

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

HC. CRIMINAL APPEAL NO. 206 OF 2019

(Original Criminal Case No. 193 of 2018 of the District Court of Nyamagana District at Mwanza)

HASSAN ABEID SAKARA @ HANCY..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

20.4.2020 & 29.5.2020

U.E.Madeha J

The appellant along with one Makoli Chacha Makoli, arraigned in the District Court of Nyamagana in Mwanza for the offence of armed robbery contrary to section 287A of the Penal Code, Cap 16 (R. E. 2002) as amended by Act No. 3 of 2011. At the end of the trial, he was found guilty, convicted and sentenced to thirty years imprisonment. Makoli Chacha Makoli was acquitted on the trial Court. Being aggrieved, he has come to this Court on a first appeal.

The case for the prosecution at the trial was briefly to the following effect: It was 00:00 hours when Anastazia Wales was walking through the mosque, where she was heading to his home at Mabatini Street. She was

telephoned by Juma Jonas telling her to wait for him at the street next to mabatini mosque, while waiting for his man to arrive she was also holding a wallet that had money in it. People who were holding a bush knife came and began to take her wallet and take Tshs 130,000, the victim says that, she recognized the appellant by using the bright light outside the mosque. He cut her head with a sword. At the material time Juma Jonas was standing sideline failing to do anything fearing the appellant. The incident itself took ten minutes. Juma Jonas did not identify the appellant, although he stayed side lines to the victim. The appellant's caution statement was received in evidence as exhibit PA and PB. The incident of armed robbery happened on 16.9.2018, the appellant's was arrested on 23.9.2018 at a liquor club. The trial Court sustained the appellants' convictions, mainly on the basis of identification and the appellant's cautioned statement, the learned trial Magistrate found the light burning in the mosque to have been sufficiently intense for watertight identification.

At the hearing of appeal before me, on 20.4.2020 the appellant appeared in person, unrepresented Ms. Sophia Mgasas, the Learned State Attorney who represented the Republic.

Defending himself, he faulted the decision of the Court below that, evidence on identification was insufficient to mount the conviction. He challenged the testimony of PW1 on the issue of the identification and the appellant description, the distance between him and PW1 was not mentioned. Whether he was masked or not.

For the Republic Ms. Sophia Mgasas expressed her stance that, she supported the appellant's conviction. PW1 correctly identified the appellant because at the scene there were flashes of flaming light from outside the mosque that made the victim see clearly the appellant, the armed robbery incident took place over ten minutes which was long enough to identify the appellant. In connection with the caution statement being received in evidence as exhibit PB. So, the appellant's caution statement is the property of the accused, not otherwise.

With the foregoing response of the Learned State Attorney the appellant stated that, the prosecution side must have conducted the identification parade. The prosecution side did not prove this case beyond reasonable doubt.

In view of the grounds of appeal raised the issue here is whether the prosecution side proved its case beyond reasonable doubt. In this case the

most reliable evidence is the PW1 evidence and the caution statement evidence. The evidence of PW1 alleges that; the appellant committed armed robbery by stealing a wallet containing money in it Tshs. 130,000. PW2 was with PW1 at the scene of an event, he could not identify the accused who committed the incident at the scene, PW1 had seen the accused hide under a mango tree and later emerged after stealing money he saw him clearly. Other reliable evidence is the evidence of the appellant's caution statement. After the inquiry the Court did not state whether the information was given voluntarily, the main responsibility for conducting the inquiry is to assess whether the caution statement was voluntarily made, as shown in **Shija Luyeko V. Republic** [2004] TLR 254

(i) A cautioned statement is admissible in evidence if it is proved that it was voluntarily made.

(ii) The court considered and accepted the truthfulness and voluntariness of the cautioned statement and therefore was entitled to convict without corroboration.

Given that, the lower court did not find if the caution statement was voluntarily or involuntarily made. The remaining PW1 evidence which is insufficient to convict the appellant. The prosecution has not proved its


case to the required standards beyond reasonable doubt. There was no identification parade which was conducted by the police as the offence was committed at night, the complainant did not know the appellant prior to the incident, identification parade was necessary taking into consideration that, the offence took place at night and the appellant was arrested a week later.

The above considerations suffice to dispose of this appeal and there is no need for me to engage myself on the other complaints raised in the memorandum of appeal.

In the result, I find the appeal by Hassani Abeid Sakara Hancy to have been filed with good cause. I accordingly allow it. Conviction entered against the appellant is quashed and sentences imposed on him is set aside. The appellant is to be set at liberty forthwith unless otherwise held in connection to lawful cause.

DATED and DELIVERED at **MWANZA** this 29th Day of **MAY** 2020.




U.E. MADEHA
JUDGE
29/5/2020