

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPEAL NO 59 OF 2014

(C/f District Court of Bagamoyo Criminal Case No 76 of 2012)

1. IDD S/O RAMADHANI @ BOLE.....1ST APPELLANT

2. JUMA S/O CHACHA.....2ND APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last order: 25/02/2015

Date of Judgment: 9/03/2015

BONGOLE,J

Subsequent to a conviction of the two Appellants namely Idd s/o Ramadhani @ Bole and Juma s/o Chacha who were charged of Armed Robbery c/s 287 C of the Penal Code and sentenced to 30 years Imprisonment, by the District Court of Bagamoyo at Bagamoyo, the appellants being aggrieved by the said conviction and sentence, have preferred the present appeal armed with seven (7) grounds of appeal. Thus:-

1. That the trial magistrate misdirected himself in law and in fact by convicting both appellants in a case where the prosecution failed to adduce credible direct evidence linking them to the crime as charged.

2. That the trial magistrate grossly erred in law and in fact by convicting both appellants in a case where prosecution did not tender in evidence the hen(s) recovered by "P.W 7" with one prosper and identified by PW.5 the owner to directly connect them to the crime (cross examination of PW.7 by Mr. Madaha).
3. That the trial magistrate erred in law and fact by not drawing on adverse inference against the prosecution for not having summoned one (Kipara) who its alleged was found with the said hens as exemplified by PW.5 to come to testify as to how he got then (Examination in Chief PW.5).
4. That the trial magistrate grossly erred in law and fact by convicting both appellants in a case poorly investigated as the no inventory receipt was prepared for the (16) sixteen hens recovered dead by "PW.8" at Mtambani market, tendered for verification of the court to directly connect them to the crime.
5. That the trial magistrate erred in law and fact by convicting both appellants on circumstantial evidence whose inference(s) drawn against them were not proved by the prosecution.
6. That the trial magistrate erred in law and fact by convicting both appellants in a case where there were not reminded of the charge (plea) before commencement of the trial proceedings in compliance with section 27(2) of the magistrate court Act 1984.
7. That the trial magistrate erred in law and fact by convicting both appellants on the weakness of their defence.

On a date set for hearing of the appeal, the appellant appeared in person where they adopted the grounds of appeal as filed.

Ms. Felista Lelo learned State Attorney who appeared for the Respondent supported the appeal. She submitted that the evidence available in relation to the offence is doubtful and left several questions unanswered. She pointed out that the appellants were not identified at the scene of crime as the witnesses stated that they were unable to identify them. That the appellants were arrested basing on allegation that they sold the stolen chicken but it was not established if those chicken were the ones stolen on the material date and whether the appellants were the ones who stole those chicken.

That the prosecution side had a duty of proving its case beyond reasonable doubt but it did not do so.

Further that the evidence available was purely circumstantial. That the law requires circumstantial evidence to be corroborated with independent evidence of which in this matter there was none. In support of her argument she cited the case of **Obedi Andrea Vs. Republic Cr. Appeal No 23/2005** where it was held:-

"where a case rests on circumstantial evidence, such evidence must satisfy three tests:-

1. Circumstances from which an inference of guilty is sought to be drawn must be cogently and firmly established .
2. Those circumstances should be of a definite tendence pointing towards the guilty of the accused person.

3. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and no one else."

Further more she said, the evidence by "PW.5" who said, the stolen chicken were found in the house of Mr. Kipara who assisted the arrest of the accused/appellants. That the said Kipara was not called to testify and no any reasons that were assigned as to why he was not summoned. That we remain with questions if Kipara the received those chicken from the appellants and if it was true that those chicken were the ones stolen on the date of incident. Buttrressing this argument, she cited the case of **Rep. Vs. Constantine Cammeron, 2002 TLR 84** where the court held:-

"The circumstantial evidence must be Incapable of more than one interpretation in order to sustain a conviction. She therefore pray that the appeal be allowed."

I commend the learned State Attorney for pointing out the most obvious fact that before the trial court the prosecution case was not proved beyond reasonable doubt against the appellants. Having perused the proceedings and Judgment of the trial court I find that the trial court failed to examine and evaluate the evidence before it which was purely circumstantial as correctly pointed by the learned State Attorney. The chain as from where the incident occurred to the point of how the appellants were arrested was not linked. The chain was brocken and of

which irresistibly the evidence never pointed to the appellants guilty but their innocence.

That been said, I subscribe wholly to the arguments advanced by the learned State Attorney in supporting the Appeal.

In the upshort, I hereby quash the conviction and set aside the sentence of 30 years imposed against the appellants.

The appellants are to be set free unless lawfully held in for another course.

Appeal allowed.

S.B. Bongole
JUDGE
9/3/2015

9/3/2015

Coram: Bongole, J

For the 1st Appellant

For the 2nd Appellant

For the Respondent: Ms Masue S.A

C.C. Avelina

Ms. Masue: My lord the appeal comes for judgment

Court: Judgment delivered.

S.B. Bongole
JUDGE
9/03/2015