

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA
(APPELLATE JURISDICTION)**

DC CRIMINAL APPEAL NO. 34 OF 2021

(Originating from District Court of Dodoma at Dodoma in Criminal Case No. 11 of 2019)

ROBSON BRYTON DIZOMBEAPPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

4/8/2021 & 1/9/2021

JUDGMENT

MASAJU, J

The Appellant was charged, with and convicted of two counts of ARMED ROBBERY Contrary to section 287A of the Penal Code [Cap 16 RE 2002] in the District Court of Dodoma at Dodoma. He was sentenced to serve thirty (30) years imprisonment, upon being acquitted of the 3rd count (ATTEMPTED RAPE) Contrary to section 132 (1) (3) of the Penal Code, [Cap 16 RE 202]. His Petition of Appeal is made up of eight (8) grounds of Appeal, including the grounds on identification both at the scene of crime and at the Identification Parade, and non- proof of the prosecution case as against him beyond reasonable doubt before the trial Court.

When the Appeal was heard before the Court today the 1st day of September, 2021, the layman Appellant appeared in person and prayed to adopted his grounds of Appeal to form his submissions in support of the Appeal in the Court. He also prayed the Court to allow the appeal because he did not commit the offence he had been charged with and convicted of.

The Respondent Republic, in the service of the learned Senior State Attorney, Mr. Harry Mbogoro, readily supported the Appeal on grounds of appeal so rightly raised by the Appellant. That, in **Muhidin Mohamed Lila@Emolo & 3 others V.R (CAT)** Criminal Appeal No. 443 of 2015 Dar es salaam Registry (unreported) the Court held thus;

"It is trite law that, for the evidence of an identifying witness to be credible, such witness must have given the description of the suspect before he made identification at the identification parade"

But, in the instant case, there was no proof that the prosecution witnesses, Michael Peter Febe (PW1) and Furaha Jackson Mdachi (PW2) who allegedly identified the Appellant at the Identification Parade had actually given the description of the appellant prior to their identifying the Appellant at the Identification Parade. That, since the requirement of giving the description of the Appellant prior to the Identification Parade was not complied with, the evidence obtained from the identification parade as against the Appellant was not credible.

The Respondent Republic, further submitted that according to the prosecution witnesses Michael Peter Febe (PW1) and Furaha Jackson

Mdachi (PW2) on the material day they did identify the Appellant at the scene of crime by aid of moonlight. That, since the moonlight is a weak kind of source of light there ought considered some other factors as so decided in **Magari Juma Dibwe VR (CAT)** Criminal Appeal No. 352 of the 2014, Dar es salaam Registry (Unreported) in which the visual identification was allegedly facilitated by moonlight thus;

"from the legal premise that source of light from the moonlight is a weak source for purposes of positive identification the Court emphasizes the need for the identifying witness to also disclose such surrounding factors as the proximity, familiarity to the assailant (in terms of appearance living in the same locality, being a family member, in names, walks)."

That, in the instant case the prosecution witnesses PW1 & PW@ did not expound further of their visual identification of the Appellant by moonlight along such factors for the would be unmistakable identification. The trial court was therefore wrong when she convicted the Appellant on the basis of the visual identification facilitated by moonlight which is a weak source of light without taking into account other related factors for the would be positive visual identification.

The Respondent Republic ultimately submitted that in the absence of positive identification of the Appellant at the scene of crime and at the Identification Parade, the prosecution case as against the Appellant before the trial court was not proved beyond reasonable doubt.

That said, the Court is of the considered position that the appeal is meritorious as per the reasoning by both the Appellant and the Respondent Republic. That being the case, the appeal is hereby allowed accordingly. The conviction and sentence of thirty (30) years imprisonment against the Appellant are hereby severally and together, respectively, quashed and set aside. The Appellant shall be released forthwith from prison except if there was a lawful cause to the contrary.




GEORGE M. MASAJU

JUDGE

01/09/2021