

IN THE HIGH COURT OF TANZANIA
AT DODOMA

(DC) CRIMINAL APPEAL NO. 99 OF 2008
*(ORIGINAL CRIMINAL CASE NO. 101 OF 2008 OF THE
DISTRICT COURT OF MANYONI DISTRICT AT MANYONI)*

PASCAL S/O SANGULA APPELLANT
VERSUS
THE REPUBLIC RESPONDENT

14/9/2009 – 09/10/2009

JUDGEMENT

HON. MADAM, SHANGALI, J.

The appellant PASCAL S/O SANGULA was charged along with one another namely AUGUSTINO S/O WILLIAM with the offence of Armed Robbery contrary to section 286 of the Penal Code, Cap 16 before Manyoni District Court in Criminal Case No. 101 of 2001.

In his final judgement, the trial District magistrate was satisfied with the prosecution evidence against the appellant and convicted him accordingly. The appellant was sentenced to serve thirty (30) years imprisonment and ordered to pay to the complainant a sum of TShs.56,000/= being

the value of stolen property. The second accused **AUGUSTINO S/O WILLIAM** was found not guilty and acquitted accordingly.

Aggrieved by the decision of the trial District Magistrate against him, the appellant has filed this appeal contesting for his innocence.

I have no reason to say much in this appeal because the learned State Attorney, Mr. Wambali who appeared for the respondent/Republic refrained to support the decision of the trial District Magistrate. Instead, and for very good reasons, he supported the appeal of the appellant.

Briefly, the evidence upon which the decision of District Magistrate was founded is that on 26th February, 2006 at about 3.30 p.m. at Udima Village the complainant (PW1) Benito Denis was riding his bicycle back home from Kintinku area. On his bicycle he was carrying two plastic jerry-cans full of diesel for his grinding machine. On his way he met two people who were repairing their bicycle on the road side. The two people stopped him asking for a bicycle pump. PW1 stopped and assisted them. Then the two people demanded one of the plastic jerry cans. PW1 refused. Suddenly the appellant who was holding a bush knife slashed him on the head. PW1 fell down, the two people searched him and disappeared with the bicycle and the two plastic jerry-cans full of diesel. PW1

shouted for help and several people responded including PW2. PW1 narrated to them how he was assaulted and robbed by the appellant and another (accused person). According to the evidence of PW2, the complainant (PW1) was seriously wounded. They rushed him to hospital and on the following day the appellant was arrested by village sungusungu after being mentioned by PW1. According to the evidence of pw3, when the appellant was arrested by sungusungu he was seriously assaulted and taken to hospital for treatment. While at the hospital the second accused visited him and was equally arrested. PW4, Detective Coplo Ezekiel produced two empty plastic jerry-cans as exhibit. He informed the trial court that the jerry-cans were found in the house of the appellant and they are suspected to be the very plastic jerry-cans stolen from PW1. They were admitted as Exhibit P1.

In his sworn defence the appellant testified that on the evening of 26th February, 2006 at about 7.00 p.m. he was at Koonko Bar drinking local brew with other people. Suddenly he was ambushed and beaten up by a group of people who managed to run away leaving him helpless. He managed to walk home but on the following day a group of village sungusungu warriors arrived at his house and arrested him. He was taken to police and connected with the alleged offence. He stated that the police issued him with a PF3 and took him to hospital. While at the hospital the second accused

arrived to assist him but he was also arrested and connected with the offence. The appellant categorically denied to have committed the offence.

The grounds of the appeal which were submitted by the appellant and supported by the respondent included the failure of the PW1 to identify his assailants properly and mention them by names or give some description to the people who responded for his assistance. The complainant referred his assailants as "*two people*" and it appears that he identified them at the dock. Secondly there is no connection between the arrest of the appellant and discovery of exhibit P1, the two plastic jerry-cans. The plastics were found and seized by one Peter Mwalongo who handed them to PW4 who produced them in court as exhibit. As a result Peter Mwalongo was not called as a witness and PW4 was giving a hearsay evidence. Furthermore there is contradiction on where and how the appellant was arrested. Some prosecution witnesses (P3 and PW4) claimed that he was arrested at Kitinku, Koonko Bar while PW1 and PW2 claimed that he was arrested at Mulelela village. It appears that this case was investigated by the sungusungu warriors and related information to the police officers (PW3 and PW4) whose testimonies sound to be second hand information.

One more important aspect in this case is that the trial District Magistrate totally failed to

analyze and consider the defence of the appellant. The trial District Magistrate opted to believe the prosecution evidence and disbelieve the defence version without giving any reason. I am sure that had the trial District Magistrate carefully considered the defence evidence he would have come out with a different decision.

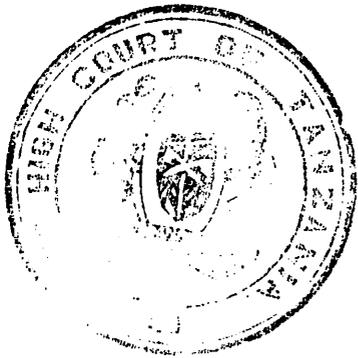
In conclusion, and on the foregoing reasons, I have all reasons to join the learned State Attorney and the appellant that the appellants conviction was based on a very weak prosecution evidence. The case was not approved beyond all reasonable doubts. Therefore, this appeal is allowed. Conviction against the appellant is quashed and the sentence of thirty (30) years imprisonment and payment of cash TShs.56,000/= as compensation is hereby set aside.

The appellant **PASCHAL SANGULA** should be released from prison forthwith unless lawfully held in connection with another matter.

It is so ordered.


M.S. SHANGALI
JUDGE
09/10/2009

Judgement delivered todate 9th October, 2009 in the presence of Mr. Wambali, Learned State Attorney representing the respondent/Republic and the appellant appearing in person.




M.S. SHANGALI
JUDGE
09/10/2009