

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**CRIMINAL APPEAL NO. 81 OF 2020**

*(Originating from Criminal Case No. 342/2019 Karagwe District Court)*

**RUBA RUMANYIKA.....APPELLANT**

***VERSUS***

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

*17<sup>th</sup> June & 23<sup>rd</sup> July 2021*

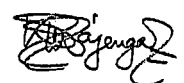
***Kilekamajenga, J.***

The appellant was charged with the offence of armed robbery contrary to section 287A of the Penal Code Cap. 16 RE 2002. It was alleged that, on 19<sup>th</sup> January 2018, the appellant while accompanied with other persons invaded the house of Ladislaus Didas while armed with machetes and iron bars and stole Tshs. 1,800,000/=. They also wounded Ladislaus Didas and his wife Judith Ladislaus. During the trial, the prosecution summoned five witnesses to prove the case to the required standard. In the evidence, PW1 (Ladislaus Didas) who the victim of the robbery incident testified that, on 19<sup>th</sup> January 2018 at around 8 pm, a group of robbers broke his door house and found his wife cooking at the sitting room. They beat the wife and went further into the bedroom where PW1 had taken refuge and beat him demanding for money. He showed them Tshs. 800,000/= but they were still dissatisfied; they continued to beat him until he gave them



Tshs. 1,000,000/=. When the robbers left the house, PW1 chased them and managed to apprehend one of the robbers. The other robber was arrested few minutes later while hiding in the bananas. The apprehended robbers named the appellant as one of the accomplice. By that time, the appellant had escaped to an-unknown place and he was arrested after almost two years when he resurfaced from his place of refuge. Meanwhile, the appellant was well-known to PW1 because they did business together and he also identified him during the robbery. The house of PW1 had electricity lights so it was not difficult to identify appellant. PW2 also testified that the appellant was accompanied with other three persons during the robbery. The robbers were armed with machetes, knives and sticks. PW2 also identified the robbers including the appellant using electricity light. She further testified that the appellant was a close friend of PW1 and they all did business together. During the robbery, the appellant searched for money in bags and clothes.

The evidence of PW1 and PW2 was corroborated with the evidence of PW3 and PW4. PW3 heard the alarm from his neighbour and immediately responded. He met PW1's wife who was wounded on her arms. PW3 witnessed the arrest of the Rugubamu Chamani who was one of the robbers. They further searched and found Aristides hiding in the bananas. However, the appellant escaped and was arrested after two years. PW4 further confirmed that he heard the noises from



the house of PW1 and immediately responded. He found the two arrested robbers who named the appellant and Akili Aloyce as their accomplices. Akili Aloyce was immediately arrested but the appellant was arrested in Kyerwa after two years. PW5 who was the police officer testified that, he went to the crime scene and found the two robbers. In the presence of PW5, PW1 named all the robbers including the appellant because he knew them by their names. PW5 was led to the house of Akili Aloyce who was immediately arrested but the appellant escaped with the money to an unknown place. The three robbers were charged and convicted for the offence of armed robbery in criminal case No. 32 of 2018.

During the defence, the appellant confirmed that he knew PW1 because they were doing business together. He however alleged that he had a conflict with PW1 and the case was fabricated against him. He denied running away from the village and participating in the robbery.

Finally, the trial court was convinced that the prosecution proved its case to the required standard. The appellant was convicted and sentenced to serve thirty (30) years in prison. Being disgruntled with the decision of the trial court, he appealed to this Court. His petition of appeal contained four grounds of appeal thus:

- 1. That the learned magistrate erred in law and fact when relied on co-accused alleged confession on conviction (sic) to appellant contrary to section 33(2) of the Evidence Act;*
- 2. That, the said confession made by co-accused (sic) before prosecution witnesses named appellant for being together in armed (sic) the victim was presumption an assertion (sic) while no documentary statement as an evidence whether received at court trial to support their credibility (sic).*
- 3. That, the visual identification of prosecution (sic) witnesses against appellant (sic) at material night were mistaken identity under observation.*
- 4. That, the prosecution allegation that appellant (sic) was escaped (sic) at moment after the incident, has no evidential value whereas the appellant was not traceable cause (sic) he was another place for his own duty (sic).*

When the parties appeared to argue the appeal, the appellant was unrepresented whilst the respondent was represented by the learned State Attorney, Mr. Nehemia John. In defending the appeal, the appellant merely invited the court to consider the grounds of appeal because he was illiterate.

