IN THE HIGH COURT OF TANZANIA

AT DODOMA

DC CRIMINAL APPEAL NO. 110 OF 2019

(Originating from Criminal Case No. 138 of 2018 from Singida District Court dated 31st October 2019)

BETWEEN

JUMA S/O IDD @ DUDE.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Mansoor , J.

Date of Judgment : 5th August, 2020

JUDGEMENT

The appellant herein was tried by the District Court of Singida and he was convicted for the offence of Unlawful Cultivation of Prohibited Plants contrary to Section 11(1(a) and (2) of the Drugs Control and Enforcement Act No. 5 of 2015. The particulars of the offence as it was alleged by the prosecution are that, on 8th day of March 2o017 at about 17:40 hrs at Mnung'una Village, Msizi Ward, Ilongelo Division within the District and Region of Singida the appellant was found unlawful cultivating prohibited plant

being sixteen (16) cannabis plants commonly known as Bhangi weighing 348 grams.

Aggrieved, the appellant appealed before this court raising nine (9) grounds of appeal, the said grounds are repetitious and overlapping but in summary these are, that, he was wrongly convicted with the offence by the trial court as the prosecution failed to comply with the mandatory provisions of the law in respect of search warrant and seizure and that there was no certificate of seizure tendered by the prosecution. That the trial court wrongly admitted the photographs as they were not certified in compliance with the conditions set for preparation of photographic prints as per S. 202(1) of the Criminal Procedure Act Cap 20 R.E 2002 (the CPA). That the whole prosecution evidence was not corroborated. That the ownership of the alleged farm with the 16 cannabis plants was not proved to be his. That the alleged 16 plants of cannabis was not proved by the witness from the Government Chemist. That he was convicted basing on weaknesses of his defence and not on the strength of the prosecution case and lastly that he was wrongly convicted as the trial court based on the

caution statement which was procured illegally in contravention of SS. 50 and 51 of the CPA.

This appeal was argued by way of written submissions where by the appellant who appeared in person prayed this court to adopt his grounds of appeal as his submissions and there was no rejoinder whereas the respondent Republic was represented by Ms. Kezilahabi-Learned State Attorney who filed her written submissions.

I have read and carefully considered the parties' submissions and I have read and re-evaluated the evidences of both parties presented before the trial court.

Starting with the first ground of appeal that there was non-compliance of law by the prosecution in respect of search warrant and seizure in that there was no certificate of seizure tendered by the prosecution, Ms. Kezilahabi argued that the certificate of seizure was tendered before the trial court by PW5 and it was admitted as Exhibit P3. As regards the search which was conducted, she argued it was an emergence as a result the police officers searched the appellant farm in absence of search warrant . The learned counsel based her argument on S. 42(1(b) of the CPA.

My perusal on the trial court's record shows that, when PW5 was testifying for the prosecution he tendered a Certificate of seizure which was admitted by the trial court marking it as Exhibit P3. The said exhibit was written at Mnung'una Village by A. S. P Masasi on 8th March 2017 where by sixteen (16) seedlings of bhang were seized in witness of one Happiness Kilongola and Ramadhan Ismail. The exhibit mentions the person who was searched was the appellant herein.

In this regard the assertion that the appellant was wrongly convicted because there was no certificate of seizure is demerit.

On the issue of absence of search warrant, PW5 told the trial court that on the fateful date he was on patrol with his fellow policeman A.S.P Masasi at Mnung'una-Manga area when they were tipped that there was a farm planted with seedlings by the appellant, where upon they contacted the village leaders one Happiness and Ramadhan whom together they visited the said farm. Although there is no more explanation as to why they failed to procure a search warrant, the reason that they were on patrol and that is where they got information of the farm having cannabis seedlings, that was enough for

them to proceed with the search without the search warrant because doing otherwise could have delayed the search which might have resulted to anything like destruction of the seedlings or even the appellant absconding the jurisdiction upon hearing of the leakage of information of his cannabis seedlings to the police officers. On this, therefore this Court sides with Ms. Kezilahabi that the circumstances was of emergency under S. 42(1)(b) of the CPA, hence the search without a search warrant was justifiable.

Furthermore, all of the prosecution witnesses including the appellant's mother, PW4 testified before the trial court that upon interrogation by the police at the appellant's homestead, the appellant admitted to be growing bhang in his farm and he thereafter led them to the said farm where by sixteen(16) seedlings were seized. In addition to that the said interrogation was done in presence of his mother PW4 (whom in his defence he said he was in good terms with her), the Village chairman PW1, the Village Executive officer PW2 and the area chairman PW3, this means that there was nothing to suggest that the appellant was in imminent fear that he confessed and cooperated with the police because he was in fear. All

these circumstances satisfies this Court to support the trial court's finding which based on the certificate of seizure although the farm was searched without a search warrant.

