

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**DISTRICT COURT CRIMINAL APPEAL NO 14/2020**

***(Originating from the District Court of Mbinga at Mbinga Criminal  
Case No.64/2019)***

**STEVEN AUGUSTINO.....APPEALANT**

**VERSUS**

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

**JUDGMENT**

**DATE OF LAST ORDER: 29/7/2020**

**DATE OF JUDGEMENT: 6/8/2020**

**BEFORE: S.C. MOSHI, J.**

The appellant was arraigned before the District Court of Mbinga for the offence of grievous harm contrary to section 225 of the Penal Code, Cap 16. The particulars of the offence shows that the appellant on 6<sup>th</sup> day of July, 2019 at Amani Makoro village within Mbinga District in Ruvuma

Region unlawful did grievous harm to one France Haule by cutting him with a machette on his head and left hand.

The appellant denied the charge hence the case proceeded to a full trial. The appellant was found guilty and was convicted accordingly, consequently he was sentenced to serve a term of twelve (12) months in jail. The appellant was also ordered to pay compensation of Tshs.500,000/= to the victim.

Aggrieved by the decision i.e. judgement and sentence, he preferred the appeal at hand on five grounds of appeal as enumerated here under: -

*1. That, the trial court erred in law and fact by convicting the appellant in total disregard of the settled and established principles of law applicable in our criminal jurisprudence, to wit: -*

- i. On the consequence of the prosecution's failure to produce exhibits an object which purportedly to have used to harm the victim.*
- ii. on the duty of the court to value and give due credit on the prosecution evidence which contains circumstantial and hearsay evidence.*

2. *That, the Learned Resident Magistrate grossly misdirected himself in failure to consider/ properly analyze the evidence adduced by the defense.*
3. *That, having regard to the evidence on record and the circumstances of the case, the learned Resident Magistrate grossly misdirected himself in fact and law in convicting the appellant basing on mere words without prove.*
4. *That, the learned Resident Magistrate grossly misdirected himself by sentencing the appellant to pay TZS. 500,000/= without justification.*
5. *That, a notice of intention to appeal was given within the prescribed period, a copy of judgement was received on 27<sup>th</sup> January, 2020 and a copy of proceedings was received on the 3<sup>rd</sup> March 2020. The appeal has been filed within the prescribed period.*

Having gone through all grounds of appeal I noted that the fifth ground of appeal was not supposed to be included as a ground of appeal as it just narrates the time within which the appeal was filed, and time is not at issue. The first, second and third ground of appeal revolve around analysis of evidence hence I will determine them together. The fourth ground of appeal will be dealt separately.

I have considered the relevant law, the evidence as a whole and submissions.

On the first, second and the third points, there is no dispute that the offence was committed in the morning when PW1 (the victim) was tilling his farm. Therefore, it was during broad day light. PW1 while working at his farm was ambushed by an unidentified assailant who cut him by a sharp object in the head. He however saw the assailant when the assailant attacked him for a second time by a machette on the forehead. He identified the assailant to be the accused person, now the appellant who is his uncle. Observation on the PF3 (Exh. P.1) regarding the extent of injuries were inconsonance with PW1's testimony. Also, PW2, PW3 and PW4 saw the wounds.

Therefore, the evidence was direct evidence, it was not circumstantial evidence nor hearsay evidence as complained in ground number one. Furthermore, the evidence was not mere words as complained in ground number three, rather the evidence was direct evidence as stipulated under S. 62 (1) (a) of the Evidence Act, Cap.6 R.E 2019.

In regard to the non-production of exhibit, I agree with the respondent's submission that the case of **Emmanuel Saguda @Sukuke and Another V.R**, Criminal Appeal No. 422 of 2013(CAT) is distinguishable from the case at hand for the reason that in **Emmanuel Saguda @Sekuke** (supra) the offence involved "unlawful possession of weapons", therefore presence or production of the object was necessary.

It is apparent on record that defense evidence was dully considered, see page 7 of the judgement. The defense evidence shows that the victim and appellant fought however the trial magistrate analyzed it but found that it could not cast doubt on the prosecution's evidence.

The fourth ground of appeal. It is common ground that the victim sustained injuries hence the court has discretion to order compensation, see section 31 of the Penal Code, Cap. 16 R.E 2019.

That being said, I find that the appeal has no merits. Consequently, it is dismissed on its entirety.

Right of Appeal Explained.



  
**S. C. MOSHI**

**JUDGE**

**06/08/2020**