

**In THE HIGH COURT OF TANZANIA**

**AT BUKOBA**

**HC CRIMINAL APPEAL NO.10/2016**

*(Arising from criminal case No.33/2014 in the District Court of  
Bukoba )*

**METHOD DEOGRATIAS ----- APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**JUDGMENT**

**BONGOLE, J.**

**17.07 & 28.08. 2017**

At the District court of Bukoba the appellant was charged with and convicted of the offence of Armed Robbery contrary to section 287A of the Penal Code [Cap.16 R.E.2002]. He was eventually sentenced to statutory sentence of thirty years in jail.

Dissatisfied he appealed to this court on several grounds. The gist of these grounds is inter alia that the learned trial magistrate

erred to receive additional evidence and further erred to rely on witnesses who were not listed at the preliminary hearing. That the motor cycle registration card exhibit "P4" was illegally admitted. The appellant further complained that the trial court magistrate contravened section 240 (3) of the Criminal Procedure Act. The effect of his complaint is that the case was not proved against him beyond reasonable doubt.

The particulars of the offence in the charge sheet are that ***"METHOD S/O DEOGRATIUS on 13<sup>th</sup> day of February 2014 at Mugeza Kahororo dispensary area in the municipality of Bukoba in Kagera Region stole one motorcycle No.T771CTJ make bajaji boxer from one BEATUS S/O BENEZETH the property of PETER S/O EVARISTA and at or immediately before the time of such stealing did stab the said BEATUS S/O BENEZETH on his neck using a sharp object in order to obtain the said motor cycle."***

When the charge was read over to the accused /appellant he pleaded not guilty. In order to prove the case against him the prosecution called six witnesses. In defence the accused person/appellant defended himself.

Briefly, the back ground of this appeal is that on the fateful date that is, 13.02.2014 at Mugeza area within Bukoba Municipality, PW1 Sweetbert S/O Elias Mujemula hired a motorcycle of one Beatus Benezeth (the victim) for the purpose of private transport. The motorcycle was with registration No.T771CTJ make Bajaj Boxer. As he was about to hand it over to the owner at a shop owned by one Kyaruzi, the appellant arrived and asked to be taken to Kahoroho. PW1 told him that he was not a commuter - motorcyclist instead he called the victim, one Beatus Benezeth who was responsible with that task. The voyage was agreed to cost Tshs.1500/-. After PW1 had handed over the motorcycle to Beatus Benezeth and left for home, the two proceeded with the journey as agreed. The next day on 14/2/2014 PW1 got information that Beatus Benezeth had been stabbed by knife and was hospitalized at Bukoba Government Hospital. On the same date he went to see the victim when he told him that while on the way the appellant stabbed him and took away his motor cycle. He was involved in giving police statement and on 21/2/2014 he identified the appellant through identification parade.

Apparently, on 16/2/2014 the said motorcycle was found in possession of one Ashrafu S/O Rashid and upon being charged

with the offence of receiving stolen property he was convicted and sentenced on his own plea of guilty.

At the end of the trial the learned trial Magistrate was satisfied that the case against the accused person now the appellant was proved to the required standard. She accordingly convicted and sentenced him to thirty years imprisonment.

At the hearing before this court the appellant was unrepresented while the Republic was represented by Mr. Njoka learned State Attorney.

The appellant opted to wait for the Stated Attorney to begin first and responded later on.

Mr. Njoka resisted the appeal. He submitted that the complaint by the appellant that the trial court violated section 240(3) of the Criminal Procedure Act was baseless because the trial Magistrate gave him opportunity to object to the admission of the same at page 38 of the proceedings but he did not do so. That being the case he argued, there was no need to call the Doctor to tender the PF3.

Regarding the complaint that the judgment of the trial court had no point for determination contrary to section 312 of the CPA, Mr

Njoka submitted that the trial magistrate raised issues for determination at page 5 of the judgment and answered the same. He argued that since the issues raised were proved by the prosecution then, that was the point for determination required by the law under section 312 of the CPA.

Submitting on the complaint that the case was not proved beyond reasonable doubt, he stated that the evidence of PW1 who identified the appellant on the material date when he hired the motorcycle with registration No. T771 CTJ from the victim, one Beatus Benezeth was cogent. That after one day that is, 14.02.2014 PW1 was informed that Beatus had been stabbed and was admitted at Bukoba Government Hospital. He added that the evidence of PW1 was corroborated by that of PW2 A/INSP. Mbaruku Msonga who conducted the identification parade by which the appellant was identified by PW1 and PW5 Editha Godwin who stated that the appellant was his food customer and that she saw him hiring the motorcycle of the victim and the next day she heard that the former had been stabbed and his motorcycle confiscated.

To Mr. Njoka that was a proof that it was the appellant who stabbed the victim.

Regarding the complaint that there were witnesses who testified without being listed at the preliminary hearing, Mr. Njoka submitted that there are decisions which hold that section 192 of the Criminal Procedure Act does not require mentioning of the names of witnesses and exhibits at the PH. He was of the view that even if a witness's name was not mentioned at the PH that alone could not prevent him from testifying. In order to substantiate his submission he cited the cases of Bandoma Fadhil Makaro and another V. R, Criminal appeal No.14/2005 CAT Mwanza Registry (un reported) and Jackson Daudi V. R, Criminal Appeal No.111/2002; Mwanza Registry (unreported) where it was held that it is not necessary to mention names of witnesses and exhibits during preliminary hearing.

