

IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

(Tabora Registry)

(DC) CRIMINAL APPEAL NO. 41 OF 2006

ORIGINAL CRIMINAL CASE NO. 424 OF 1995

OF THE DISTRICT COURT OF BARIADI DISTRICT

AT BARIADI

Before: J.D. MAYAYA Esq., SENIOR DISTRICT MAGISTRATE

DAUD S/O JOHN @ MWAROBAINI.....APPELLANT

(Original Accused)

Versus

THE REPUBLIC.....RESPONDENT

(Original Prosecutor)

JUDGMENT

27/10/08 & 22/01/09

KADURI, J.

Daud s/o John @ Mwarobaini is appealing against conviction and sentence against him of the offence of robbery with violence c/ss 285 and 286 Penal Code for which he was convicted and sentenced to 30 years imprisonment.

There are two main grounds of appeal, first being the issue of identification and secondly he disputes having been found with a radio recently stolen.

The prosecution called 3 witnesses, Paskazia Shoka, Anastazia d/o John and B. 8538 D/C Elitirize. Briefly what we gather from these witnesses is that thieves broke into Paskazia Shoka's bed room and stolen been, a wrist watch and a bag. Paskazia was assaulted with a club and was cut with panga on her head. She gave the thieves 50,000/=. She only managed to identify the appellant who frequented her place to drink local brew Wanzuki, she had inscribed the word "Pas" in the battery chamber of the radio. The word "Pas" is Paskazia in short. She raised alarm but when people responded the thieves had left. Anastazia d/o John was a pupil, then in Std. 7 and was living with her aunt. (mama mkubwa) Paskazia Shoka. She testified that she identified the appellant during the commission of the robbery.

The appellant was arrested on 21/12/2004 at Sima area. He was suspected by PC. Elitirise, who found him with a bag on a bicycle carrier. In the bag the Police constable found a radio Sony which was later identified by PW1 Paskazia Shoka as the radio stolen from her on 6/12/2004.

Both Paskazia Shoka and Anastazia d/o John claimed to identify the appellant during the commission of the robbery but did not inform the people who responded to their alarm that the appellant was among the thieves.

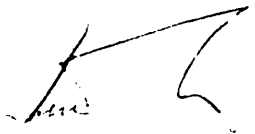
In his defence, the appellant stated that he was arrested at Bariadi bus station on 20/10/2004 when he disembarked from a bus from Mwanza. A police officer suspected him to be an offender because he had a scar on his face. He had nothing with him. When he was taken to the Police Station where he was charged with robbery vide C.C. 442/2004 for a robbery committed at a Petrol Station and afterwards he was charged with the present offence.

The trial court convicted the appellant not because he was identified during the commission of robbery but because he was found with a stolen radio. He has disputed knowing PW1 and he has stated that he only saw the radio in question while in court.

The trial magistrate found it dangerous to accept the evidence of PW1 and PW2 that despite having identified the appellant they informed no one until the appellant had been arrested allegedly in the possession of the stolen radio.

The arrest and charge of the appellant is controversial. This coupled with the fact that the identifying witnesses did not tell anybody that they identified the appellant until he was arrested on suspicions casts doubts as to the guilty of the appellant.

I quash his conviction, set aside the sentence and order that the appellant be released from prison forthwith unless otherwise lawfully held.


L. H. M. JUDGE

JUDGE

21/1/2009