As regard the ground of appeal of wrong admission of photographs. I have perused on the typed proceedings and the originals, there is nowhere the trial court admitted the photographs nor was it/them tendered. Then this ground dies as it stands.

Coming to the ground of appeal that the prosecution evidence was not corroborated.

This ground attracts this Court to asses almost the whole prosecution testimonies. The village chairman PW1, the Village Executive Officer PW2 and the area chairman PW3, all told the trial court that it was the police officers who up on their arrival at Mnung'una Village they asked them to take them to the appellant's house as they had information that he grew bhang in his farm. That at the house of the appellant who stayed with his mother one Mwajuma Mohammed PW4, after interrogation by the police officers, the appellant admitted to be cultivating bhang in his maize farm and he thereupon went on to show them the seedlings, sixteen (16) in number. The

same was testified by PW5 the police officer who added that, the appellant at the farm, having shown them the bhang seedlings, he told them that he was using it himself in order to gain strength for farming. These testimonies was corroborated by the appellant's mother, PW4, who lived with the appellant though she did not go with them to the farm, but testified that upon PW1, PW2, PW3 and PW5 arrival at their home and interrogation, the appellant admitted to be having bhang in his farm and they thereupon went to the farm and uprooted a total of 16 seedlings. PW4 is seen to be well versed with his son's dealings as she told the court that she attempted to stop him from cultivating bang but in vain, ending up being threatened to be beaten should she uproot them.

As regards these testimonies, the trial court relied upon them in reaching its decision, therefore since there was enough corroboration, this Court finds that the appellant was rightly convicted.

As far as ownership of the alleged farm. This ground of appeal is also demerit, because as rightly pointed out by Ms. Kezilahabi that, what was before the trial court was not about the ownership of the farm but cultivation of bhang. Indeed the prosecution proved the person who

was cultivating bhang to be the appellant through the mother of the appellant, PW4, despite his admission when he was interrogated, as she said at pg. 16 of the typed proceedings;

'' I told him to stop cultivating bhang, he refused.

He told me if I uprooted them, he will beat me.

He was therefore guarding them as were going to

the farm to find green vegetables.''

As regards the ground that the alleged 16 plants of cannabis was not proved by the Government Chemist. This court also finds that it is meritless since PW6 the police officer in investigation department at Singida District tendered the Chemist Report which was admitted without objection by the trial court as Exhibit P5. The Chemist reported that his investigation revealed the sample submitted was bhangi scientifically called *Cannabis Sativa.* For the prosecution this was enough instead of calling a witness from the Government Chemist as the appellant had wanted. More so the appellant did not object its admission in the trial court.

Coming to the ground that the appellant was convicted basing on weaknesses of his defence and not

on the strength of the prosecution case. Having seen the whole evidences from the prosecution side in the trial court as shown above, this Court is of the view that the prosecution evidence was strong which proved the case beyond reasonable doubt and in his judgement the trial magistrate assessed the testimony from both parties in reaching into his decision.

In respect of the last ground of appeal, that the appellant was wrongly convicted as the trial court based on the caution statement which was procured illegally in contravention of SS. 50 and 51 of the CPA.

On this, the facts are that the appellant was arrested on 8th March 2017 at 17:40hrs and the caution statement, Exhibit P1 was recorded on 10th March 2017 contrary to S. 50(a) of the CPA which requires it to be taken within 4 hours after arrest. There is no any explanation attached to show as to why there was such a delay as required by S. 51 of the CPA, then it follows that, that caution statement was to be expunged by the trial court for none compliance of the law. However although the trial court failed to expunge the caution statement and it used it in convicting the respondent, still this Court cannot allow this appeal since the trial court considered it not in isolation of

other evidences but in connection with other prosecution evidences which are strong and could stand by their own that is to say they proved the offence beyond reasonable doubt as shown above and that of the appellant who in fact in his defence before the trial court he confessed to have grown bhang in his farm as he was using it in order to get strength for farming.

In light of the foregoing this court finds no reason to interfere with the findings of the trial court, so it is left undisturbed by dismissing this appeal in its entirety.

It is so ordered.

Pronounced in open Court at Dodoma this 5th Day of August, 2020.

LATIFA MANSOOR

JUDGE

5th August, 2020