

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

**HIGH COURT CRIMINAL APPEAL NO. 21 OF 2021**

(Original Criminal Case No. 52 of 2019 of the District Court of Ukerewe District)

**JOEL ALEXANDER & 4 OTHERS..... APPELLANT**

**VERSUS**

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

**JUDGMENT**

**5<sup>th</sup> & 18<sup>th</sup> May, 2021**

**RUMANYIKA, J.:**

Essentially the appeal is against the 15/10/2020 conviction and custodial sentence of 30 years for the offence of armed robbery Contrary to Section 287A of the Penal Code Cap 16 R.E. 2019 (the code). Together and jointly with three (3) others (not in this appeal) Joel Alexander and Laurent Julius (according to memoranda filed on 16/11/2020 and 05/02/2021 respectively for convenience of the appeal (the 1<sup>st</sup> and 2<sup>nd</sup> appellants) respectively having had not been happy. Here they were. With respect to the 1<sup>st</sup> count of Conspiracy to Commit Offence Contrary to Section 384 of the Code quietly but improperly though, the learned trial resident magistrate seems to have "dropped" the ground on the way. Nevertheless, even if too the appellant were convicted and punished, the

sentences were bound to run concurrently therefore making no difference given the timing and nature of the charges for avoidance of doubts during the hearing on such behalf Mr. Galati having had filed a new petition on 16/11/2020, with leave of the court the learned counsel abandoned one jointly filed by appellants on 05/02/2021.

Messrs. Galati and Meli learned counsel and state attorney appeared for the 1<sup>st</sup> appellant and the respondent Republic respectively. The 2<sup>nd</sup> appellant appeared in person. By way of digital platform I heard them through Mobile numbers 0737877746, 0717418929 and ..... respectively.

The 1<sup>st</sup> appellant's 4 grounds of appeal and 7 grounds of the 2<sup>nd</sup> appellant they revolve around points: -

- (a) That contrary to the law his conviction was only based on uncorroborated evidence of co accused.
- (b) That the 1<sup>st</sup> appellant was not identified at the scene of crime.
- (c) That the 1<sup>st</sup> appellant was convicted on the alleged plea of guilty but on the initially withdrawn charge sheet.

- (d) That the prosecution case was not beyond reasonable doubts proved.
- (e) That with respect to the cellular phone (Exhibit "P5") the trial magistrate improperly evaluated the evidence.
- (f) That the charges and evidence adduced by prosecution's witnesses the two were at variance.
- (g) That the complainant did not actually identify some items as his property.

Mr. Galati, learned counsel submitted; **(a)** that contrary to long established legal principle there was nothing to corroborate the 1st appellant's repudiated confession much as also, for that reason the evidence of the 2<sup>nd</sup> appellant needed corroboration therefore it could not ably corroborate the fellow's (cases of **Bushir Amir V.R** (1992) TLR 65 and **Mkubwa Said Omary V. SMZ** (1992) TLR 365 and **Jimmy Lunaganza V.R**; Criminal Appeal No. 159B of 2017 (CA) at Bukoba, Unreported) **(b)** the prosecution witnesses (Pw5 and others) were inconsistent because only Pw5 stated that the 1<sup>st</sup> appellant was found in possession of the cellular phone **(c)** contrary to the trial magistrate's findings, the 1<sup>st</sup> appellant wasn't actually identified **(d)** that the charges of



armed robbery were not proved because no instrument/an arm used was produced in court.

Apparently, the layman, therefore for such obvious reasons the layman 2<sup>nd</sup> appellant had nothing to add to his memorandum of appeal.

Ms. L. Meli, learned state attorney submitted that the appeal fell short of merits because; **(a)** that the appellants' cautioned statements were repudiated yes, but upon inquiries rightly so and accordingly the learned trial resident magistrate overruled the preliminary points of objection because the statements were but true (case of **Kashindye Meli V.R;** (2002) TLR 374) **(b)** that with respect to the 2<sup>nd</sup> appellant and the cellular phone (Exhibit "P3") sufficed the doctrine of recent possession as corroborating evidence because the complainant's ownership it wasn't disputed much as indeed the appellants were not identified **(c)** that the trial resident magistrate may have had relied on the old substituted charges yes, but even if the finding was expunged from the records, still the conviction would remain **(d)** that not in every case production in court of the weapons/instrument used was necessary to prove charges of armed robbery.