On the other hand, the learned State Attorney objected the appeal and denied the allegation that the conviction was based on the evidence of the co-accused. He argued further that the appellant was convicted based on the evidence of PW1 and PW2 who were victims of the robbery. The prosecution proved its case because there were eye witnesses of the incident and the appellant was clearly identified despite the fact that the robbery happened at night. The appellant was

identified using electricity light. The appellant searched the pockets of PW1 and PW2, and the house for money. Furthermore, PW1 and PW2 knew the appellant before robbery. During the robbery, PW1 and PW2 identified the appellant without any doubt. Immediately after the robbery, the appellant ran away something which further implicated him in this offence.

When rejoining, the appellant insisted that the case was framed against him and objected the allegation that he disappeared from the village after the robbery.

After considering the submissions from the parties, I have an obligation to evaluate the merits in the grounds of appeal advanced by the appellant. On the first ground of appeal, the appellant impugned the decision of the trial court for basing its decision on the evidence of the co-accused contrary to section 33(2) of the Evidence Act, Cap. 6 RE 2019. As already analysed above, despite being named by the co-accused, the appellant was also identified by PW1 and PW2. These two witnesses were victims of the robbery which was committed at night though there was electricity lights. The evidence shows that, the robbers found PW2 preparing dinner and the lights were on. Furthermore, the appellant was well known to PW1 and PW2 because he did business with PW1. Therefore, it was not difficult for PW1 and PW2 to identify the appellant under such circumstances. After the robbery, one of the robbers was apprehended at the

crime scene. The arrested robber immediately named his accomplices including the appellant and another person called Akili Aloyce who was arrested while hiding in the bananas just few minutes after the incident. The appellant managed to escape with the money and was arrested after two years.

Furthermore, PW3 who immediately responded to the crime scene heard the arrested robber mentioning the appellant and Akili Aloyce. PW3 participated in the arrest of Akili Aloyce while the appellant escaped. PW4 found the two arrested robbers who all named the appellant their accomplice. In my view, the evidence of PW1 and PW2 on visual identification complied with the requirement of the law as stated in the case of **Baya Lusana v. R. Criminal Appeal No. 593 of 2017**, CAT at Mwanza (unreported) the Court of Appeal of Tanzania has highlighted the conditions for the application of evidence of visual identification thus:

*The law on the evidence of visual identification is well settled as the court is warned not to act on such evidence unless all the possibilities of mistaken identity are eliminated and the court is satisfied that the evidence before it is absolutely water tight. In that regard, the trial court must consider the following guidelines: **One**, the time the witness had the accused under observation; **two**, the distance at which he observed him; **three**, the conditions in which the observation occurred, for instance whether it was day time or night time; **four**, whether there was good or*

*poor lighting and **five**; whether the witness knew or had seen the accused before or not.*

Furthermore, in the case of **Said Chally Scania v. Republic, Criminal Appeal No. 69 of 2005** which was quoted with approval in the case of **Baya** (supra), the Court of Appeal observed that:

*'We think that where a witness is testifying about another in unfavourable circumstances like during the night, he must give clear evidence which leaves no doubt that the identification is correct and reliable. To do so, he will need to mention all aids to mistaken identification like proximity to the person being identified, **the source of lights, its intensity**, the length of time the person being identified was within view and also whether the person is familiar or a stranger.*

Furthermore, it is not true that the appellant was convicted based on the evidence of the accomplice. The evidence of PW1, PW2, PW3 and PW4 was sufficient to sustain the conviction. The second, third and fourth grounds of appeal are similar to the first ground and I do not see the need of reiterating what I stated above. In conclusion, I find the prosecution proved its case to the required standard. I do not find any ground of appeal to shake the decision of the trial court. I hereby dismiss the appeal and uphold the decision of the trial court. It is so ordered.

**DATED at BUKOBA** this 23<sup>rd</sup> day of July, 2021.

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**23/07/2021**

**Court:**

Judgment delivered this 23<sup>rd</sup> July 2021 in the presence of the appellant and the learned State Attorney, Mr. Mwakasege. Right of appeal explained to the parties.

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**23/07/2021**