Concerning the statement of the victim tendered and admitted under section 34B of the Evidence Act [Cap. 6 R.E.2002], he briefly submitted that even if the same was to be disregarded for being tendered before giving ten days notice; there was still enough evidence to pin point the appellant that is, the evidence of PW1, PW2 and PW3. He thus prayed this court to dismiss this appeal for lack in merit.

On his part the appellant, submitted that the evidence of PW1 and PW5 was contradictory in that they referred to different dates on which the incident was alleged to have occurred. He stated that both of them alleged to have called one Beatus Benezeth to take a passenger but while PW1 stated it was on 13/2/2014, PW5 stated it was on 14/2/2014. He argued that this contradiction meant that the duo was not talking of the same incident.

He also challenged the identification parade arguing that he was not given his basic rights. Particularly, he stated that he was assaulted by a police and that he was lined up with people with different appearance and height.

Regarding the stolen motorcycle, he submitted that the same tendered at the trial as exhibit was different from the one alleged to have been stolen. He stated that the one tendered was MC 448 AHX different from the one that was indicated in the charge sheet that is, T771 CTJ.

The appellant further faulted the conduct of this case at the trial in that he was materially prejudiced when a person alleged to have received the stolen motorcycle from the appellant pleaded guilty in his absence and was subsequently conditionally discharged. He on this account prayed this court to allow the

appeal as the prosecution had not proved the case to the required standard.

The main issues for determination are that of identification and circumstantial evidence.

It was the submission of Mr. Njoka that the evidence of PW1, PW2, PW3 and PW5 were strong enough to convict the appellant even in absence of other pieces of evidence such as the statement of the victim one Beatus Ebenezech. The evidence at the trial is to the effect that PW1 stated that he identified the appellant on the material date by the description of being short, long hair wearing short sleeve shirt with white colour dots and black trousers. He latter on identified the appellant on the identification parade exhibits E1, E2 and E3 respectively which was conducted by A/Insp Mbaruku(PW2) and F.2530D/Sgt Amos (PW6). I agree with Mr. Njoka that this evidence was cogent and reliable and was not shaken by the appellant in his defence. In other words, the evidence of PW1 on identification of the appellant on the material date was corroborated in identification parade conducted by PW2 and PW6 in which PW1 and PW5 further re-identified the appellant.



The motorcycle was found in possession of the second accused person who showed the police where he obtained it. He took them to the appellant as per the unshaken evidence of PW6-F.2530D/Sgt Amos. In here the chain of circumstances connecting the appellant to the offence as he stood charged were un-broken. 'PW1' saw him hiring the said motorcycle from Beatus Ebenezech. The said Beatus Ebenezech was stabbed by the said customer as per exhibit P3 (PF3). PW3 the tenant in the same house saw the said motorcycle packed inside the fence while dirty and the appellant told him that it belongs to his friend. The 2<sup>nd</sup> accused person directed the police to the appellant's house and pointed him to be a person who gave him that motorcycle as per the proceedings at page 39 per the testimony of PW6 on record.

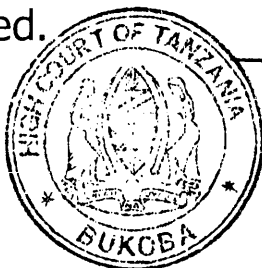
Though the appellant tried to complain that the said motorcycle was not proved to be the same, the record as per exhibit P4 shows that there were two cards whereby it was transferred and re-registered as MC44 from T77CJT with the same chassis No.MD2A18Z5DWF33667. Therefore, the complaint is baseless. All these pieces of direct and circumstantial evidence irresistibly pointed to none but to the guilty of the accused person now the appellant.

It is a settled law that when circumstances of a case corroborate each other leading to the guiltiness of an accused person conviction can be grounded basing on such factors or circumstances. This was decided in the case **of Mswahili M. V. Republic [1977] TLR No. 25** where it was held thus:-

*“In a case where facts are based on solely on circumstantial evidence corroborating each other a conviction is possible if the circumstantial evidence leads irresistible to an inference of guilt and should be incapable of any other reasonable explanation.”*

In view of the fore going, I find the trial court’s findings of facts correct and the subsequent conviction and sentence justified. The appellant’s complaints are complaints of saving his skin from the sentence mated on him, the skin which I am not going to save.

That been said, this appeal is want of merit and it is hereby dismissed.



  
S. B. Bongole

Judge

28/8/2017

Date: 28/8/2017

Coram: Hon. S.B. Bongole, J.

Appellant: Present

Respondent: Present


B/C: Respicius

**Mr. Njoka:**

My Lord, the appeal comes for judgment.

**Court:**

Judgment delivered in the presence of the appellant in person, Mr. Njoka learned State Attorney for the respondent in my presence this 28<sup>th</sup> August, 2017.

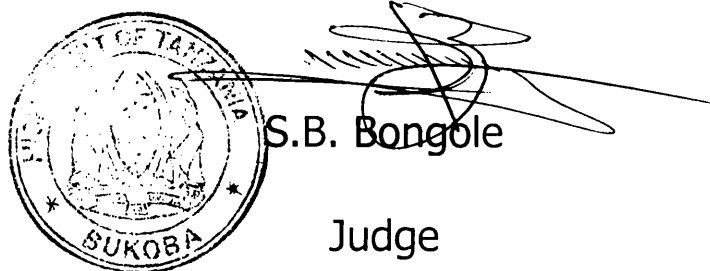


S.B. Bongole

Judge

28/08/2017

Right of Appeal explained.



S.B. Bongole

Judge

28/08/2017