IN THE HIGH COURT OF TANZANIA

DODOMA SUB REGISTRY

AT DODOMA

DC CRIMINAL APPEAL NO. 39324 OF 2023

(Arising from District Court of Kondoa in Criminal Case No. 12 of 2023)

ABDUL ISSA RAJABU..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last order: 20/03/2024

Date of Judgment: 04/04/2024

LONGOPA, J.:

This appeal challenges the decision of the District Court of Kondoa which convicted and sentenced the appellant to serve seven years imprisonment for committing armed robbery contrary to section 287A of the Penal Code, Cap.16 R.E. 2022.

It was alleged that on 19th May 2023 at Ubembeni area within Kondoa District in Dodoma Region, appellant did steal cash money Tanzanian shillings four hundred thirty-three thousand (TZS 433,000/=) being the property of one Hidaya Hassani Hussein and immediately before such stealing did stab one Hidaya Hassani Hussein with a screw driver in order to obtain and retain the said property. The appellant denied the charge and the prosecution called a total of five witnesses to

testify and establish the case against the appellant. Upon conclusion of the hearing of the case, the appellant was convicted and sentenced thereof. Being aggrieved by conviction and sentence, the appellant decided to challenge the decision by way of appeal on seventeen grounds, whereby eight grounds from seventeen grounds are additional grounds as reproduced hereunder for easy of reference: -

1. *That, the learned trial Magistrate erred in law and fact by convicting the appellant basing on the evidence of visual identification which to weak not only that but also was to general to be free from mistaken of identity*
2. *That, the learned trial Magistrate erred in law and fact by convicting the appellant without considering the requirement of section 38(3) of the Criminal Procedure Act, Cap. 20 R.E.2019 since the required ingredients was missing for instance.*
3. *That, the evidence relied upon to convict the appellant was incredible and unreliable*
4. *That, the trial court erred in law and fact for failure to analyse adequately the evidence, and totally ignored the defence evidence of the appellant. As a result, she reached to a wrong decision.*
5. *That, the trial court was biased and erroneously influenced by the prosecution side and imported extraneous matters which were not canvassed in evidence during the trial.*
6. *That, if real the appellant was well identified on the material time why there was a delay of arresting the*

appellant regarding that there was no evidence establishing that after the commission of the offence the appellant absconded and arrested outside the town of Kondoa.

7. *That, the ingredients of the offense of armed robbery were not established against the appellant.*
8. *That, in totality the prosecution side did not prove the case beyond all reasonable doubts against the appellant.*
9. *That, the trial court erred in law and in fact when convicted the appellant while did not write and announce the sentence which imposed against the appellant.*
10. *That, the learned trial magistrate grossly erred in law and fact when convicted the appellant based on identification evidence while the prosecution witnesses failed to give out the detailed description of the suspect when they reported the incident at the police station as it has to stand by the law.*
11. *That, the learned trial magistrate grossly erred in law and fact by failing to notice the intensity of the alleged source of the light at the scene of the crime was not disclosed as required by the law. Leave alone the distance between the said source of the light and confrontation point was not established.*
12. *That, the learned trial magistrate grossly erred in law and fact by failing to notice that this case was*

cooked and fabricated against the appellant due to the diverse reason from the prosecution side due to fact that the appellant was arrested on 21/05/2023 but he was arraigned in court on 7/06/ 2023 contrary to the procedure of the law.

13. *That, the learned trial magistrate grossly erred in law and fact failing to comply with the provisions of Section 10 (3) and 9 (3) both of CPA [Cap 20 R.E 2022], as this enables the prosecution side to pirate the count and vaguely inject their witnesses therefore build up its case from the case already heard in court.*

14. *That, the learned trial magistrate grossly erred in law and fact by failing to notice that it was evident by PW4 that the appellant was admitted the offence when interrogated at the police station but without any justified reasonable cause the alleged cautioned statement was not brought before the court during the trial.*

15. *That, the learned trial magistrate grossly erred in law and fact by failing to assess the credibility of the prosecution witnesses hence arriving at the erroneous decision, this is due to the fact that it was evident by PW1 that the incident occurred at night on 19/05/ 2023 and on the same date and night PW5 (Doctor) received the victim (PW1) at the Hospital although she was not admitted. But surprisingly PW1 recorded her statement*

at the police station on 21/05/ 2023 (see page 23 of the C/P).

