

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

CORAM: MAKAME, J.A.; KISANGA, J.A. And OMAR, J.A.

CRIMINAL APPEAL NO. 10 OF 1986

C.6642 PETER MASAWA. APPELLANT

VERSUS

THE REPUBLIC. RESPONDENT

(Appeal from the conviction of the High
Court of Tanzania at Tanga) (Chuwa, J.)
dated the 11th day of December, 1985

in

Criminal Sessions Case No. 43 of 1984

JUDGEMENT OF THE COURT

KISANGA, J.A.:

This is an appeal against conviction for attempted murder and a sentence of three years' imprisonment passed by the High Court sitting here at Tanga.

The facts of the case may be summarized briefly as follows:-
The appellant was a policeman. On the material night he was posted at a road block along the Arusha-Tanga road apparently to check on the unauthorized traffic of goods between one region and another. The road block was at a place called Manundu in Korogwe, Tanga Region. A bus travelling from Arusha to Tanga arrived at the barrier in the small hours, and upon inspection, the appellant found on it four bags of wheat flour. It transpired that the owner thereof had no permit to move such goods between Arusha and Tanga, and so the appellant ordered that the stuff be off-loaded from the bus.

According to the prosecution, this was followed by prolonged negotiations lasting for about one and a half hours

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whereby the appellant demanded and received Shs. 1,000/- before he could allow the bus to proceed with the cargo. The money was a trap consisting of Shs. 100/- currency notes given out by the complainant (P.W.5), a senior investigator with the Anti-Corruption Squad who happened to be travelling on the bus that night. After the appellant had received the bribe money from the owner of the wheat flour, P.W.5 identified himself to him and demanded the refund of that money. Only Shs. 500/- was recovered, the appellant claimed to have hidden the rest in the grass but it could not be traced. P.W.5 insisted on recovering the remaining Shs. 500/- but as he did so the appellant snatched a sub-machine gun from a fellow policeman with whom he was on duty that night and aimed a shot at P.W.5 in the chest. P.W.5 averted the shot by punching the muzzle upward and the bullet discharged into the air.

The appellant's defence was that after he had ordered the off-loading of the flour, P.W.5 appeared and in answer to a question put by him the appellant re-iterated his order to off-load the flour if they wanted the bus to leave. Whereupon P.W.5 sought to disarm him and in order to prevent that the appellant cocked his gun, threatened to shoot if P.W.5 did not keep away and in fact fired a shot in the air. After that he proceeded to the police station where he reported that he had fired one shot in the air to scare off a person who wanted to disarm him, and after that he went about his normal work. In convicting the appellant, the learned trial judge accepted the prosecution evidence and rejected the appellant's story.

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Before us in this appeal the appellant was represented by the learned advocate, Mr. W. R. Mramba, while the learned Senior State Attorney, Mr. Mwale appeared for the respondent Republic. In his submissions, Mr. Mramba largely attacked the findings of the trial judge on the issue of credibility of witnesses. Thus in his first ground of appeal he contended that the trial judge erred in finding that the appellant attempted to kill P.W.5. However, there was the evidence of P.W.5, P.W.6 and P.W.7 who eye-witnessed the incident and who positively stated that the appellant aimed a shot at P.W.5 in the chest, adding that the injury to P.W.5 was averted by P.W.5 punching the muzzle upwards thus causing the bullet to discharge into the air. After scrutinising the evidence ourselves, we could find no reason whatsoever for suggesting that the trial judge ought to have disbelieved these witnesses and ought to have preferred the appellant's word on the point. We think that he was perfectly entitled to believe the witnesses and to reject the appellant's story as he did. Apart from the reasons given by the trial judge for coming to that conclusion, it may be pointed out that P.W.5 before joining the Anti Corruption Squad, was a person who had held the position of an inspector in the police force, and at the time of the incident he was senior investigator and commander of the Anti Corruption Squad at Arusha. No reason was suggested, and we could find none, why such a fairly senior and a responsible officer should make such grave allegations against the appellant, a police constable who did not even know the witness before.

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In the second ground Mr. Mramba contends that the trial judge grossly misdirected himself on the evidence in finding that the appellant had received a bribe, and that that provided a motive for his wanting to kill P.W.5. This complaint, however, is completely unjustified because there was overwhelming evidence of P.W.5 and P.W.7 to the effect that the appellant received Shs. 1,000/- as a bribe. The evidence further shows that the appellant was charged in the District Court with corruptly receiving that amount but was acquitted, and so Mr. Mramba contended that the allegation of corruption in the present proceedings had no substance and hence there was nothing to provide motive for the alleged attempt by the appellant to kill P.W.5. To that we can only say that it all depends on what evidence was adduced before the District Court, and how that court assessed such evidence. We cannot form any opinion on the matter because the record of that case is not before us. However, we are satisfied on the evidence which is before us in this case that the learned judge was perfectly entitled to find that the appellant corruptly received Shs. 1,000/- and that on realising that he had been found out by P.W.5, and bearing in mind the possible consequences thereof he sought to shoot P.W.5.

In ground three Mr. Mramba attacked the trial judge for finding that the contradictions in the prosecution case were minor and that they did not cast any doubt on the prosecution case. We have carefully examined the contradictions which counsel refers to, and we are in entire agreement with the trial judge that they did go to the root of the matter and therefore they cannot have cast any reasonable doubt on the prosecution case.

And lastly Mr. Mramba contended that in the light of his earlier submissions in this case, the trial judge ought to have accepted the appellant's defence as being true. For the reasons given in the preceding paragraphs, we are unable to accede to this view. Perhaps we could make one further observation, and that is this: If it is true that the appellant merely fired in the air to scare off P.W.5 who wanted to disarm him, one would expect that after doing so the appellant would then take steps against P.W.5 for obstructing or interfering with him in the lawful execution of his police duties, and also against the owner of the flour for flouting his order to off-load the flour from the bus. It is somewhat strange, however, that he did not do so, and that instead he merely reported at the police station to have fired a shot in the air to scare off a person who wanted to disarm him after which he went about his normal duties.

In all the circumstances we can find no ground for faulting the trial judge. We are satisfied that the appeal has no merit and it is accordingly dismissed in its entirety.

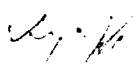
DATED at TANGA this 11th day of September, 1986.

L. M. MAKAME
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

A. M. A. OJAR
JUSTICE OF APPEAL.

I certify that this is a true copy of the original.


(J. H. MSOFFE)
DEPUTY REGISTRAR.

