

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

CRIMINAL APPEAL NO. 44 OF 2020

(Originating from Criminal Case No. 98 of 2019 Tanga District Court,)

SAMWEL JULIUS @ BONGE..... APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

MRUMA, J.

The Appellant Samwel Julius @ Bonge was charged on 26th July 2019 with two counts.

Count 1: Burglary contrary to Section 294 (1) (a) and (2) of the Penal Code [Cap 16 R.E. 2002]

The particulars of the offence are that on 8th day of April, 2019 at night hours at Usagara area within the city and Region of Tanga did break and enter in the dwelling house of one Hamud Mohammed with intent the commit an offence of stealing therein.

Count 2: Stealing contrary to section 258 (1) (2) (a) and 265 of the Penal [Code Cap 16 R.E. 2002].

Particulars of the charge being that on 8th April 2019 at Usagara area within the District City and Region of Tanga did steal one Television make Bravia worth Tshs. 1,900,000/= one stand Fan make Dolphin worth Tshs. 200,000/=, One Carpet worth Tshs 150,000/=, One DVD and Speaker make Sony worth Tshs. 600,000/= all make total of Tshs. 2,850,000/=.

The Appellant pleaded not guilty to all counts. The prosecution conducted the trial by calling five (5) witnesses. After a full trial, the Appellant was convicted for two offences and was sentenced to 4 years imprisonment on the first count and three years' imprisonment for the second count of stealing. Both sentences were ordered to run concurrently.

The Appellant dissatisfied by the conviction and sentence of the learned trial Magistrate has appealed to this court for quashing of the said orders. The petition of appeal filed in court on 8th July, 2020 contained four (4) grounds namely:

- i. That the learned trial Magistrate erred in law and in fact by failing to analyse that there was no proper identification of the Appellant which tendered before the court as exhibits.

- ii. That the learned trial Magistrate erred in law and in fact by failing to notice that there was no confession statement of the Appellant which tendered before court as exhibit.
- iii. That the learned trial Magistrate erred in law and in fact by acting upon exhibit P2 the TV make Sony Bravia which lacks neither prior description nor conclusive authenticity ownership receipt.
- iv. The prosecution did not prove the case beyond reasonable doubt.

The reading and perusal of the grounds of appeal can be summarized into one. That the prosecution did not prove its case beyond reasonable doubt. It is trite law that the duty of the first appellate court is to reconsider the evidence, evaluate it and draw its own conclusion ***[see Okeno V Republic [1972] EA 32].***

As stated before, the prosecution at the trial called five (5) witnesses.

PW1, Hamoud Mohamed Abdallah, a resident of Usagara East area within Tanga City stated that on 08/04/2019 at about 5.00 hours he woke up for a morning prayer. It was his testimony that when he looked around his sitting room, he realized that his TV type Sony Bravia black in colour with Silver stripes, serial No. 1045411, his floor carpet and stand fan (Dolphin)

were missing. He proceeded to the main door and found that it was broken.

On 17/06/2019 when he was watching news on a local Tanga Television station he saw and heard police pronouncing about some items which were recovered from persons who were suspected to be thieves. On the following day i.e. 18/06/2019 he visited Chumbageni Police Station where he was able to identify one TV set, as being one of his properties when his house was burgled into and his properties stolen on 08/04/2019.

PW5 DC Lucas, who is a police officer stationed at Chumbageni Police Station testified that on 14/06/2019 on receipt of information from an informer they went to Magunduro area in Mabokweni where the Appellant was living. They arrested the Appellant and seized a motor cycle which was suspected to have been stolen. His testimony was corroborated by that F. 935 Dc Hery (Roy) who testified that he interrogated the Appellant on 14/06/2019 and he confessed to have stolen from PW2 a Sony Bravia TV set which he sold to Prisca Leonce who was charged as third accused.

This evidence was confirmed by the testimony of the second accused Prisca Leonce Rauya (DW2) who told the court that she bought a TV set

from the Appellant for Tshs. 450,000/= but he paid Tshs 350,000/= leaving a balance of Tshs. 100,000/= unpaid.

