

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: MUSSA, J.A, LILA, J.A. And MKUYE, J.A.)

CRIMINAL APPEAL NO. 25 OF 2017

**1. MOHAMED MUSTAFA @ RAJABU
2. HAMISI GUMBO @ MBELWA
3. MUSTAFA JUMA @ ZIDALU** } **APPELLANTS**

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal against conviction and sentence from the decision of the High Court of Tanzania at Tanga)

(Msuya, J.)

dated the 29th day of August, 2016

in

Criminal Appeal No. 51 of 2016

JUDGMENT OF THE COURT

13th & 25th February, 2019

LILA, J.A.:

This is a second appeal by the appellants. The appellants were dissatisfied with the decision of the High Court (Msuya, J.) in DC. Criminal Appeal No. 51 of 2016 delivered on 29/08/2016. Initially, the appellants were charged in the District Court of Korogwe at Korogwe of the offence of armed robbery contrary to section 287A of the Penal Code Cap 16 R.E. 2002. It was alleged that on 06/11/2015 at about 20:45 hrs

at Kibaoni Village- Mombo area within Korogwe District in Tanga Region, the appellants did steal a motorcycle with registration number MC 686 AWG make Sanlag the property of one Makange s/o Juma valued at Tshs. 2,020,000/= and immediately before and after such stealing did injure him with a bush knife in order to obtain and retain the said stolen property. The appellants were tried and were finally convicted as charged. They were each sentenced to serve a statutory jail term of 30 years. Aggrieved by both conviction and sentence, they unsuccessfully appealed in the High Court. Still aggrieved, they preferred the present appeal.

Before we consider the merits of the appeal we find it imperative to restate, albeit briefly, the evidence on record as was narrated before the trial court. On the fateful date and time, Makange Juma (PW1) was at the sitting room with his wife, who did not testify, in preparation to sleep. Solar lights, two in the sitting room and one in the bed room were on. Suddenly, they heard someone knocking who on being inquired who he was, introduced himself "Mimi Said wa magamba". His wife opened the door while he was behind the door cautious to know who that guest was. Due to the crucial nature of his evidence in the determination of the appeal and for ease reference, we find it apposite to recite the relevant part of his testimony. PW1 said:

" When the door was opened Hamisi Gambo the 2nd accused pushed the door and entered into the sitting room, he held a panga on his hand. And then Muddy entered the sitting room and he held a knife on his hand then roster followed and entered into the sitting room holding a panga on his hand. Hamisi when entering he pushed my wife outside the house so I sensed that they were not there on friendly basis. The 2nd accused Hamisi started cutting with a panga on my head and the Rasta cut me a panga on my forehead and on my left shoulder. I tried to run out of the house but on the way I met the 1st accused who tried to stab me on the stomach but the knife instead cut me on my right hand. I tried to confront the 1st accused in the attempt to take the knife away from him and I was able to cut his hand using his knife. While confronting the 1st accused I heard a voice saying "uwa huyo" and when in confrontation with muddy I saw one of them I don't remember who was

taking my motorcycle out of the house. Because my wife was outside the house she shouted for help and many villagers came to help. The villagers came when these accused had left so I told them that these accused were my attackers by description and names. The villagers went looking and chasing after the robbers while I was taken to hospital for treatment."

When he (PW1) was cross-examined by the 1st appellant, he said:

"Xxd (1st accused)

Yes we worked together at Gomba estate.

That's all."

Upon being cross-examined by the 2nd appellant he said:

"Xxd (2nd accused).

I have known you for two years, we first met at

Gomba estate and your wife resides at Kibaoni.

The light were on and you came to me and cut

me with a panga, so I had no doubt your

presence that night."

And, on being cross-examined by the 3rd appellant, he said:

Xxd (3rd accused)

I know you very well, I know where you live, I don't know your wife. I don't know the registration number of the bodaboda you ride. Your house is near the Makuyuni Sunday market. You wore a red jersey with white strips near the shoulder areas on the night you attacked me. You cut me with a panga on my forehead and on my left shoulder. You claimed that I give you money when you failed to get any money you decided to take my motorcycle. I don't know who arrested you. You had dreadlocks when you attacked me."

