issue in this case concerns the identification of P.W.1's assailants. The learned trial judge, like the learned resident magistrate, found as a fact that the appellant was sufficiently identified as one of the three persons who assaulted P.W.1 and stole from him his money.

In considering this point, the learned judge stated:-

> "The State Attorney Mr. Swai did not support the conviction. He argued that the identification of the culprits by the complainant was unsatisfactory because it was done in darkness, and when complainant was drunk and that the said complainant was rendered unconscious by the beating. While conceding that the evidence of identification by complainant was unsatisfactory and that by itself it could not ground a conviction, however, we have other solid piece of evidence on identification as given by P.W.2.

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> The evidence of P.W.2 which has been quoted above amply corroborated the complainant. In fact the evidence of P.W.2 alone was sufficient to ground a conviction because it was cogent and convincing. There could be no question of mistaken identity as P.W.2 had ample time to chat with accused and his colleagues when they searched for complainant in her house. And she was not chatting with strangers but three youths who are her villagemates. Although appellant during cross-examination raised the point that he had previously quarrelled with P.W.2 yet he did not substantiate it. Like the trial magistrate I hold that the suggestion about the previous quarrel was just a naked lie concocted in a bid to beat the cause of justice. I associate myself with the finding of the trial magistrate and I cannot find fault with the evidence of P.W.2. In the face of such pregnant evidence, it will be flying in the face of reason to bow down to the complaints of the appellant that he did not deserve the conviction.".

This being a second appeal, we can find no point of law upon which to fault the concurrent findings of the two courts below.

We are therefore bound to dismiss the appeal in its entirety, and we dismiss it accordingly.

DATED at MWANZA this 29th day of November, 1986.

F. L. NYALALI
CHIEF JUSTICE

L. M. MAKAME
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

I certify that this is a true copy of the original

J. H. MSOFFE
DEPUTY REGISTRAR