D.CPL Yohana (PW3) a police officer stationed at Chumbageni explained how the Appellant took him to Magomeni area where he sold a Sony Bravia TV to the third accused Prisca Leonce (DW2). He stated that he was in the company of WP Nangeta and DC Mofu, among others. They arrived at the 3rd accused's home. They called the area chairperson one Angetile Mwakipesile and went together to the third accused home where they found the 2nd accused. The second accused identified the Appellant as the person who sold the TV in question to the 2nd accused, who is his sister. The second accused confirmed the testimony of D.CPL Yohana (PW3).

At the close of the prosecution case, the Appellant was placed on his defence. He gave a sworn testimony. He stated before court that on 14/06/2019 while at his homestead some people who introduced themselves as police officers went there and arrested him. He further stated that he was taken to Chumbageni Police Station. At Chumbageni Police Station he was informed that some people had mentioned him as a suspect of house breaking and stealing.

It was further his evidence that while under police custody two persons were brought and were asked by the police to identify him as Bonge but they denied.

On the appeal the appellant reiterated the contents of the petition of appeal. His main concern of at the appeal was that he was neither arrested in connection with the offence charged, nor was he found in possession of any of the properties alleged to have been stolen.

Mr. Mangowi, learned state attorney who represented the Republic/respondent opposed the appeal and urged the court to uphold both conviction and sentence. He maintained that the evidence by prosecution witnesses established the case against the Appellant beyond reasonable doubt. He urged this court to find that there was evidence to confirm the finding of the trial court. It is the Appellant who led the police to recover the stolen TV.

I have carefully considered the evidence by the prosecution, the defence offered by the Appellant and the arguments of both parties to this appeal. The main issue in this appeal is whether at the trial there was sufficient evidence to sustain the conviction and sentence of the Appellant.

In the case before me PW D.CPL Yohana (PW3) testified that on 14/06/2019 he was directed by the OC-CID to go with the Appellant to the 3rd accused home. He mobilized his colleagues WP Nangeta and DC Mofu among others, to visit/go to the 3rd accused home. It was his evidence that they were led to the third accused home they found the 2nd accused who identified the Appellant. The Appellant informed him that that is where he sold the TV. They recovered the TV in the 3rd accused's bedroom. This is the TV which the complainant (PW2) identified as his stolen TV.

It is on record that at the home of the 3rd accused the police recovered one set of TV which the 3rd accused claimed to have bought from the Appellant. The TV was identified by PW2. The recovery of the TV at the home of the third accused and the testimony of the 2nd and third accused which is to the effect that the 3rd accused bought it from the Appellant, established the ingredient of actus reus.

There is cogent evidence from PW1, Pw2, PW3, Pw4 and Pw5 showing that PW2 identified the TV as his TV which was stolen during the burglary of the house. There was no plausible explanation from the Appellant denying to have sold the TV to the third accused. On scrutiny of the evidence, I am

of the holding that between the burglary and stealing of the TV, arrest of the Appellant and its recovery at the homestead of the 3rd accused there is no intervening factors to weaken inference of guilt. The circumstantial evidence addressed unerringly points to the guilty of the Appellant. It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

- i. The circumstances from which an inference of guilty is sought to be drawn must be cogently and firmly established.
- ii. Those circumstance should be definite tendency unerringly point towards guilt of the accused.
- iii. 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 non-else. It is also necessary before arriving the inference of the accused guilty from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.

In applying the test on circumstantial evidence to the instant case I am of the considered opinion that the evidence by Pw2 that his house was

burglared into and a TV Sony Bravia with serial No. 1045411 among other properties stolen therefrom, which evidence was not challenged, coupled with that of PW3 on how the Appellant led the police to recover the same TV from DW2 taken together with that of DW2 and DW1 which was to the effect that DW2 bought that TV from the Appellant places the Appellant at the scene of crime.

The learned trial Magistrate considered the evidence of both sides. The Appellant in his defence told the court that the persons were brought in police station to identify one Bonge but they could not identify him as Bonge. He did not challenge DW1 and DW2 evidence that he sold the TV to DW2.

Given the above consideration, I find no merits on this appeal to compel this court to interfere with the findings, conviction and sentence passed by the trial court.

In view of the foregoing, I am satisfied that the Appellant was properly convicted on watertight evidence and the sentences passed on count I and II are lawful. The appeal on both conviction and sentence lacks merit. Accordingly, it is dismissed.

It is so ordered.




A.R. MRUMA

JUDGE

23/03/2020