Following the shout for help by PW1's wife, villagers responded including Abbasi Kopa (PW3) who on arrival he found PW1 who told him that he was robbed by Hamisi Gambo and Rasta. He said PW1 who was injured and was bleeding was taken to hospital by other villagers while other villagers with him traced the robbers. In the course, they saw motorcycle tyre marks which they followed and they managed to find a motorcycle make Sanlag Registration number MC 686 AWG abandoned

in the bush. There was also a black mobile phone make techno (exhibit P2). No sooner, the mobile phone called and it showed that "Mama" was the one calling. He spoke to her and he tricked her that the owner of it had met an accident. That "Mama" said the owner was Muddy. Later, one "Babu" called and said he was at Gomba. That, they used the recovered motorcycle to go to Mombo police station to report the incident. That thereat, again, a call was made to "Babu" and "Babu" said his name is Dulla Ndama and was at Gomba. PW3 went on to state that they, together with policemen, went to Gomba whereat they saw the 1st appellant who upon seeing the police car took to his feet but they arrested him in the house he had ran into. That they found the 1st appellant injured on his hands and had blood all over his clothes. That, the 1st appellant told them that he and Hamisi Gumbo and Rasta had robbed at Kibaoni using Omary's motorcycle and another one. PW1 said they proceeded to the house of Omary and they arrested him. When cross-examined by 1st appellant, he said PW1 told him that about six robbers invaded his house and he named Hamisi and Rasta. Omary Ramadhani Kimaya (PW2), a bodaboda, told the trial court that on 06/11/2015 at about 19:45 hrs he was at Gomba and was called by another bodaboda to take passengers to Kibaoni. That on arrival he carried one Mohamed (1st accused then) and the other bodaboda carried

Hamisi and Mustafa (the 2nd and 3rd accused then). As regards his familiarity with the appellants, he told the trial court that:

" The first accused at the dock is called Mohamed Mustafa. He lives in Dar es salaam but he also lives at Gomba where his grandfather Mzee Sepande lives. I have known the first accused for about two years now. The second accused is called Hamisi Gumbo. He lives at Gomba for now but before he lived at Chepeta. I have known him since my childhood. The third accused is called "Ras" but I don't know his real name. Ras rides a bodaboda like me, he lives at Makuyuni. I have known Ras for about 2 years now because we used to work at the same bodaboda stand. I have no conflict with any of these three..."

PW2, further, said that upon arrival at Kibaoni area Hamisi (the 2nd appellant) told him to wait while the other two passengers went away. That he waited to be paid Tshs 10,000/= by 1st appellant for so long hence, with the other bodaboda, they left. That he was arrested the

next morning in connection with the robbery incidence. He said, at Mombo police station, he admitted carrying 1st appellant to Kibaoni. He also said Mohamed Yasin who called him to collect 1st appellant ran away after he was arrested. F 4207 D/C Hassan (PW4), the investigator of the case who was in the police car gave an identical evidence to that of PW3 on what happened when they went to Gomba. He said PW1 told him that he was robbed by Hamisi Gumbo, muddy and Rasta; the appellants.

In their respective defences, all the appellants disassociated themselves with the commission of the offence. The 1st appellant (DW1) had it that he was living at Dar es Salaam and that on 06/11/2015 he was at Gomba at his grandfather's house for clearing his father's grave. That at 20:45 hrs he hired Omari Ramadhani (PW2) to take him to Kibaoni and dully paid him. That he went to one Rajabu's bar where he set with another person who was downloading music from his phone and tried to call one Hamisi Rashidi Bakari who he wanted to meet but was not reachable. That at Kibaoni a group of people emerged looking for robbers and as he was running away his phone fell. That he passed through thorn bushes hence the scars he had. He then hired another bodaboda back to Gomba. On the way, he said they met an accident which caused him sustain bruises. That, the other person disappeared

with his phone. That at about 05:00 Hrs, he was arrested by police. That he then lead police to PW2 who was also arrested for carrying him to Kibaoni. He called one Juliana Julius, a woman he was living with, as his witness. She said that they live in Dar es Salaam and that at the end of September they went to Gomba. She did not produce any bus tickets to prove so. She said that on 06/11/2015 at 18:45 Hrs his husband left to Kibaoni on PW2's motorcycle and returned at 21:00 Hrs with two friends but had injuries at his hand.

On his part, Hamisi Gumbo Mbelwa (DW2), the 2nd appellant, who earlier on when PW1 gave evidence notified the court that he would rely on the defence of alibi, said on 06/11/2015 he was in Dar es Salam as he went there on 2/11/2015 and returned on 16/11/2015. That he was arrested on 6/12/2015. He also said he worked at the estate as watchman and one Mzee Ally was his supervisor but was not ready to call him to prove that he informed him of his travel to Dar es Salaam. He conceded knowing PW2 for over 20 years. He called his wife one Prisca Edgar (DW4) to defend him. She said she was arrested by police on 06/11/2015 when DW3 was in Dar es Salaam since 02/11/2015 and returned on 16/11/2015. She also said she knew PW2.