16. *That, the learned trial magistrate grossly erred in law and fact when recorded the demeanour of PW1 and PW2 on the judgment instead of recording it on the proceedings when still the witnesses on the courts dock followed by Section 212 of the CPA.*

17. *That, the learned trial magistrate grossly erred in law and fact by failing to give due consideration the defence raised by the appellant (as this is fatal).*

The appellant prays to this Honourable Court to allow this appeal, by quashing the conviction and setting aside the sentence of seven years imprisonment and let him at liberty.

On 20/03/2024 when this appeal called for hearing, the appellant appeared in person while the respondent was represented by Mr. Francis Mwakifuna learned State Attorney.

In support of the appeal, the appellant stated that he leaved it to the court to decide, that after the court analysed the strengths of all his grounds of appeal.

Mr. Mwakifuna the learned State Attorney on his submission stated that, the respondent does not support the appeal. He reiterated that the respondent concurs with the conviction and sentence entered against the appellant. He argued that in respect of proper identification on the scene of crime, evidence of the respondent testified to have identified him sufficiently by PW1 who was the victim, PW2 and PW3. PW1 stated

to have known the appellant before the fateful incident. PW1 stated that there were sufficient electrical lights at the scene of crime as revealed in page 13 to 14 of the proceedings.

PW2 who was together with PW1 at the scene of crime as stated in page 15 of the proceedings. PW2 stated to had known well the appellant before the incident and on Page 16, PW2 stated the intensity of light to identify the appellant properly. PW3 who was grocery attendant also testified that she knew the appellant before the incident and that electricity lights were sufficient enough to identify the appellant. This identification is sufficient under the law as stated in Anuary Nangu and Another vs The Republic, Criminal Appeal No. 109 of 2006. Those grounds on identification had no merits. They deserve dismissal.

On failure by the Magistrate's failure to comply with Section 38 of the CPA, it was submitted that the appellant fled after commission of the offence and was arrested after some days later. The seizure certificate was not necessary as he was not found with anything on the material date. There was nothing for seizure certificate to be filed. It should be dismissed for lack of merits.

In respect of incredible and unreliable evidence of the prosecution witnesses, it was submitted that prosecution brought evidence on armed robbery. PW1 testimony established that (1) property must be stolen (2) there should be dangerous weapon directed to the victim in order to retain the stolen property.

PW1 stated that appellant used the screw drive in order to take the handbag; the handbag with money was stolen by the appellant. This testimony was corroborated by PW2 who witnessed the incident of stealing the victim's handbag. Exhibit PE1 tendered by PW5 who was medical doctor who examined the victim and found the injuries. Page 27 reflects the use of the dangerous weapon against victim. Thus, the elements/ingredients were proved.

In regarding the failure to analyse evidence and ignore the defence evidence, it was submitted that this ground is not true. In the judgment, trial magistrate did analyse fully the evidence of the parties from page 3 to 5 of the judgment. It was not true that the conviction was based on the prosecution evidence alone. This ground lacks merit.

On extraneous matters, it was submitted that the contents of the judgment reflected what transpired in evidence of the prosecution and defence. There was nothing extraneous but limited to evidence of the five prosecution witnesses and single defence witness. The defence evidence on page 31 of the proceedings is the one reflected on the judgment of the trial court. There was nothing extraneous.

On delay of arrest, it was submitted that the victim reported the matter immediately and named the appellant as the person who committed the offence. That was when investigation commenced and the appellant was arrested on 21/05/2023 at different place. It is evident that appellant fled from the scene of crime as he had never disputed

that he was residing around the scene of crime but he was arrested at a different place. This ground is destitute of merits.

