

**IN THE HIGH COURT OF TANZANIA
AT MTWARA**

**CRIMINAL APPEAL NO. 22 OF 2006
ORIGINAL MTWARA DISTRICT COURT CR. CASE NO. 122/2005**

ANDREA JACKOBO -----APPELLANT

VERSUS

THE REPUBLIC -----RESPONDENT

Date of Last Order: 27/11/2006

Date of Judgement: 14/12/2006

JUDGEMENT

SHANGALI, J.

The appellant ANDREA JACOB is appealing against the decision of the District Court at Mtwara in the Criminal Case No. 122 of 2005 in which he was convicted of the offence of unlawfully possession of Narcotic Drugs contrary to Section 19(1) and (3) of the Drugs and Prevention of Illicit Traffic in Drugs Act No. 9 of 1995 as amended by Act No. 13 of 1992.

In that case the appellant was charged with the second accused namely THOMAS S/O MOSES who was found not guilty and acquitted accordingly.

Upon his conviction the appellant was sentenced to serve five (5) years imprisonment. The appellant was dissatisfied with the decision of the trial District Court and has preferred this appeal against both conviction and sentence.

Having gone through the trial courts proceedings and judgement I am inclined to observe that this is one of those cases where convictions are registered preferably by the will of the trial Magistrate rather than the availability of cogent prosecution evidence and the position of the law. The whole prosecution evidence relied on one witness PW1, the police Officer

who alleged to have arrested the appellant, searched his room and discovered therein a bundle and 47 sticks of "cannabis sativa" commonly known as 'bhang'. Although PWI stated categorically that in that arresting exercise he was with other Police officers and also a person called ANDREW including unknown 10x10 cell leader of the area who witnessed the search; none of them was summoned by prosecution to support their case and no reason or explanation was advanced to justify that failure.

During the preliminary hearing of the case the prosecution indicated their intention to call about seven (7) witnesses but at the end of the day only one witness was called to testify. Perhaps that position could not have jeopardized the prosecution case because in law there is no particular number of witnesses required in order to prove any fact or register a conviction. Nevertheless, that stance of the law is relevant where the available evidence of a single witness or few witnesses is sufficient and capable to prove the case. Where, like in the present case the evidence of a single witness is incapable to prove all the facts in the case, it is imperative for the prosecution to call more witnesses if their case is a genuine one.

In this appeal, the whole case is silent on how and what persuaded the trial court to believe and conclude that the alleged substance found in possession of the appellant was real "bhang" listed as "cannabis sativa" under the Drugs and Prevention of Illicit Traffic in Drugs Act No. 9 of 1995 as Amended by Act No. 13 of 1997. Even PWI was silent on how he identified and ascertained the substance to be "bhang" and he was not even probed by the court to explain his scientific knowledge and or expertise in "bhang".

It has been emphasized time and again that the narcotic drugs offence are nowadays very serious offences and they do attract very harsh penalties; therefore sufficient and cogent evidence should be available to prove the offence and particularly to prove that the alleged substance is actually narcotic drugs in terms of the law. See the case of **MASHIRAMBA ABDALLAH VS. R** Criminal Revision No. 24 of 2003, Tanga Registry (HC) unreported and also the case of **MONIS KARAJA VS. R**. Criminal Appeal No. 62 of 2002 (Unreported).


During the hearing of this appeal Ms. Shio, learned State Attorney who appeared for the Republic/Respondent earnestly declined to support the decision of the trial Resident Magistrate and briefly submitted that there was

no sufficient prosecution evidence to warrant a conviction against the appellant.

I entirely join hands with the learned State Attorney's candid legal observations on this appeal. The appellant was wrongly convicted and sentenced on pathetically weak prosecution evidence.


Consequently, this appeal is allowed, conviction against the appellant is hereby quashed and sentence imposed against him set aside.

The appellant is to be released and set free forthwith unless held on any other lawful matter.


M.S. Shangali
JUDGE
14/12/2006

Judgement delivered todate 14th December, 2006 in the presence of Mr. Luena, learned State Attorney for the Republic and the appellant in person.




M.S. Shangali
JUDGE
14/12/2006