The third appellant, Mustafa Juma @ Zidalu (DW5), told the trial court that on 6/11/2015 he was at home and in the morning he went to his farm at Kidanda and at night he spent time with his mother and grandmother. That he was arrested on 18/12/2015 at Juddy Bar while with others on the ground that he was not a good man because he had dreadlocks. He also said he was born and brought up at Makuyuni and that he, prior to the case, did not know PW1, PW2 and the 1st and 2nd appellants. He said he is known by other bodaboda because they see him riding motorcycles but not a bodaboda. He denied ever being at Kibaoni.

At the conclusion of the evidence by both sides the trial magistrate was satisfied that the offence of armed robbery was committed and that all the appellants were familiar to the victim (PW1) and Omary Ramadhani (PW2).

As to whether the appellants were properly identified, the trial magistrate after consideration of the evidence by PW1 and PW2 at length he was satisfied that the appellants were properly identified at the scene of crime by PW1 with the aid of light from solar which illuminated the area. He said because of that PW1 was able to explain how he knew the appellants before the event, the order of entering into

his house, the weapon each appellant held and the attack made against him by each appellant. That aside, he was of the view that the presence of the appellant at Kibaoni was cemented by PW2 who with another bodaboda carried the appellants to Kibaoni on the fateful night where PW1 lives and that he (PW2) had enough time to identify the 2nd appellant when he told him 'hebu subirini kidogo kwanza hapa'. He further, said the mobile phone found in the bush besides the stolen motorcycle implicated the 1st appellant who, in his defence, also confessed to be his mobile phone.

Regarding the 2nd appellant who had earlier on raised the defence of alibi, the trial magistrate was satisfied that there was no proof that he, really, on the material date and time, was in Dar es Salaam. He accordingly rejected it.

Dissatisfied, the appellants preferred an appeal to the High Court which was predicated on a four point joint memorandum of appeal. The High Court was at one with the trial court that the appellants were properly identified at the scene of crime by the aid of light from solar, they were familiar to PW1 and were immediately named by PW1 to PW3 who responded to the call for help by PW1's wife, PW1 was close to the appellants when they were attacking him and according to PW2 the

appellants were taken to Kibaoni by PW2 and another bodaboda where the offence was committed. The presiding judge was satisfied that oral confession by 1st appellant was properly considered and the defence of alibi was properly rejected. She accordingly dismissed the appeal.

All the appellants were aggrieved by the High Court decision. The first appellant filed a four point memorandum of appeal. The 2nd and 3rd appellants filed a joint memorandum of appeal comprising of five grounds of complaint and on 7/3/2018 lodged in Court written submission in support of the appeal. Three grounds of complaints feature out prominently in both memoranda of appeal. These are:-

- 1. That the appellants were not properly identified at the scene of crime.*
- 2. The evidence of identification was not corroborated by PW1's wife who was not called to testify.*
- 3. That the evidence on record does not reflect the real name of the 3rd appellant as contained in the charge.*

In their totality the appellants contend that the charge was not proved against them and they seek the Court to allow the appeal.

This appeal was argued by the appellants themselves as they appeared without legal representation while Mr. Waziri Mbwana Magumbo and Ms. Maisara Mkumba, both learned state Attorneys, appeared on behalf of the respondent Republic.

When the appellants were called on to argue their appeal, the 1st and 2nd appellants adopted the written submission they had filed and like the 3rd appellant who did not file submissions were ready to give their respective responses after the learned state Attorneys have first argued the appeal.

In the written submission, the two appellants contended that there are apparent contradictions between PW1 and PW3 in their evidence regarding the number of bandits who stormed into PW1's house that while the former said they were three, the latter said he was told by PW1 that they were six. Another contradiction complained of is that in part the villagers who turned up for help said the stolen motorcycle was found in possession of the 1st appellant and in another part they said the mobile phone was found where the stolen motorcycle was abandoned. We think we should hurriedly say that it is true that PW3 said the mobile phone was found near the motorcycle. But, the contention that the 1st appellant was found in possession of the motorcycle is not borne out

