

IN THE HIGH COURT OF TANZANIA

AT TANGA [SITTING AT KOROGWE]

CRIMINAL APPEAL NO. 45 OF 2013

*[Originating from Korogwe District Court Criminal Case No. 70 of
2013]*

YUSUPH ABDALLAH SINGANO @ GOD.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

U. MSUYA, J.

The appellant Yusuf Abdallah Singano @ God was convicted for the offence of armed robbery contrary to section 287A of the Penal Code [Cap. 16 R. E. 2002], at the District Court of Korogwe, at Korogwe.

The facts as alleged in the particulars of the charge sheet are that, on the 12/03/2013 at about 22 hours, at Msambiazi area Korogwe District, the accused did steal Tshs. 3,000,000/= and mobile

phone make Samsung valued at Tshs. 200,000/= all properties valued at Tshs. 3,200,000/= the property of one Josephine Shemsanga. Further that immediately before and after stealing, the appellant threatened PW1 Josephine Shemsanga by a pistol in order to obtain the said property.

Briefly the prosecution case as testified by the witness in proof of the case against the appellant was that, when PW1 was returning home from her bar business, which was not far from her resident a group of bandits who she could not identify ambushed her house and kept her under gun point. In the process she was robbed Tshs. 3,000,000/=. They took 15 minutes to detain her than she was released.

According to PW4 who was at the bar of PW1, as he was leaving the place, he passed through the residence of PW1 and saw a man storming PW1's house. He suspected something abnormal was occurring, he informed PW2 who was in the bar. Following that all the people who were in the bar responded for help. These witnesses said to have seen about four bandits escaping in motorcycle parked beside the road alongside that of the appellant.

According to them they managed to arrest the appellant whose motorbike could not start and suspected him to be one of the robbers.

In his judgment the trial court clearly observed that it was not disputed that the appellant was not seen by PW3 and PW4 robbing PW1. But the fact that he was at the scene of crime according to the evidence of PW2 Rajabu, PW4 Nuru and PW3 Hassan who chased the bandits he found the appellant guilty and convicted him accordingly referring to section 22 (1)(b) of the Penal Code [Cap. 16] which reads:-

22 (1) "When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing namely:-

(a).....

b) Every person who does or omits to do any act for purpose of enabling or aiding another person to commit the offence".

It is for the above reason that the appellant was convicted. In that he aided the bandits to escape.

Aggrieved by the conviction and sentence the accused preferred an appeal.

He lodged (10) ten grounds of appeal but the main ground is one, that is of identification.

At the hearing of the appeal the Appellant was unrepresented and Mr. Mfinanga represented the Respondent. The appellant prayed to the court to adopt the grounds of appeal as submitted.

In response, the Learned State Attorney Mr. Mfinanga supported the appeal. His reasons were that one, the incident occurred at night about 22.00 hours. Two in identifying him the witnesses did not clearly explain how they identified him. If there was light, what was the intensity of the light. Three the appellant was alleged to have been arrested in his motorbike parked on the road, how were the witnesses sure that he participated in the commission of the crime at the house of PW1. Four the Learned State Attorney raised the issue of the caution statement that it could not act as a basis of conviction because there was no independent evidence to corroborate it, because the evidence of PW3 and PW4 was not watertight as to the identification of the accused in the commission of the crime at the house of PW1.

So he prayed to the court to quash the conviction against the appellant and acquit him.

There is no dispute from the record and the trial Magistrate's judgment that PW3 and PW4 did not see the appellant robbing PW1. The appellant was seen in a motorbike, which according to the witnesses parked alongside that of the bandits who escaped. That when they were escaping one of the bandits jumped to the