

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

DC CRIMINAL APPEAL NO. 89/2019

(Original Criminal Case No. 382 of 2018 in the District Court of Moshi at
Moshi)

EDWARD RICHARD MUSHI

VERUS

THE REPUBLIC

JUDGEMENT

16/11/2020,16/2/2021

MWENEMPAZI, J.

The appellant was charged in the District court of Moshi and convicted with the offence of robbery with violence contrary to section 285 and 286 of the Penal Code Cap. 16 R.E 2002. He was sentenced to fifteen (15) years imprisonment.

In order to challenge the decision of the District court (Hon N. E. Mwerinde RMS) the appellant has filed this appeal raising seven (7) grounds of appeal for the purpose of brevity I will mention them while dealing with the appeal.

At the hearing the appellant was unrepresented and the respondent (Republic) was being represented by Ms. Kassim Nassir, Learned State Attorney.

The appellant in his submission has prayed that the court considers the grounds of appeal and make decision which will have the effect of allowing the appeal.

The Respondent's counsel on his part supported the conviction and sentence which was given to the appellant. The counsel submitted on the 1st ground separately and the 2nd - 7th ground of appeal was argued together.

The first ground of appeal was that the magistrate erred in law and fact in failing to draw an inference negative to prosecution for failure to tender a registration card of a motor cycle alleged to have been robbed by the appellant. According to the Learned State Attorney the offence with which the appellant was charged with did not require proof of the property alleged to have been stolen. In this case the stolen property is a motorcycle, MC 270 ATA make Fekon, red in colour.

The prosecution's failure to bring the registration card did not create any doubt on the part of the prosecution case. It was not required to prove ownership of the stolen property. On that ground he prayed the appeal to be dismissed.

Also, on the 2nd -7th grounds the counsel submitted that they are baseless. He submitted that the prosecution proved their case and the appellant failed to raise any doubt which may be resolved in his favor.

According to his submission the counsel showed how the prosecution had been able to prove their case beyond reasonable doubt. The evidence by PW1 Ombeni Petro Mabai (page 9-11) shows that the appellant violently grabbed his motor cycle with registration No. MC 270 ATA Fekon red in colour on the 4/5/2018 at Weruweru area.

The appellant pushed the witness and then grabbed the motor cycle. The appellant was with his colleague; the event took place early in the morning. PW1 was able to see and recognize him (appellant). There is no doubt, the offence was proved beyond reasonable doubt and further to that the testimony of PW1 was corroborated by the testimony of PW3 Nsia Wilbard Moshi. She testified that on the fateful date (4/8/2018) she saw the appellant as passenger on the motor cycle of PW1. The appellant has failed to raise any doubt. He just denied the allegation leveled against him.

In rejoinder the appellant has submitted that the evidence relied by the prosecution is hearsay. The witnesses were called by phone. No proof of ownership of the motorcycle was tendered.

I have read the record and the only question is whether the appellant was positively identified by PW1 as testified. PW1 has testified that he was hired by PW3.

In the testimony of PW1, he said he was hired by a customer on 4/08/2018. He took her to the destination. On his way home, he met Edward who hired him again so that he takes Edward and his colleague to Kimboshi Village. PW1 did not know Kimboshi village but he told them he knew Weruweru area. They told him to take them to Weruweru area. On arrival they gave

him 10,000/=, while he was looking for change, they robbed him money and pushed him and they robbed a motor cycle. The witness PW1 reported immediately to his brother who went to the Police.

Apparently, the appellant admitted and attempted to show where the motorcycle was sold and also attempted to escape. The Evidence by PW3 is a bit not straight forward. She has been recorded to identify the complainant as an accused. However, her story shows at Kagera Bus Stand, they met two boys which story now brings in the story of PW1.

My view, the evidence by the witness PW1 and PW3 has substantial difference which lacks clarity in the identification of the accused. Under the circumstances, there is enough doubt to be resolved in favor of the appellant.

The appeal therefore has merit and is allowed. Judgement of the trial court is quashed, sentence set aside and the appellant should be released forthwith unless otherwise he is lawfully being held. It is ordered accordingly.



T. M. MWENEMPAZI

JUDGE

16/2/2021