A brief account of the evidence on record reads thus: -

Pw1 Mahula Kayale stated that he did not know the appellants. That as they were in boat in the lake, together with fellows on 16/04/2019 at about 3.00 hours were invaded, assaulted, and at a machete point robbed a number of items (as per charge sheet) except his hand set. That immediately thereafter he called his boss and they were rescued.

Pw2 Christian John Changala stated that he did not know the appellants. That as together with fellows were in deep lake busy catching "dagaa" they were invaded, assaulted and robbed (as per Pw1) that although they sustained no serious physical injuries, shortly they were rushed to hospital and police, then accordingly the culprits were reported arrested.

Pw3 Maya Jirikula stated that as together with fellows were in the lake catching sardines (dagaa), culprits invaded and robbed them (as per Pw1).

Pw4 Masinde Mjunga also stated materially the same as Pw1 – Pw3 only that the black colored cellular phone belonged to him which shortly was reported recovered by policemen of cybercrime department. That on behalf of the 3<sup>rd</sup> accused's brother having had attempted to compensate



the victims so that the latter may withdraw the case. Much as the 3<sup>rd</sup> accused had received and kept the stolen items with her.

Pw5 E.9337 DC Mathew stated that he was the material investigations officer, with respect to the cellular phone through cybercrime department having had found the 2<sup>nd</sup> appellant in possession of the same and some other items.

Pw6 Mathia John stated that he was the local Goziba Hamlet chair who, with respect to 3<sup>rd</sup> accused's home having been invited he witnessed the police search then the 3<sup>rd</sup> accused led to arrest of the 1<sup>st</sup> appellant who, long at last confessed to the charges and from the 3<sup>rd</sup> accused they discovered Yamaha engine, a fuel tank etc. much as all of them signed the search warrant.

Pw7 Mnyapara Mabagara stated that following the incident of 16/04/2019 through a mobile call the victims (his workers) having had been reported to him immediately and accordingly he reported the case to police on 17/04/2019. That on 13/05/2019 policemen invited him to, and he identified the items inclusive of Fiber, some boat spares and a fuel tank but on 13/05/2019 some relatives of the 3<sup>rd</sup> accused asked him to settle.

Pw8 G. 3582 DC Hijat stated that he also investigated the case in April, 2019 with regard to the cellular phone via Mobile Number 0766026973 through Cybercrime department, Mwanza they arrested the subscriber of mobile number 0744264561 (4<sup>th</sup> accused) who also led them to arresting the 5<sup>th</sup> accused (vendor of the cellular) phone whereby they implicated and named each other including the 3<sup>rd</sup> accused and they confessed. So was the 1<sup>st</sup> appellant arrested and all the items discovered (copy of the search warrant, a certificate of seizure and cellular phone (Exhibit PE1 – PE3) respectively, the Bonnet, 2 Engine machines, a fuel tank (Exhibit PE4) collectively also copies of the appellants' cautioned statements (Exhibits PE6 and PE7) respectively.

Pw9 H. 3698 DC Yohana he stated that following the incident he interrogated the 3<sup>rd</sup> accused and recorded her cautioned statement on 11/05/2019 at 17.00 hours at Goziba Island among others that as the former's workers had arrived with some items (Exhibit PE1) for sale, she paid them partly i.e. shs. 620,000/= (copy of unopposed cautioned statement-Exhibit PE6).

Pw10 G.8349 DC Jumanne stated that following the incident through cybercrime department they found the 4<sup>th</sup> accused in possession of the



cellular phone also arrested equally the confessing 5<sup>th</sup> accused who named and implicated the former as having had sold him the phone. The 2<sup>nd</sup> appellant named the 3<sup>rd</sup> accused as mistress planner (the 4<sup>th</sup> and 5<sup>th</sup> cautioned statements were admitted as Exhibits PE6 and PE7) respectively.

Dw1 (the 1<sup>st</sup> appellant) stated that on 11/05/2019 policemen arrested him in the presence of the local Goziba chair. That he knew the 3<sup>rd</sup> accused before but denied the charges then the policemen asked him to sign the statement and he was just arraigned in court. The case having had been withdrawn on 25/07/2019 but they were recharged on 29/07/2019. That is all.

Dw2 (the 2<sup>nd</sup> appellant) stated that he was arrested by police on 11/05/2019 at 10.00ahours that having had been arrested and charged he wasn't arraigned in court until 28/05/2019. That he named/implicated the 3<sup>rd</sup> accused therefore confessed only when the policemen had promised to release him and was threatened. That the case was withdrawn on 25/07/2019 but they were recharged on 29/07/2019 and the policemen did not record his statement much as also, there was no proof that he sold one the cellular phone leave alone existence of the alleged armed robbery.



