

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

(PC) CRIMINAL APPEAL NO. 16 OF 2021

(Originating from Criminal Case No. 265/2020 of Kyaka Primary Court and Criminal Appeal No. 42/2020 of the District Court of Bukoba)

RAYMOND LAURIAN.....APPELLANT

VERSUS

JAMES EMMANUEL.....RESPONDENT

JUDGMENT

19th May & 27th May 2022

Kilekamajenga, J.

The appellant was charged with the offence of robbery with violence contrary to section 285 and 286 of the Penal Code, Cap. 16 RE 2019 at Kyaka Primary Court. It is alleged that, on 16th August 2020, at Gabulanga Village, Kassambya Ward within Missenyi District, the appellant while assisted by Medard Theobard did violently rob a motorcycle from James Emmanuel. During the trial, the appellant and his co-accused pleaded not guilty to the charge prompting the complainant to prove the case to the required standard.

The victim of the incident (James Emmanuel), testified that, on the fateful date, the appellant approached the victim at around 7 pm for a motorcycle ride at a price of Tshs. 6,000/= to reach a place where there was a wedding party. After the agreement, the victim took the appellant to a wedding party. On the way,



the appellant stopped the victim to send a text message and they further proceeded with their journey. On the way, two people emerged who covered their faces and prevented the victim from moving using a wire. While the victim struggled to escape, the appellant participated in ensuring that the motorcycle loses control. Finally, the motorcycle lost direction; the appellant wanted to grab the respondent but he managed to escape leaving behind the motorcycle and the appellant. Thereafter, the appellant disappeared with the motorcycle while the other two persons were left behind searching for the victim in the bushes. PW2 supported the evidence of the victim stating that, on that day, he saw the victim carrying the appellant on the motorcycle at around 7 pm. On the next day, PW2 heard that the motorcycle was stolen.

During the defence, the appellant stated that, on 16th October 2020 he was arrested by the victim's boss and accused of robbing a motorcycle from the victim. DW2 also gave a story similar to that of DW1. The second accused (Medard Theobard) testified that, he was arrested on 30th September 2020 and connected to the motorcycle robbery. The second accused's testimony was supported with Elipidius Nestory and Theogene Theobard.

Thereafter, the Primary Court was fully convinced that the case against the appellant was proved beyond reasonable doubt. The appellant was convicted and



sentenced to serve fifteen years in prison. He was further ordered to compensate the victim the value of motorcycle after the prison term. Being disgruntled with the decision of the Primary Court, the appellant appealed to the District Court of Bukoba seeking for justice. His appeal was dismissed for lack of merit hence this appeal. Before this Court, the appellant filed a petition of appeal containing eight grounds coached thus:

- 1. That both the trial primary Court and the District Appellate Court erred in law and fact to convict and sentence the appellant on a defective charge sheet which did not specify the enactment constituting the charged offence Contravening Section 135 (a) (ii) of the C.P.A Cap. 20 RE 2019.*
- 2. That, the Hon. trial Court erred in law and fact to convict and sentence the appellant on weak, insufficient and uncorroborated evidence of only one witness (PW1, JAMES EMMANUEL) the complainant without any other independent witness.*
- 3. That, the Hon. trial Court erred in law and fact to convict and sentence the appellant in absent of the exhibit in addition to that, the complainant failed to adduce the registration card of the alleged cycle so as to prove that even though the exhibit is absent in Court but he once possessed the said motorcycle.*
- 4. That, both the trial and the District Appellate Court fatally faulted to convict, sentence and uphold sentence against the appellant on insufficient evidence whereby despite the complainant to fail adduce the registration card fail to mention the registration number, chassis and Engine of the alleged motorcycle.*

5. *That, it was a mistake identity to arrest the appellant and the appellant was not found in possession of stolen property to incriminate him with the event as emphasized by the Tanzania Court of Appeal at Mwanza in the case of KURUBONE BAGIRIRIGWA & 3 OTHERS Criminal Appeal No. 132/2015 on page 11 of the judgment.*
6. *That, it was stated in the case cited above that for the doctrine of recent possession to apply as a basis of conviction it must positively proved that the property in dispute was found in possession of the suspect it being the property of the complainant, recently stolen from him and it must be the one constituting the subject of the charge and the contrary is grievous doubt.*
7. *That, the complainant complain to have been robbed his motorcycle on 18/08/2020 and claimed to identify his assailant but never mention the appellant to any responsible authority to ascertain his credibility.*
8. *That the charge against the appellant was not proved to the required standard that's to say beyond the reasonable doubt.*

When the case was fixed for hearing, the appellant appeared in person and without representation. In his submission, the appellant invited the court to consider the grounds of appeal as they appear in the petition of appeal. Thereafter, he urged the court to consider the case of **Kurubone Bagirigwa and 3 others v. The Republic, Criminal Appeal No. 132 of 2015**, CAT at Mwanza (unreported).

