

**IN THE COURT OF APPEAL OF TANZANIA  
AT ARUSHA**

**(CORAM: LUBUVA, J.A., NSEKELA, J.A., And KAJI, J.A.)**

**CRIMINAL APPEAL NO. 84 OF 2001**

**BETWEEN**

**YULI WILBARD..... APPELLANT**

**AND**

**THE REPUBLIC..... RESPONDENT**

**(Appeal from the conviction of the High Court  
of Tanzania at Arusha)**

**(Munuo, J.)**

**dated the 22<sup>nd</sup> day of October, 1999**

**in**

**Criminal Appeal No. 27 of 1999**

**JUDGMENT OF THE COURT**

**KAJI, J.A.:**

The appellant Yuli s/o Wilbard was charged with and convicted of the offence of armed robbery contrary to sections 285 and 286 of the Penal Code, before Rombo District Court, at Mkuu. He was sentenced to the mandatory sentence of thirty (30) years imprisonment.

Briefly the facts giving rise to the case were as follows:-

On 21.1.1997, at night, about six bandits invaded the dwelling house of Amadea w/o Leons Shayo (PW1) by breaking the door using a huge stone. One of them was armed with a gun. The others were armed with machetes and clubs. PW1 identified the appellant and 4 others. They beat her demanding to be given Shs. 1,000,000/= they claimed she had. They ransacked the house and stole several articles therefrom valued at about Shs. 215,000/=. PW1 raised an alarm. The bandits dragged her to a remote area where they sexually assaulted her and raped her. They fired some shots in the air to scare those who responded to the alarm. Ezekiel Focas (PW2), MW 316156 Justine Peter Shirima (PW3) and Fidelis Justine (PW5) were among those who responded to the alarm. PW2, PW3 and PW5 identified the appellant and 3 others. The matter was reported to Mkuu Police Station. The appellant was arrested. His co-robbers escaped and could not be traced.

At the trial the appellant gave a total denial in his defence which was rejected by the trial court. He was aggrieved. He

unsuccessfully appealed before the first appellate Court (Munuo, J., as she then was). He was aggrieved. Hence this appeal.

Before us the appellant appeared in person, unrepresented. Mr. Mwampoma, learned Senior State Attorney, appeared for the respondent Republic.

In his memorandum of appeal the appellant listed seven grounds of appeal which, in our view, basically revolve on identification and contradictions.

The appellant argued that, since the event happened at night, it was necessary for the prosecution witnesses who claimed to have identified him to clarify how they identified him under the circumstances.

The appellant further argued that, there were some contradictions in the evidence of PW2, PW3 and PW5 which, in his view, were fatal, which weakened the prosecution case. It was his

submission that the contradictions should have been resolved in his favour.

On the other hand Mr. Mwampoma, learned Senior State Attorney, replied that, the appellant was properly identified through electric light and moon light, especially that he was known by the prosecution witnesses prior to the event, and that the event took a long time. He denied the existence of contradictions; and that if there were any contradictions, they were minor which did not go to the root of the case.

The crucial issue in this case is whether the appellant was properly identified. The trial court considered the issue at length. It observed that there was electric light in PW1's house which enabled PW1 to identify the appellant who was her village mate, whom she had known since the time of schooling. The event took a considerable time. Outside there was moon light which was shining brightly which enabled PW2, PW3 and PW5 to identify the appellant

who was their village mate whom they had known for many years prior to the event.

The trial court came to the conclusion that under the circumstances, the appellant was properly identified by PW1, PW2, PW3 and PW5. The first appellate court concurred with that finding. The conditions for a proper identification as held by the Court in WAZIRI AMANI V R. (1980) TLR 250 were properly observed by both courts below. On our part we have been satisfied that under the circumstances there was no possibility of mistaken identity, and that the appellant was properly identified by PW1, PW2, PW3 and PW5.

The appellant complained also about some discrepancies in the evidence of PW2, PW3 and PW5. Indeed there were some discrepancies in the evidence of PW2, PW3 and PW5. The learned trial Magistrate considered them at pages 49 and 50 of his judgment and held that they weakened the prosecution case. But he went further and held that, despite the discrepancies, the other available evidence was strong enough to found a conviction. The learned

judge on first appeal did not say anything on the discrepancies. It is also not clear whether she considered them at all.

We have carefully considered the discrepancies and the holding of the learned trial Magistrate. Notwithstanding the discrepancies, the other available evidence supported the conviction. We are satisfied that, had the learned judge on first appeal considered them, she would have come to the same conclusion. The sentence of 30 years imprisonment is the minimum under Section 5 of the Minimum Sentences Act, 1972 as amended by Act No. 6 of 1994.

In the event, and for the reasons stated, we dismiss the appeal in its entirety.

DATED at ARUSHA this                      day of                      2004.

**JUSTICE OF APPEAL**

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