

IN THE HIGH COURT OF TANZANIA

AT MBEYA

APPELLATE JURISDICTION

(Mbeya Registry)

DC. CRIMINAL APPEAL NO. 33 OF 2003

(Original Criminal Case No. 701 of 2000 of the  
District Court of Mbeya)

NDENDI MWAKYOMA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

MACKANJA, J.

The appellant was convicted for doing grievous harm c/s 225 of the Penal Code. The facts may be summarized as hereunder.

Anna Mwaisanila (PW.1) was working as a barmaid at a joint she described as Moondust. She usually reported for work at 4.30 p.m. and knocked off at 12.00 a.m. So she reported off duty at 12.00 a.m. on 5th August, 2000 and proceeded home to retire for the remaining part of the night. She lived at Block "Q" in this municipality. As she was proceeding home she, she said, saw the accused proceeding in the opposite direction. The two exchanged greetings when they met; that the appellant went close to the complainant and asked if she was Fatuma. She told him that she was not Fatuma. PW.1 went on to swear that suddenly the accused got hold of her hand and pulled a knife from the right hand pocket of his coat. She warded off several blows before she was kicked and went down. She was stabbed in the back as rose to her feet. She was also sustained cut wounds on her hands. She went on to testify the appellant boxed her in the eye after he had dealt her blows which gave rise to the several cut wounds.

PW.1 went on to testify that no one responded to her alarm for assistance. So she pulled herself together and returned to her

employer's business premises where she found Sofia, Luciana Bahati and Queen Malecela. She told them that the appellant had attacked and stabbed her with a knife. These three people took her to the Mwanjelwa Police Station where No. F 974 P.C. Ndoile (PW.4) issued her a PF.3 (Exh. P.1) after which she was taken to the Mbeya Referral Hospital. She was admitted to that hospital and was discharged seven days later.

FW.1 swore that she was able to recognize the appellant because there was an electric bulb burning at the locus criminis, that she knew him before that occasion because they lived in the same neighbourhood.

The extent of the injuries is described on the PF.3 (Exh. P.1) thus:-

"... had multiple cut wound on the body and which are very seriously (sic) Deep cut wounds).

= DANGEROUSE (sic) HARM ="

The appellant denied criminal liability. He testified that he spent the whole 5th May, 2000, at home. Later in the evening he went to view television at Sarah Mwakyoma's residence. The latter, DW.3, he said, is his aunt. He was accompanied by his sister Dora Mwakyoma (DW.2). It was also the defence case that the appellant could not have gone out after he returned home 10.30 p.m. because his mother Margareth (DW.4) locks the gate and keeps the key.

That, then, was the evidence upon which the appellant was convicted, following which he was sentenced to five years jail. He was aggrieved, hence this appeal.

The evidence shows quite plainly that the gravamen of the trial was identification and credibility. I propose to determine the appeal on those lines. I will begin with identification.

The evidence of identification in the instant case is that of the complainant alone. It is the law of this country that testimony of single witness may, if reliable, prove a criminal offence without corroboration. The requirement for corroborative evidence in certain instances is procedural rather than substantive. In many case it is

required to support the evidence of a single witness of identification of an accused person who has committed an offence under unfavourable conditions. The issue here, then, is whether the circumstances in which PW.1 was attacked were favourable for a correct identification of the person who inflicted the vicious wounds on the person of the complainant.

There is evidence on record that the complainant and the appellant lived in one neighbourhood. There was an exchange of greetings before the attack; there was light from an electric bulb which was lit. Indeed, the many blows which the complainant received on the hands and the fist in the eye all go to show that the attack was not a transient one. The complainant had ample time to observe the attacker.

Another important fact in evidence of visual identification is consistency. The complainant named the appellant at the Police Station when her statement was recorded. That this was so deposed to by D.9663 D.C. Hamisi (PW.3). That she named the appellant while recording her statement with the Police is found in the evidence of PW.4.

Now, the complainant passed out for a while after she was attacked. PW.4 says she was unconscious when he examined her before he issued the FF.3 (Exh. 1.1); Rhoda Mwambela (PW.2) found her unconscious at the referral hospital to which she was admitted. The complainant also said she passed out. But, as she swore, she walked back to Moondust where she found her colleagues who took her to hospital through the Mwanjelwa Police Station. I am satisfied, therefore, that she was in full command of her faculties at, and during, the time of the attack and she remained so when she walked back to the bar premises where she worked.

There is evidence of the description of the clothing the attacker was wearing. As Mr. Mwenda, learned State Attorney, pointed out the complainant gave a description of the apparel the appellant was wearing.

In finalis I am satisfied, and I so hold, that evidence of identification against the appellant is watertight. The conviction is, therefore, unsailable.

The appeal is dismissed in toto.

Sgd. J. M. MACKANJA

JUDGE

29/10/2003

Date: 31/10/2003

Coram: J. Kahyoza, D.R.

Appellant: Present

Respondent:- Miss Kileo State Attorney - Present

Ass. Mr. Mayeye, Mr. Muruambo

C/C. Mbasha

Court: Judgment delivered.

Sgd. J. Kahyoza, D.R.

31/10/2003

Court: Right of appeal explained.

Sgd. J. Kahyoza, D.R.

31/10/2003

Certified true copy of the original Judgment.

DISTRICT REGISTRAR

MBEYA