After going through the grounds of appeal and submission from the appellant, it is apposite that I address the grounds of appeal. **First**, the appellant argued that, he was convicted based on the evidence of one witnesses and such evidence was not corroborated with an independent witness. Under the law, the evidence of one witness is sufficient to warrant a conviction if such witness is credible and reliable. There is no particular number of witnesses to prove a fact.

Section 143 of the Evidence Act, Cap. 6 RE 2019 clearly provides that:

'143. Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact.'

In the case at hand, the evidence of the victim was credible because he knew the appellant before and the incident occurred at 7 pm in the presence of the victim and the appellant. It may be so naïve to believe that, the victim might have mistaken the identity of the person he carried and who he knew before the robbery. I find no merit in this ground.

Second, the appellant argued that, the victim failed to tender the registration card of the motorcycle. In my view, the robbery cannot be proved by tendering of the registration card of the motorcycle. What is evident is, the victim carried the appellant to an agreed destination and on the way, the victim was violently robbed. DW2 confirmed that, he saw the victim riding the motorcycle while

carrying the appellant on the evening of 16th August 2020. On the way, the victim witnessed the robbery and the appellant parted with the motorcycle leaving behind other two people searching for the victim who had just escaped to the bush. Therefore, failure to tender the registration card did not affect the fact that the motorcycle was robbed.

Third, the appellant further argued that, he was not found in possession of the stolen motorcycle. While the victim's evidence shows that the motorcycle was robbed on 16th August 2020, the appellant was arrested almost two months after the incident; failure to find the motorcycle in the hands of the appellant did not affect the good evidence proving the robbery with violence committed by the appellant. **Fourth**, the appellant alleged that the charge against him was defective. This point prompted me to revisit the charge against the appellant. The charge found in court file shows that, the appellant was charged with robbery with violence contrary to **section 285 and 286 of the Penal Code, Cap. 16 RE 2019**. For clarity, I wish to reproduce the two sections provides thus:

'285.-(1) Any person who steals anything and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained is guilty of robbery.

(2) Where two or more persons steal anything, and at or immediately before or immediately after stealing, use or threaten to use actual violence to any person or property in order to obtain or retain the thing stolen commits an offence of gang robbery.'

'286. Any person who commits robbery is liable to imprisonment for fifteen years and if the offender is armed with any dangerous or offensive weapon or instrument, or is in company with any other person or if, at or immediately before or immediately after the time of robbery, he wounds, beats, strikes or uses personal violence to any person, he is liable to imprisonment for life, with or without corporal punishment.'

Furthermore, the particulars show the date and hour when the offence was committed. The charge further shows that the name of the victim; the registration number and the value of the motorcycle. Though the charge did not specify the subsections of section 285 but the two subsections are relevant in the case hand. In my view, failure to state the subsection may not be fatal so long as the charge contains the relevant provision of the law. Declaring the charge defective while the relevant provision of the law is stated may be going too far beyond the criminal justice. Doing so will render our courts places where games of legal technicalities are exercised rather than being temples of justice. In my view, courts should not create technicalities which even the parties do not envisage. So far, the appellant is aware of the charge against him and, in my view, he was not prejudiced in any way by the failure to specify the subsections.

As long as the trial was fair and the evidence was sufficient to sustain the conviction, I find no any error on the charge at hand.

Fifth, the appellant argued that the case was not proved against him. As already pointed above, the victim's evidence does not leave any doubt that the appellant robbed the motorcycle. The appellant who was the victim's passenger later turned out to be a robberer and disappeared with the motorcycle while leaving behind the victim. The appellant was arrested two months after the incident and charged with the offence of robbery with violence. In my view, the offence was proved to the required standard. I hereby dismiss the appeal. It is so ordered.

Dated this 27th May 2022 at Bukoba.


Ntemi N. Kilekamajenga
JUDGE
27th May 2022

Court:

Judgment delivered this 27th May 2022 in the presence of the appellant but in the absence of the respondent.




Ntemi N. Kilekamajenga
JUDGE
27th May 2022