from the evidence on record. We accordingly reject it. They also submitted that the knife allegedly used to cut PW1 was not tendered in court as exhibit. We, again find that the record does not show that PW1 ever dispossessed the 1st appellant of the knife. That argument is, therefore, misplaced. The appellants also complain that the trial court ought to have had drawn an adverse inference against the prosecution for failure to call PW1's wife who opened the door hence allowing the bandits enter the house as she was a crucial witness. They referred the Court to the case of **Aziz Abdalla Vs.R** [1990] TLR 71. The appellants also faulted the two courts below for holding that they were properly identified because the size of the solar lamp, the setting of the house and position of the witness and the intensity of light were not explained. They referred us to the case of **Kulwa Makuwaje and Two Others Vs R**, Criminal Appeal No.35 of 2005, **Issa Mgara @ Shuka Vs. R**, Criminal Appeal No. 37 of 2005 and **Said Chally Scania Vs. R**, Criminal Appeal No.69 of 2005 (All unreported). They also contended that if the 1st appellant made a confession which incriminated other appellants then his cautioned statement ought to have been recorded. They cited the case of **Njuguma and Another Vs. R**, (1952) 2 E A C A 311 which stated that voluntariness of the taking of a cautioned statement must be established. It should be noted here that the admission, according to

evidence, was made orally and at the time of arrest at Gomba not at the police station when being interviewed. The provisions of section 57(2) of the Criminal Procedure Act, Cap. 20 R. E. 2002, therefore, do not apply. This complaint is without merit. They, again, argued that the name of the 3rd appellant is as named in the charge not Rasta. Lastly they contended that the defence of alibi raised by the 2nd appellant that at the time the offence was committed he was in Dar es Salaam was completely ignored. They annexed to the written submission the bus tickets to prove so. We have, in fact noted that the written submission covered the grounds of complaint raised by the 3rd appellant.

In his rebuttal submission, Ms. Mkumba supported the appellants' conviction and sentence and she opted to argue the appeal generally. She contended that all the appellants were properly identified at the scene of crime by PW1. She said PW1 knew the appellants prior to the incident date and he explained how he knew each of them. She also said light from the solar was enough to identify the appellants. In supporting her assertion she referred us to the case of **Abdallah Rajabu Waziri Vs. Republic**, Criminal Appeal No. 116 of 2004 (unreported) which held that where the identifying witness knew the appellant prior to the event, even light from a match box would be sufficient for a proper identification. She further said PW1 named the

appellants as his assailants to PW3 who was among the villagers who responded to the call for help which signified that he saw them properly. She cited to us the case of **Julius Ndahani Vs. Republic**, Criminal Appeal No. 215 of 2004 (unreported). She however conceded that witnesses gave different versions on the number of persons PW1 said they robbed him. She further argued that, PW1 himself said they were three and he named them to be the appellants (page 11), PW3 said he was told that they were two namely Hamisi and Rasta (2nd and 3rd Appellants) (page16) and when he was cross-examined by 1st appellant he said that PW1 said he was invaded by about six people but was able to mention the two appellants (2nd and 3rd appellants). The learned State Attorney however said the discrepancy is minor.

The other piece of evidence relied by the learned State Attorney in resisting the appeal is that there is sufficient evidence by the prosecution that the mobile phone found in the bush where the stolen motorcycle was abandoned belonged to and actually the 1st appellant admitted in his defence that it belonged to him.

Further arguing in respect of the complaint that the defence of alibi raised by the 2nd appellant was completely ignored, the learned

State Attorney refuted that contention saying the same was considered but was found baseless.

In their respective rejoinder submissions, all the appellants substantially reiterated what they complained in their grounds of appeal and the written submission by the 1st and 2nd appellants summarized above.

Like the learned State Attorney, we will also consider the appeal generally but where need arises we will deal with certain specific issues raised in the grounds of appeal and submissions by both sides.

Our careful scrutiny of the evidence have led us to a conclusion that there are two strands of evidence tendered by the prosecution to prove the appellants' guilty; the visual identification by PW1 and circumstantial evidence.

We propose to first consider the evidence of identification. The record shows that the offence was committed at 20:45 Hrs, at night time and as shown above, the appellants' conviction was grounded on the visual identification evidence of PW1. It is therefore not surprising

that the issue of identification is fundamental in the appellants' complaint in this appeal.

