

IN THE HIGH COURT OF TANZANIA
AT TABORA
APPELLATE JURISDICTION
(Tabora Registry)
(DC) CRIMINAL APPEAL O. 98,99,200 OF 2012
ORIGINAL CRIMINAL CASE NO. 235 OF 2010
OF THE DISTRICT COURT OF KAHAMA DISTRICT
AT TABORA
BEFORE: MR. HASSAN RESIDENT MAGISTRATE

MUS[^]SA NKUMBI & 2 O[^]HERS... ... APPELLANTS
VERSUS
THE REPUBLIC RESPONDENT

14th May, 2013 – 4th June 2013.

J U D G E M E N T

HON. LUKELELWA, J.

The appellants Mussa Nkumbi Maganga, Edward Mtiya @ Mzee wa Chips and Stephano Andrew Ndeki @ Stephen Njaakali herein after variously referred to as first appellant, second appellant and third appellant respectively were on 22.11.2011 convicted by Kahama District Court on a charge consisting of a count of Conspiracy to Commit an offence Contrary to section 384

Date: 07/06/2013

Coram: Hon S. B. Lukelelwa, J.

Appellant: Present

Respondent: Present

B/c: Mary Mpululu

Order: Judgment delivered in court this 7th day of June, 2013.

Right of Appeal explained.


S. B. LUKELELWA,
JUDGE.

7th June, 2013

of the Penal Code, and seven counts of Armed Robbery contrary to section 287A of the Penal Code.

The were subsequently sentenced to three years imprisonment on the first count and thirty years imprison on each count of Armed Robbery. The sentences were ordered to run concurrently. The appellants were aggrieved by both the conviction and sentence and each has preferred an appeal into this court; and their appeals have been consolidated.

Evidence was led at the trial from fourteen prosecution witnesses to the effect that on 19.05.2010 at 00.00 hours, there was robbery committed at Uyogo village by a group of bandits who were armed with a gun.

The victims were PW1 Esther Peter, PW2 John Antony, PW3 Shukrani Bahati, PW5 Salum Hussein, PW7 Shija Selemani @ Ndegesele, PW8 Mkumbo Jumapili and PW9 Sharifu Daudi. The above witnesses could not identify the bandits.

However the appellants and others were arrested on divers dates, and their caution statements recorded by Police Officers including PW6 Corporal Emmanuel and PW10 Detection Sergeant Laurent, PW 14 No. D 3421 Dsgt Sopilian testified that the first accused at the trial one Paschal Deo @ Deus Tati, now deceased and the first appellant led him to show a gun SM 9 M. 22 – 15596

with a magazine having 10 rounds of ammunitions at Mwime area PW 14 went on to state that spent cartridges were picked up from Uyogo village and Nyamtengera and sent to the Forensic Bureau. A Forensic Bureau expert report was admitted in Court as exhibit P7.

The second appellant also had an extra-judicial statement recorded by PW4 Hermes Byarugaba, a Primary Court Magistrate of Kahama Urban Primary Court.

The first appellant had told the court that he was subjected to torture, and denied having recorded a statement before PW 12.

The second appellant testified that on 17/06/2010 at 15.00 hours was arrested on his way from Ulowa village to Kahama and taken to police; where he was questioned about Uyogo-robbery.

On 21/06/2010 he was taken before a justice of peace PW4 where he refused to make a statement. He testified that he was beaten up and tendered his PW3 which was admitted as exhibit D1.

The third appellant testified that he was arrested on 17/06/2010 but did not know his fault.

He denied having gone to a Guest house to show the first accused at the trial.

In convicting the appellants the learned trial Resident Magistrate held that the first appellant was the one who led the police to third appellant who in turn led them to the home of the first accused. The latter admitted committing the offence and led them to Mwime Nyakato where the gun was retrieved. According to exhibit PW7, the Forensic expert reports it was the very gun which was used in the robbery. Hence the case against the appellants was proved beyond any reasonable doubts.

Mr. Nestory Paschal learned State Attorney for the respondents Republic did not oppose the appeal. The learned State Attorney submitted that the Prosecution witnesses did not identify the appellants.

The learned trial Resident Magistrate had relied on retraced confessions of the appellant without making inquiry to voluntary nature of the Caution Statements.

As regards exhibit PW7, which was tendered in Court by PW14 No. 3421 Detective Station Sergeant Sopilian, was wrongly admitted as PW14 was not the maker of the report.

This contravened the provisions of section 240 (4) of the Criminal Procedure Act. I entirely to along with the appellants and the learned State Attorney that the appellants were convicted on insufficient evidence.

I quash the convictions and set aside the sentences imposed on the appellants.

It is ordered that the appellants be released forthwith from prison unless held therein on other lawful charges.

Appeal allowed.

Order accordingly.


S. B. LUKELELWA,
JUDGE.

4th June, 2013

