

IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

(Tabora Registry)

(DC) CRIMINAL APPEAL NO. 194 of 195 OF 2013

CRIMINAL CASE NO. 50 OF 2011

OF THE DISTRICT COURT OF BUKOMBE

BEFORE:- HON. S. SWALLO Esq. RESIDENT MAGISTRATE

SENDEMA S/O CHARLESAPPELLANT

(Original Accused)

VERSUS

THE REPUBLICRESPONDENT

(Original Prosecutor)

JUDGMENT

14th & 29th August, 2014

S. M. RUMANYIKA, J

Charged with offence of armed robbery C/s 287(A) of the Penal Code Cap 16 RE 2002, the Appellants and two others were on

1/12/2011, convicted and sentenced by the District Court Bukombe to thirty (30) years term in custody. Not happy here they are. Infact it is appeal numbers 194 of 2013 and 195 of 2013 consolidated.

The appeals center to only two main points. The six (6) ground memoranda of appeals may so boil down like as under:-

- (1) The learned trial Resident Magistrate erred in law and fact. Not holding that the Appellants were not properly identified at the scene.
- (2) The Learned trial Resident erred in law and fact whereby convicting the Appellants on uncorroborated repudiated cautioned statements.

During the hearing, the Appellants did not have any useful submissions. They appear in person.

Mr. Miraji Kajiru Learned State Attorney represents the Respondent. In fact he supports the entire appeal. As the Appellants were not properly identified. Contrary to the law (Case of Waziri Amani V. R (1980) TLR 250). Which requires that unless all the possibilities of mistaken identity were eliminated and evidence is water tight, which indeed wasn't the case here, the Appellants were entitled to acquittal. No light intensity, Appellants' attire and distance between the Public witnesses and culprits were disclosed in evidence. Leave alone duration of the identification. The Prosecution case was

proved not beyond reasonable doubts. Submitted the learned State Attorney.

It is evident in a nutshell that as Pw1 and Pw2 were in bed about 02.00 am, some thugs broke into, assaulted Pw1 with Panga(s). While demanding some, they managed to take shs. 450,000/=. Then took him out and laid him down in the yard. He managed to identify them properly. As it was all over shinning. Because the solar energy light was on.

Though improperly and it appears late, the Appellants pleaded defence of alibi. Then repudiated the cautioned statements. Nevertheless, the trial magistrate just admitted them (exhibit P2). This one was too absurd. I will come back to it hereinafter.

The issue is whether the Appellants were properly identified at the scene at the material 02.00Am. It is trite law that evidence of visual identification at night is the weakest kind ever. Unless it is water tight, in that all the chances of mistaken identity eliminated, courts can not convict. There might be light in the room and outside probably in the yard for Pw2 to visualize though terrified, anything around yes! But the issue is whether he was capable of doing it free of any mistakes. It is trite law as argued by Mr. Miraji State Attorney that without witness state it categorically how brighter was the room/place, how far or near was the culprit, how long did it take him to identify the culprit (categories never closed), the visual

identification remains shaky upon which case could not have been proved beyond rational controversies.

But of more importance is the Appellant's cautioned statements repudiated. But the learned trial Resident Magistrate admitting them in evidence casually and without making any inquiries. As said, this was, with greatest respect not correct. It is trite law that whenever the voluntariness of an accused is queried on a statement made by him interviewed by the police this court, or any court subordinate hereto, has no option other than to conduct a trial within the trial or inquiries. As the case may be. After all there was nothing corroborative. At times, the learned trial Magistrate found it no longer safer to bank on the statements wholesale. The records speak it loudly:-

It is trite law that the confession admission on
retracted must be corroborated to support
conviction. Although the accused retracted
the confession this evidence of identification
corroborate the admission(the underline
is mine).

But as said, with the identification declared not proper and reliable, there can be nothing to corroborate the statements and if

anything, the statements (exhibit "P2") ought to have been be, and are, for the aforesaid reasons expunged from the records.

I will, though slightly with different reasons from Mr. Kajiru State Attorney's allow the appeal as hereby do. Decision and sentence by the trial court quashed and set aside respectively. Unless held otherwise lawfully, the Appellant be released forthwith.

R/A explained.

S.M. RUMANYIKA

JUDGE

28/08/2014

Delivered under my hand and seal of the court in chambers. This 29/08/2014. In the presence of the Appellants only.

S.M.RUMANYIKA

JUDGE

29/08/2014