We are mindful of the principles enunciated in an unbroken chain of decisions of this Court emphasizing that before a court can found a conviction basing on visual identification evidence such evidence must be watertight so as to remove the possibility of mistaken identity. (see **Said Chaly Scania Vs. Republic**, (supra) cited by the appellants and **Raymond Francis Vs. Republic** [1994] TLR 100). In essence the two cases restated the principles laid down by this Court in the often cited case of **Waziri Amani Vs. Republic** (1980) TLR 250. In that case the Court laid down the following factors which must be established in determining that identification is watertight:

1. The time the witness had the accused under observation.
2. The distance at which he observed him.
3. The conditions in which such observation occurred, for instance, whether it was day or night time. Whether there was good or poor lighting at the scene.

4. Whether the witness knew or had seen the accused before or not.

The only identifying witness in the present case was PW1. In his evidence recited above he claimed to have known each of the appellants for various periods of time. His evidence was that of recognition which is taken to be more reliable than that of identification. In **Shamir John Vs. Republic**, Criminal Appeal No. 166 of 2004 (unreported) this Court observed that:-

"...Recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognize someone whom he knows, the Court should always be aware that mistakes in recognition of close relatives and friends are sometimes made."

We now proceed to consider the evidence in the present case in the backdrop of the above laid down principles.

According to PW1, the only identifying witness, when the bandits entered into the sitting room where he was sitting with his wife there were two solar lights illuminating the room which enabled him to see and identify all the appellants who he knew prior to the event. Since the

bandits entered in the room in which PW1 and his wife were, the issue of distance between PW1 and the bandits does not arise. They were all in the same room. He explained the periods of time and how he had known each appellant. That aside, he also stated what each appellant held and how each attacked him. More significantly, PW1 named the 2nd and 3rd appellants as the culprits to PW3 who immediately went to their aid. In respect of the 3rd appellant, PW1 went further and explained the attire he had worn; a red jersey with white strips near the shoulder. As for 1st appellant, PW1 was clear that he met him carrying a knife when attempting to get out of the house and they held each other but the latter was able to cut him with a knife on his right hand. Further, PW1 said in the struggle to disarm the 1st appellant the appellant was cut on his hand.

In view of the above set of facts we concur with the learned State attorney that there was enough light in the room hence the identification evidence of the appellants was watertight and did not give room for mistaken identity.

The second piece of evidence relied on by the prosecution and the trial court to convict the appellants is circumstantial evidence. The relevant evidence came from PW1, PW2, PW3 and partly PW4.

Before we consider the circumstances which obtained in the present case, we first wish to expound the principles governing circumstantial evidence.

It is trite law that for the court to found conviction based on circumstantial evidence, that evidence must irresistibly lead to the conclusion that it is the accused and no one else who committed the crime. That principle was set in the case of **Simon Musoke Vs. R** [1958] EA 715 and was followed by the Court in many cases. To mention but a few, are the case of **Hassan fadhili Vs. Republic** [1994] TLR. 89 and **Shabani Abdallah Vs. Republic**, Criminal Appeal No. 127 of 2003 (unreported). In the latter case, the Court stated that:-

" The law on circumstantial evidence is that it must irresistibly lead to the conclusion that it is the accused and no one else who committed the crime."

In the instant case, the string of circumstantial evidence linking the appellants with the commission of the offence is that PW2 and another bodaboda, on the material date were hired by the appellants to take them to Kibaoni area whereat PW1 was living. PW2 said, he personally carried the 1st appellant while the 2nd and 3rd appellants

were carried by another bodaboda. PW2 explained well how he knew each appellant prior to that day as summarized above. He also said upon arrival at Kibaoni he was told by the 2nd appellant to wait and others disappeared. He, after a long wait,, left without even being paid the fare by the 1st appellant. Further, according to PW1, in the struggle with the 1st appellant, the later was cut on his hand. On being arrested the 1st appellant was found injured. In addition, the 1st appellant admitted that the mobile phone found at the place where PW1's stolen motorcycle was abandoned belonged to him. And more, the 1st appellant named the 2nd and 3rd appellant as being the ones they, together robbed PW1 at Kibaoni and led the police to where they resided hence their arrest. The 1st appellant, in his defence, admitted hiring PW2 to carry him to Kibaoni on the material date and time, that he was found with blood on his clothes and that the mobile phone belonged to him but said the bruises were caused by thorny bushes through which he passed when escaping from the angry villagers who were tracing robbers. He said his mobile phone fell in the course. In view of the clear and strong prosecution evidence and admissions by the 1st appellant, we find that the defence evidence is implausible and instead, carried further the prosecution evidence against them.

It is our considered view that the totality of above evidence conclusively proved that it is the appellants who robbed PW1.

