IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

(Tabora Registry)

CRIMINAL APPEAL NO.117 OF 2006

ORIGINAL CRIMINAL CASE NO.75 OF 2004

OF THE DISTRICT COURT OF TABORA DISTRICT

AT TABORA

BEFORE; P.M. NKOMBE. Esq. PRINCIPAL DISTRICT MAGISTRATE

NASSIR S/O SAID @ ALLY.....APPELLANT

(Original Accused)

VERSUS

THE REPUBLIC.....RESPONDENT

(Original Prosecutor)

JUDGEMENT

6th August, 07 & 22nd August, 07

MUJULIZI, J.

The Appellant was charged with the offence of Robbery with violence contrary to section 285 and 286 of the Penal Code, (Cap. 16 R.E. 2002) for which he was convicted and sentenced to fifteen (15) years imprisonment on 25/11/2004.

He appealed against both conviction and sentence.

The appellant who appeared at the hearing of his appeal had raised a total of 7 grounds of Appeal. However, since the Respondent Republic, represented by Mr. Lukosi, learned State Attorney, did not support the conviction, I will not dwell into the merits of the grounds of appeal.

On 06/08/2007 after hearing the appeal, I allowed it, quashed the conviction substituting it with an acquittal on the charged offence and set aside the sentence.

Consequently I set the Appellant at liberty and reserved my reason for allowing the appeal for today.

The Respondent Republic was correct in not supporting the conviction.

It was alleged before the trial court, which on 30/04/2004 at 17.00 hours on Kariakoo Street in Isevya Area, Tabora Municipality, the appellant had stolen a gold chain weighing 3½ grams, the property of Cecilia John, and that in the course of stealing the said chain; he had used force (violence).

The prosecution called a total of 5 witnesses including the complainant.

It was alleged in evidence that the complainant was seen at the bar with earrings which she stowed away in her bracelets.

Later on the witnesses alleged that they saw the appellant running away. The complainant emerged thereafter from the toilet claiming that the appellant had taken away her earnings.

However, although it was claimed that the Appellant was arraigned before getting to his house, which was just about 12 paces away from the bar, they could not retrieve the earrings from him.

According to the appellant, what had actually happened was a scuffle between him and some of the witnesses, following which he went to report the matter to the police.

It was common ground that the appellant was arrested while lodging his complaint to the police.

It was submitted to me by the learned State Attorney, with whom, I am in respectful agreement, that there were several discrepancies befalling the entire case.

First of all the charge sheet names the stolen item to be a golden chain and not earrings as testified to. However, although the discrepancy in itself would not have been fatal, but the prosecution

chose not to amend the same, and therefore it was upon them to prove the charge as framed.

Secondly, neither the chain nor the earrings were ever retrieved.

Thirdly the only witness to the incident, PW.5, the complainant, did not give evidence to support the claim of the use of violence.

Her testimony was to the effect that she was followed to the latrine by a person who grabbed her and then took away the earrings from her and ran away. She shouted and that when other people were coming towards her;

> ***"That person who is the accused was running to the house of his wife. They caught the accused but he refused to produce them and by then he had already hidden them..., when I reached there (Police Station) I met the accused under custody."***

But PW.1, Allex Herman, testified that the accused was arrested at his house, but after finding that he did not have the earrings they left him at his house advising the complainant to report to the police.

PW.2 D/Sgt Abbart, on the other hand says that at about 5.00 pm he was about the scene when he saw a group of many people

who seemed to be assaulting another. On getting near he was told by PW.5 that the victim had been robbed of her earrings by a person, the accused, who had already disappeared and that later on at about 6.00 pm when he reported to duty, the accused was at the station complaining that he had been assaulted and he was asking for a PF.3 whereupon he was detained and subsequently charged.

But according to PW.3 Marselino s/o Haule, both the complainant and the accused came out of the latrine at the same time, whereby the accused run into his house. He then escorted the complainant to the police station where they found the accused, who was then arrested.

Indeed there are discrepancies in the same account of the same story, which the casts reasonable doubt as to the veracity of the witnesses.

I am therefore inclined to believe the accused's account of the incident, which, as submitted by the learned State Attorney, creates reasonable doubt as to the proof martialled by the prosecution.

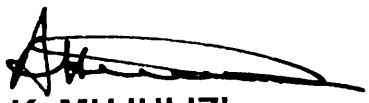
For the above reasons I allowed the appeal.

A.K. MUJULIZI

JUDGE

22/08/2007

Judgment delivered in the presence of Mr. Zacharia, learned State Attorney.



A.K. MUJULIZI

JUDGE

22/08/2007