The central issue is whether with respect to the appellants the charges of armed robbery were beyond reasonable doubts proved much as they were not identified.

In fact the prosecution case was built on; (a) with regard to stolen items (Exhibits "PE1 – "PE4") the doctrine of recent possession and (b) the appellants' cautioned statements (Exhibits "PE6" and "PE7").

At least with respect to them, the appellant is on record constructively having had been in possession of the cellular phone (Exhibit "P3"). The relevant part of the 2<sup>nd</sup> appellant's cautioned statement reads thus: -

*"..... baada ya hapo askari polisi akaniuliza nimeitoa wapi hiyo simu na mimi bila kumzungusha nikamwambia kwamba kutokana na vishawishi vya wenzangu tulipora kisiwa kimoja cha Ukerewe ....na kwamba tulipora mashine moja ya majini aina ya Yamaha H.P 9.9, kokoro la dagaa la Japani, Tank la mafuta, Fuel line pamoja **na simu moja aina ya Tecno ya batani**".*

On his side, in his statement the 1<sup>st</sup> appellant is on record having had said;

"..... nilikubali na kueleza kwamba tumemuuzia mashine ya majini aina ya Yamaha H.P 9.99, Kokoro la dagaa la Japani, tank la mafuta na Fuel line na akawa amenipatia Tsh. 240,000/= na namdai Tshs. 260,000/= ....na **hii kazi tulifanya Mwezi 04 tarehe sikumbuki mwaka 2019 na huyo Mama Shelida Paulo ndio alituagiza na alitupatia mtubwi wake na tulienda kupora usawa wa kisiwa cha Ghana .....na pamoja na vitu hivyo tulipora pia na simu aina ya Tecno ya batani ambayo baada ya kufika Goziba alichukua Laurent (the 2<sup>nd</sup> appellant)**".

It should also be remembered that through the means the cybercrime officer ably tracked it and hardly a month later they discovered the said cellular phone among other items. Like Ms. Lilian Meli learned stated attorney rightly so in my considered opinion argued, the doctrine of recent possession must have had sufficiently corroborated the appellants' repudiated cautioned statements leave alone the logical sequence, consistence and truth part of the appellants' stories (case of **Kashindye Meli** (Supra) much as it is long settled legal principle that the best witness



ever was an accused who voluntarily confessed. Grounds (a), (d), (e), and (g) are dismissed so are the unfounded grounds (b) (c) and (f).

However, without prejudice to the trial court's findings of 25/03 and 27/04/2020 leading to admission of Exhibits PE6 and PE7, even where for the sake of assumption there was nothing evidential to corroborate the appellants' repudiated cautioned statements, I think it is common knowledge that at times human psychology was more complex than human himself so much so that where a conviction is likely only to base on a repudiated confession and, in order to avoid conviction of innocents or criminals getting out of the courts free, among other things that judges also needed to consider **five criteria** and if the criteria were considered cumulatively the better and safer: **(i)** If the provisions of Section 27(3) of the Evidence Act Cap 6 R.E. 2019 were taken whole sale, the Legislative purposes would have been defeated such that possibilities of genuine and freely confessing subject taking advantage would have not been eliminated **(ii)** If only accused's confession was enough to quench the police's thirst why all such details, lengthy but consistently logical and tiresome stories and for whose interest? **(iii)** Unless where need be, during inquiries/trial within trial the respective Justice of the peace was proven irresponsible or

on that one he played role of the police agent, the extra judicial statement shall substantiate contents of the respective cautioned statement **(iv)** Given its nature, scope and legal effects, there being the chances of the offence charged falling under category of organized crimes and rackets **(v)** Chances of innocents being convicted and criminals getting out of the courts free. The pigeon holes are still capacious much as, if courts will not do everything that had never been said by the laws, and socio economic circumstances were never static, development of jurisprudence shall remain a nightmare.

When all is now said, I would uphold the impugned conviction and sentence. The appeal is dismissed in its entirety. It is so ordered.

Right of appeal explained.

**S. M. RUMANYIKA**

**JUDGE**

**10/05/2021**

The judgment delivered under my hand and seal of the court in chambers this 18/05/2021 in the absence of the parties.



**S. M. RUMANYIKA**

**JUDGE**

**18/05/2021**