

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL CASE APPEAL NO. 120 OF 2021

***(Arising from Criminal Case No. 57 of 2020 in the Resident Magistrate
Court of Musoma at Musoma)***

BETWEEN

SAMSON S/O ANDREW @ MANYAMA..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

24th August and 21st September, 2022.

A. A. MBAGWA, J.:

This is an appeal against the judgment and sentence of the trial Resident Magistrate's Court of Musoma at Musoma.

The appellant Samson Andrew Manyama was arraigned before the trial court on a charge of Grievous Harm contrary to section 225 of the Penal Code. The particulars of offence alleged that Samson Andrew Manyama on 10th day of September, 2020 at Butiama village within Butiama district in Mara region, unlawfully caused grievous harm to one Peter Nzagi Matobela by cutting him with a machete.

Upon arraignment, the appellant pleaded not guilty hence the prosecution paraded three witnesses and produced one documentary exhibit to prove the allegations.

It was the evidence of Juliana Joseph (PW1) that on 3rd June, 2020 she sent her daughter (XX) to a shop to buy a soap. However, the said daughter did not return home. As such, PW1 made a report to the village chairman and Muryaza Police Station on the missing of her daughter.

On 09th September, 2020, PW1 got information that her daughter was abducted at Samson Andrew's (the appellant) home. She thus sought help from militia man to arrest both her daughter and the appellant. Therefore, she got Peter Matobela (PW2) and on 10th September, 2020 PW1 and PW2 went to the appellant's home at around 20:00hrs with the mission to arrest them. PW2 knocked at the appellant's door and introduced himself as militia man. Suspicious of his acts, the appellant escaped through the window and took at his heels. PW2 pursued him but in the process of arresting him, the appellant cut PW2 with a machete to avoid arrest. PW2 was grievously injured. Nonetheless, PW1 and PW2 raised alarm and people immediately assembled at scene and managed to arrest the appellant.

Following the injuries he sustained, PW2 Peter Matobela was submitted to Butiama District Hospital after obtaining a PF3 from the police.

It is PW3 Wilbert Manazi who attended PW2 at Butiama District Hospital. PW3 told the trial Court that he attended the victim (PW2) on 10th September, 2020 at around 23:00hrs. He expounded that the wound was three inches deep and half inch wide. PW3 tender PF3(exhibit P1) in which he recorded his medical findings. Exhibit P1 is self-elaborate that PW2 was excessively bleeding due to cut wound caused by a sharp object. In addition, PW3 told the court that while attending the victim (PW2) he asked him as to who attacked him and the victim PW2 told him that he knew his assailant.

During defence, the appellant told the court that on the fateful day i.e., 10th September, 2020 at night, while at home, he heard people knocking at the door and they introduced themselves as militia men but he did not trust them as such he sought to run away through a window. The appellant stated that in the course of fleeing, the machete inadvertently cut the victim (PW2).

After hearing the evidence of both sides, the trial magistrate was not convinced by the defence raised. To the contrary, he was satisfied that the prosecution proved the charge to the required standard. As such, he convicted the appellant of the offence charged and sentenced him to serve

a prison term of three years. In addition, he ordered the appellant to pay the victim (PW2) compensation of Tanzanian shillings five hundred thousand (500,000/=).

The appellant was aggrieved with both conviction and sentence hence he appealed to this court. He filed a petition of appeal containing several grounds which can be reduced to one main complaint that the trial court erred to convict him in absence of sufficient evidence.

When the matter was called on for hearing, the appellant appeared in person via teleconference whilst the Republic/ respondent was represented by Nimrod Byamungu, learned State Attorney.

The appellant lamented that the prosecution evidence was not sufficient enough to ground his conviction. He pinpointed that the alleged machete with which he allegedly used to cut the victim was not tendered in evidence. He further complained that PW2 had not arrest warrant to arrest him.

In contrast, Mr. Byamungu, learned State Attorney was in full support of conviction and sentence meted out by the trial court.

With regard to criticism for non-production of the alleged machete, Mr. Byamungu submitted that it is true that the weapon was not brought to

court. However, he quickly remarked that the appellant admitted that the victim was injured by machete. As such, the learned State Attorney was opined that there is no dispute on this fact. All the same, there is sufficient evidence from PW3 that the victim was injured by a sharp instrument, Byamungu submitted.

On the contention that PW2 had no arrest warrant, the learned State Attorney conceded the allegation but submitted that it was not a justification for the appellant to injure the victim because at page 27 of the proceedings, the appellant admitted that the victim introduced himself as a militia man. He stressed that the appellant injured the victim in order to escape the hand of law.

Concerning the insufficiency of the prosecution evidence, Mr. Byamungu was adamant that it was proved as per the requirement. He said that the appellant admitted in his defence that he injured the victim. Moreso, PW3's evidence is that the victim sustained grievous harm. The State Attorney prayed that this appeal be dismissed.

I have considered the grounds of appeal and the submissions made by the parties at the hearing. I also had an occasion to peruse the trial court record. The relevant issue for determination is whether the trial court was right to convict the appellant.

Throughout the evidence, there is no dispute that the victim (PW2) was injured. This is as per the evidence of all prosecution witnesses namely, PW1, PW2 and PW3 as well the appellant. Further, PW3 explained on the extent of injury that it was three inches deep. The appellant, in his defence, stated that the machete inadvertently cut the victim while he was in the process to flee from people who introduced themselves as militia men (mgambo).

This being the first appellate court, I took trouble to re apprise the evidence adduced at the trial court. PW1 and PW2 were very clear that the appellant intentionally cut the victim (PW2) on his head in a bid to escape the arrest. There was no a single question from the appellant to suggest that he did not intend to cut him rather it accidentally happened. His cross examination throughout the trial focused on his identity. The appellant came to raise the question of cutting the victim by accident during defence. This is not

accepted in law. It is a clear position of law that where a person fails to cross examine on an important issue but comes to raise it during defence, such defence is taken to be an afterthought and cannot be considered. See the case **George Maili Kemboge V R**, Criminal Appeal No. 327 of 2013 CAT at Mwanza.

Besides, the appellant does not dispute that he was arrested at the scene of crime. As such, as rightly submitted by the learned State Attorney, the question of mistaken identity cannot be sustained.

Having considered the above, I am of the firm views that the prosecution side sufficiently proved the charge and therefore the trial court rightly convicted the appellant.

In the event, I dismiss the appeal for want of merits. Consequently, I uphold the conviction, sentence and compensation order made by the trial court.

It is so ordered.

The right of appeal is explained.




A. A. Mbagwa

JUDGE

21/09/2022

Court: The judgment has been delivered in the presence of Isihaka Ibrahimu (SA) for the Republic and the appellant this 21st September, 2022.


A. A. Mbagwa

JUDGE

21/09/2022