On ingredients of the offence, it was reiterated that submission of the third ground is the one reflecting the proof of ingredients. Thus, submission was the same. This applies also to the 8th ground of appeal on proof beyond reasonable doubt.

On lack of sentence, it was submitted that sentence was pronounced by the trial magistrate as it appears in page 34 of the proceedings. He was sentenced for seven (7) years imprisonment.

On fabrication of the case, it was submitted that the investigation was conducted and then the case file was submitted to the National Prosecution Service office for other action on whether there was a case against the accused to be instituted. This has no merits.

Regarding to non compliance to Section 9 (3) and 10 (3), it was submitted that police powers to record the statement and the appellant did not request for the complaint to be availed to the appellant. PW1 was in court to testify and the appellant was afforded opportunity to cross examine as reflected in pages 14 to 15 of the proceedings. In the case of **Emmanuel Saguda @ Sururuka and Another vs Republic,** criminal Appeal No. 422 of 2013 cross examination of the complainant is enough.

Evidence of PW4 that there was confession that at the time when appellant decided to rescind his admission before justice of peace, the prosecution decided not to use the same. The conviction was not based on the absence of cautioned statement.

On the sixth additional ground, it was submitted that victim was given PF3 for medical treatment at the hospital. The PF3 was returned to police station on 20/5/2023 during day time and on 21/3/2023 was when the investigator called her for making a statement. This reason has no merit at all.

On demeanour of PW1 and PW2, it was submitted that trial magistrate analysed the evidence of the PW1 and PW2 with regard to the consistency thus the magistrate noted credibility of PW1, PW2 and PW3 testimonies.

Failure to consider the defence evidence, it was submitted that trial magistrate afforded the rights to the appellant as per section 231 of CPA as reflected on page 29 of the proceedings. On page 31 of the proceedings, there was evidence of defence is recorded, on page 3 to 5 of the judgment, there was summary of the defence evidence. The same was accommodated in order to weigh if the defence raised any doubts on the prosecution evidence. This ground lack merits.

It was a prayer of the respondent that the appeal be dismissed for lack of merits as the prosecution established the case beyond reasonable doubts.

In the rejoinder the appellant on respect of identification there were no details regarding intensity of light whether it was tubelight or bulb. There are different types of lights including red or coloured bulbs and tubelights.

Upon the perusal of the record from the District Court of Kondoa on this matter as well as the submissions by the parties, this Court is enjoined to ascertain whether the appeal before me is meritorious. I am constrained to analyse the available evidence from the record to ably determine the issues raised in the grounds of appeal.

The analysis shall be in subsets of related grounds of appeal and in so doing the grounds on failure to prove the case beyond reasonable doubt by the prosecution shall be argued last. The reason being that ground alone if established is sufficient to dispose of the appeal. However, I am inclined to analyse other grounds of appeal prior to so determine on the burden and standard of proof being met.

The first set of the grounds relates to the identification of the appellant and intensity of the light at the scene of crime. This caters for the second and twelfth grounds whereby the appellant challenges that he was not sufficient identified at the scene of the crime. Identification of the accused at the scene of crime is one of necessary aspects of fair trial in Tanzania.

Fair trial would call for a proper identification of the accused to ensure that it is the actual wrongdoer who is arraigned in court. In the

case of **Niyonzimana Augustine vs Republic** (Criminal Appeal 483 of 2015) [2016] TZCA 669 (22 February 2016) (TANZLII), the Court of Appeal on identification stated that:

> *There is no shadow of doubt that the appellant was the one who raped PW1. The conditions were favourable to positive identification. The incident occurred at 6:00p.m. before darkness had set in. The appellant was known by all the witnesses.*

I have perused the proceedings of this case and found that evidence of PW1, PW2 and PW3 is the one that touches the identification of the appellant. PW1, PW2 and PW3's evidence is to the effect that on 19/05/2023 at around 2200hours PW1 and PW2 went at Obama bar were PW3 is the attendant to drink soda and found appellant and his fellows/colleagues they were drinking beer. When PW1 and PW2 finished their drinks, PW1 took TZS 10,000/= and pay PW3 and waited for a change while PW2 went out to look for a motorcycle. PW1 after receiving a change and headed out, she met appellant at the door who stabbed PW1 and snatched the handbag which had money inside it and there was sufficient electricity light. The second aspect is that they live in the same area and knew the appellant's grandmother who is the seller of sunflower oil. This shows that they know appellant way back the occurrence of the incidence.