We now turn to consider other complaints raised by the appellants. We will start with the alleged difference or discrepancy in the number of bandits named by PW1.

We are alive of the legal position that normal discrepancies in the witness's testimony do not corrode the credibility of a witness while material discrepancies do. Normal discrepancies are those which are due to normal errors of observations, memory errors due to lapse of time, or due to mental disposition such as shock and horror at the time of the occurrence of the event. Material ones are those going to the root of the matter and/or are not expected of a normal person. [See **Bahati Makeja Vs. Republic**, Criminal Appeal No. 118 of 2006 and **Dickson Elian samba Shapwata and Another Vs. Republic**, Criminal Appeal No. 92 of 2007 (both unreported)]. As to what is the duty of the court when there are discrepancies, the Court lucidly stated in the case of **Mohamed Said Matula Vs. R** [1995] TLR. 3 that:

"Where the testimony by witnesses contain inconsistencies and contradictions, the court has

a duty to address the inconsistencies and try to resolve them where possible, else the court has to decide whether the inconsistencies and contradictions are only minor or whether they go to the root of the matter.”

Upon our careful examination of the record we agree with the appellants and the learned State Attorney that the discrepancy exists. But like the learned State Attorney, we are, considering the circumstances in this case, inclined to agree that the discrepancy is minor.

PW1, the victim, maintained in his testimony that the bandits were three and he named them to be the appellants. PW3, who responded to the call for help, said PW1 named two bandits; the 2nd and 3rd appellants. PW2 said the three appellants are the ones they carried to Kibaoni on the bodaboda. We think PW1 who was by then injured and was to be taken to hospital could not, by then, be pinned down to tell all the names. All the same, the three appellants were arrested in aid of the 1st appellant. The discrepancy is thus by any stretch of imagination minor and could not vitiate the credibility of PW1, PW2 and PW3.

The next complaint to be considered is in respect of failure by the prosecution to call PW1's wife one Mwanashamba Mrisho to testify. In essence, the appellants are inviting the Court to draw an adverse inference on the prosecution case and they referred us to the case of **Aziz Abdallah Vs. Republic** (supra). We agree with the appellants that the decision in the cited case is to the effect that an adverse inference may be made where the persons who are competent to give evidence, possess material facts and are within reach are not called to testify and no sufficient reason is shown by the prosecution side. However, the Court, in the case of **Kobelo Mwaha Vs. Republic**, Criminal Appeal No. 173 of 2008 (unreported), observed that the circumstances of each case should be considered. In that case the Court gave an example of the decision in the case of **MT 7479 Benjamin Holela Vs. Republic** [1992] TLR 121 in which the Court refused to draw an adverse inference against the prosecution for not calling a certain witness where it was not suggested that he was in a better position than another witness regarding the shooting incident.

The issue here is whether in the instant case PW1's wife was better placed and could give a better account of what transpired than PW1. The circumstance under which the offence was committed

speaks out loudly. According to PW1, his wife, after opening the door, was pushed outside as the bandits forced their way into the house and she was the one who, while outside, cried for help. This was confirmed by PW3 who said the call for help came from a woman. There is no evidence that she remained at the scene (in the sitting room) after being pushed outside the house. The circumstances do not suggest so either, for, even PW3 did not tell the trial court that he found her there when he responded to the call for help. That said, it is our finding that PW1's wife was not better placed than PW1 to tell what transpired. She was therefore not a crucial and material witness at all. We accordingly refrain from accepting the invitation made by the appellants.

Last to be considered is the name of the 3rd appellant. It is contended by the appellants that the 3rd appellant is, as per the charge, called Mustafa Juma Zidalu and that the one named by PW1 and PW2 as Rasta is not him. It is worth noting here that, upon our perusal of the original record, reference to Ras, Rosta and Rasta are purely typographical errors. The record shows Rasta. The fact remains that the 3rd appellant was identified by both PW1 and PW2 as Rasta and was the one arrested and charged. It is the person identified and arrested which matters not the name. We therefore see

nothing irregular. After all PW1 and PW2 said the 3rd appellant was famously known as Rasta because he had dreadlocks. This complaint is therefore baseless and is dismissed.

On the whole, we are of the view that the cumulative effect of the prosecution evidence fully proved the guilt of the appellants. We find the appeal devoid of merit and we hereby dismiss it in its entirety.

DATED at TANGA this 22nd day of February, 2019.


K. M. MUSSA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

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




E. Y. Mkwizu
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL (T)