

IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

CORAM: MUSTAFA, AG. C.J.; MAKAME, J.A. AND OMAR, J.A.

CRIMINAL APPEAL NO. 92 OF 1986

CHARLES MUYUKI & 2 OTHERS APPELLANTS

Versus

THE REPUBLIC RESPONDENT

(Appeal from the Conviction and Sentence
of the High Court of Tanzania at Mbeya)
(Mwaikasu, J.) dated 17th November, 1986

in

Criminal Sessions Case No. 38 of 1986

JUDGEMENT OF THE COURT

MUSTAFA, AG. C.J.

The three appellants, hereafter called A1, A2 and A3, were charged with two counts of attempted murder, and were duly convicted and sentenced to 13 years imprisonment each. They have appealed against both conviction and sentence.

Briefly the prosecution case was as follows. PW1 and PW2 were husband and wife, and on or about 13th August 1978 were sleeping in their home at Igava village. They were in one room. A hurricane lamp was burning. Early in the morning, at about 1.00 am PW1 heard some persons trying to break down their room door and then he saw three persons entering his room. The three persons were the three appellants. A1 was carrying a gun and a panga and A2 and A3 were both armed with pangas as well. A1 attacked PW1 with a panga and PW1 was slashed on several parts of his body. The wounds, according to the medical evidence, constituted dangerous harm. During the attack by A1 on PW1, A2 called on A1 to shoot PW1. In the meantime PW2 managed to trip A1, and PW1 managed to reach for his own gun and as he was taking aim at the attackers the three appellants ran away.

There was some trouble between PW1 and A1 about the ownership of a cow, and on the day following the attack PW1 was to have collected the cow from the authorities as a decision had been given in favour of PW1. During A1's attack on PW1 A1 was alleged to have taunted PW1 and said that PW1 should not expect to get his cow or words to that effect.

PW2 in the meantime was slashed by A2 and A3 and her injuries were described as grievous harm by the medical authorities.

Both PW1 and PW2 knew AI, A2 and A3 prior to the incident and they both recognised the three attackers and when the villagers came in answer to the alarm immediately informed them of the identities of AI, A2 and A3.

In answer to the alarm raised PW3, a co-villager, came to PW1's house, and he saw AI, A2 and A3 rushing out of PW1's house. It was in evidence that there was moonlight at the material time, and PW3 knew all the three appellants. PW3 said all the three appellants were armed.

Similarly PW4 came in answer to the alarm. He could only recognise AI rushing away from the scene.

The three appellants denied that they were correctly identified. We will deal with each of them.

As regards AI, he had been identified by PW1 and PW2 in circumstances which were conducive to correct identification. PW1 was awakened by the noise of the breaking door and saw the attackers, led by AI, entering his room. AI attacked PW1, and in the course of it taunted PW1 about his cow. There was a hurricane lamp burning at that time in the room. The attack lasted some time. PW1 knew AI well before the attack.

Similarly PW2 identified AI, whom she had known previously.

The Court believed PW1 and PW2 to be truthful witnesses. PW3 and PW4 corroborated the evidence of PW1 and PW2 concerning AI. There was moonlight and both PW3 and PW4 had had good opportunities of identifying AI whom they had known.

We are satisfied that AI had been properly identified as one of the attackers.

As regards A2, PW1 and PW2 identified him in favourable circumstances, and this identification was corroborated by PW3. All three witnesses knew A2 previously. Similarly we believe A2 had been properly identified as one of the attackers.

And in regard to A3, PW1 had seen him previously when A3 was negotiating with PW1 for the purchase of a goat. PW2 testified that A3 was one of those who had slashed her with a panga. And this identification was corroborated by PW3. We are also satisfied that A3 was properly identified.

All the three appellants pleaded alibis, stating that at the material time they were sleeping at their respective homes. They called no witnesses. The trial judge rejected their alibis in terms of section 194 of the Criminal Procedure Act as the appellants had not given prior notice of such alibis before the trial or before the prosecution ended its case in terms of Sec. 194(4) and (5) of the said Act. The judge was entitled to do so. We dismiss the appeal by the appellants against their conviction.

Mr. Bateyunga has submitted for the appellants that the imposed 13 years imprisonment, especially on AI, who was 64 years old, was excessive. We have duly considered the matter and have given consideration to State Attorney Tomba's submission on this aspect. The appellants were engaged in a vicious attack on their victims, armed with a gun and pangas, and attacked as a gang. They inflicted serious injuries on both PW1 and PW2 and but for a fortunate circumstance, PW1 at least would have been shot and probably killed. The sentence of 13 years is harsh, but we do not feel inclined to interfere.

We have stated earlier that the appellants were each charged with two counts. The trial judge only imposed one sentence. We will correct the sentences as follows.

The appellants are sentenced on the first count to 13 years imprisonment, and on the 2nd count to 13 years imprisonment; the sentences to run concurrently.

Apart from correcting the sentences we dismiss the appeal of the appellants.

DATED at MBUYA this 27th day of April, 1987.


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A. MUSTAFA
AG. CHIEF JUSTICE

L.M. MAKAME
JUSTICE OF APPEAL

A.M.A. OMAR
JUSTICE OF APPEAL

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


(J.H. MSOFFE)
DEPUTY REGISTRAR