In the case of **Isaya Loserian vs Republic** (Criminal Appeal No. 426 of 2020) [2024] TZCA 138 (23 February 2024) (TANZLII), the Court

analysed in detailed manner on treatment of identification evidence. The Court of Appeal at page 15 stated that:

> *Evidence relied on is visual identification and particularly by recognition. Trite legal stance is that such evidence is of the weakest nature and should not be relied on unless the court is satisfied that all possibilities of a proper and unmistaken identification are eliminated, that is to say the evidence must be watertight. Generally, night times are associated with darkness and the conditions are taken to be difficult and hence unfavourable for a proper and unmistaken identification. For assurance, the Court has occasionally insisted that the identification evidence must meet certain thresholds. In Waziri Amani vs Republic (supra) some guidelines were set out to include, but not limited to, time the culprit was under the witness's observation, distance (proximity) at which observation was made, the duration the offence was committed, and where the offence is committed at night, the source and intensity of light at the scene to facilitate a positive identification and whether the culprit was familiar to the witness.*

The evidence of PW1, PW2 and PW3 leaves no doubts that appellant was identified properly. PW1 and PW2 saw the appellant when they entered a bar and they knew him before that time as they live in the same area, there were electricity light, and before PW1 was robbed

the victim and appellant talked first at a close distance; and PW3 is the one served them both with drinks thus observed victim and appellant at very close distance. This was direct evidence within the meaning of section 62(1) (a) of the Evidence Act, Cap 6 R.E. 2019 which states that:-

> *62 (1) Oral evidence must, in all cases whatever, be direct; that is to say- (a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it.*

I am certainly confident that evidence of PW1, PW2 and PW3 was sufficient to identify the appellant as the assailant of the victim. That being the case, the identification of the appellant has no legal impediments at all. Three witnesses, namely PW 1, PW 2 and PW 3 reiterated ably during respective cross examination by the appellant that each witnessed the incident of the appellant snatching the handbag and stabbing the victim. All the three witnesses testified that there was sufficient electricity lightings at the scene of crime to warrant them properly identify the appellant.

This is coupled by the evidence that PW 3 had served the appellant with a drink thus closely observed the appellant and PW 1 had also talked to appellant at close distance immediately before robbery incident as the appellant is said to have approached the victim to request for spending the night together. That is why the trial magistrate ably demonstrated about sufficient identification of the appellant in pages 6 to 8 of the judgement. It is lucid from this evidence

on record that the first, sixth, 10th, and 11th grounds are destitute of merits as the appellant was properly identified.

Second set of grounds cover grounds of appeal related to failure to analyse the evidence, importation of extraneous matters which were not canvassed in evidence during the trial, failure to tender caution statement, ingredients of the offence were not established against the appellant, and credibility of the prosecution witnesses.

The most important aspects in proof of cases are the reliability and credibility of witnesses and not the number of witnesses. The prosecution in the instant case relied of the credible and reliable evidence of PW1, PW2, PW3, PW4 and PW5 to prove beyond all reasonable doubt that the appellant robbed the victim, cause injury and took the money; and it was the incident caused by the person known to PW1, PW2 and PW3. The evidence on record tally and complement each other. For instance, evidence of PW 5 corroborates the evidence of PW 1, PW 2, and PW 3 that the victim was stabbed by the appellant. It also cements the fact the victim reported to the police and given the PF 3 to attend medical treatment for the injuries sustained because of unlawful act of the appellant.

I am fully aware that Section 143 of the Evidence Act, Cap 6 R.E. 2019 provides that there is no specific number of witnesses required to establish or prove a case. All the five witnesses of the prosecution had adduced evidence that was credible. Neither witness was seriously challenged in cross examination to an extent that any reasonable doubt

was raised. It should be noted that in the record the evidence of PW 1, PW 2 and PW 3 was direct thus credible and reliable evidence.

In the case of **Jafari Mohamed vs Republic** (Criminal Appeal 112 of 2006) [2013] TZCA 344 (15 March 2013) (TANZLII), at pages 12-13, the Court of Appeal guided that:

> *The two courts below, as already shown, found the three prosecution witnesses to be credible. It is trite law that credibility is an issue of fact, and the trial magistrate or judge is the best judge of this fact. An appellate court, like this one, will only interfere with such concurrent findings of fact only if it is satisfied that "they are on the face of it unreasonable or perverse" leading to a miscarriage of justice, or there had been a misapprehension of the evidence or a violation of some principle of law.*

On ingredients essential is establishing the offence, I am mindful that the same are not difficult to ascertain. The offence of armed robbery to which the Appellant stood charged and convicted by the trial court is stipulated under section 287A of the Penal Code, Cap 16 R.E. 2019 as follows:

> *Any person who steals anything, and at or immediately after the time of stealing is armed with any dangerous or offensive weapon or robbery instrument, or is a*

company of one or more persons, and at or immediately before or immediately after the time of stealing uses or threatens to use violence to any person, commits an offence termed armed robbery and on conviction is liable to imprisonment for minimum term of thirty years with or without corporal punishment.

According to the cited provision, for the prosecution to prove offence of armed robbery three ingredients must exist. First, there was stealing. Second, that immediately before or after stealing the invader had a dangerous or offensive weapon. Third, that the invader used or threatened to use actual violence to obtain or retain the stolen property.

In recent case of **Amos Sita @ Ngili vs Republic** (Criminal Appeal No. 438 of 2021) [2023] TZCA 17697 (3 October 2023) (TANZLII), at pages 12-13, the Court of Appeal stated that:

*From the above position of the law in order to establish an offence of armed robbery, the prosecution must prove the following: (1) There must be proof of theft; See the case of **Dickson Luvana v. Republic**, Criminal Appeal No. 1 of 2005 (Unreported); (2) There must be proof of the use of dangerous or offensive weapon or robbery instrument against at or immediately after the commission of the offence; and (3) That, the use of dangerous or offensive weapons or robbery instrument must be directed against a person; see **Kashima***

***Mnandi v. Republic**, Criminal Appeal No. 78 of 2011 (Unreported).*

It is on record at page 13 of the proceedings that PW 1 was stabbed on her left shoulder with a screwdriver while snatching the handbag with money amounting to TZS 433,000/=. Also in cross examination, PW1 reiterated to have stabbed with screwdriver for the appellant to retain handbag with money.

This is corroborated by evidence of PW 2 who stated to have seen PW 1 bleeding after being attacked by the appellant, thus went to Police for PF 3 before undergoing treatment at the hospital. In cross examination, PW 2 stated that she witnessed the incident of robbing of PW 1.

Further, PW 3 evidence on page 18 of the reveals that appellant was at the scene of crime on material date and time and PW 3 saw appellant attacking PW 1. It was evidence of PW 3 that she witnessed snatching of the victim's handbag by the appellant.

PW 5 stated to have examined the victim and found that she was injured on her left shoulder as she was bleeding. Exhibit PE1 that is PF 3 was admitted, marked and read out loud in court.

The totality of evidence of PW 1, PW 2, PW 3 and PW 5 points that elements of armed robbery were fully established. First, there was stealing of the victim's handbag with money inside totaling TZS

433,000/=. Second there was use of dangerous or offensive instruments i.e. the screwdriver immediately to retain the stolen handbag and money. Third, the offensive or dangerous instruments was directed to victim as such the victim was stabbed and injured to the extent of bleeding in the left shoulder that necessitated to get medical treatment as Exhibit PE 1 (PF 3) reveals. That was the finding of the trial magistrate on pages 8 and 9 of the judgement.

On failure of the prosecution to tender caution statement was over-emphasized by the appellant. I am of the view that this aspect should not detain me. It was the evidence of PW 4 that though at the beginning, the appellant indicated to admit the offence but later on changed to deny having committed the offence when he was sent to the justice of peace. The caution statement was not recorded, as evidence of PW 4 does not state that there was any statement recorded after the appellant had denied to the allegations. It would have been different if PW 4 had stated that there is a cautioned statement recorded for the appellant. There is no reason for the appellant to complain as in criminal cases, it is not only cautioned statements that are proving the commission of the offences.

My thorough perusal of the record of the trial court reveals nothing extraneous being imported in the decision. The evidence of PW 1, PW 2 PW 3 during cross examination reveals consistency and same direction that all three witnesses were eyewitness of the armed robbery incident. This is what the trial court magistrate have stated at pages 7 and 8 of the judgment be considered as the demeanour of the witnesses. Having

analysed the evidence as found in the proceedings, there is nothing to fault the trial magistrate for importing extraneous matters.

I am aware of the warning on dangers to rely only on appearance of the witness to establish the facts. In **Juma Kilimo vs Republic** (Criminal Appeal 70 of 2012) [2012] TZCA 51 (9 July 2012) (TANZLII), at page 8, where the Court of Appeal stated authoritatively that:

> *It is trite law that an appellate court will rarely interfere with a finding of fact by a trial judge based on demeanour as that judge has had the advantage of watching the behaviour and conduct of a witness. But it is now axiomatic that such impressions may be deceptive and trial judges should be wary of judging issues of facts by appearances only.*

The consistency, coherence and uncontradictory nature of the evidence of PW 1, PW 2 and PW 3 during the cross examination entitled the trial magistrate to consider that those witnesses were credible and reliable as their respective demeanour was not shaken. I have no reason whatsoever to disbelieve the trial magistrate having personally ascertained the indeed the evidence of PW 1, PW 2 and PW 3 on identification of the appellant, presence of the appellant at the scene of crime and commission of the alleged offence was consistent without any flicker of doubt.

Additionally, about demeanor, it is a law that all witnesses are entitled to credence unless there are good reasons for not doing so. In **Mawazo Anyandwile Mwaikwaja vs DPP** (Criminal Appeal 455 of 2017) [2020] TZCA 268 (3 April 2020) (TANZLII), the Court of Appeal stated that:-

> *a witness's credibility basing on demeanor is exclusively measured by the trial court...Apart from demeanor, the credibility of a witness can also be determined in other two ways that is, one by assessing the coherence of the testimony of the witness, and two, when the testimony of the witness is considered in relation to the evidence of other witnesses.*

The evidence on credibility was also attacked from an angle of failure of the victim to record her statement on 21/05/2023 while she went to the hospital on the same day and date of alleged incident. This aspect is not a serious challenge as to the culpability or otherwise of the appellant. It is on record that PW 4 as an investigation officer was assigned to handle the file involving the incident on 21/05/2023 and on the same day he did interrogate the victim. It tallies squarely with testimony of PW 1 who is the victim that she returned PF 3 to the Police Station on 20/05/2023 and she was informed that she will be contacted later the investigation of the case.

I am not aware that in Tanzania there is a law prescribing timelines for police officers to interrogate the complainant/ victim once a

crime is reported. However, it is different in respect of the suspects of the commission of the offence. The suspect under restraint must be interrogated immediately within prescribed timelines as explicitly stated in Sections 50 and 51 of the Criminal Procedure Act, Cap 20 R.E. 2022. In the circumstances, there is no valid reason on the appellant to complain on this aspect.

Indeed, the trial court judgment reveals a critically and lucid analysis of the evidence from pages 5 to 10 of the judgment where the learned magistrate has considered the evidence on record in detailed manner, applied relevant legal principles and reached into conclusion that reflect the available evidence. It cannot be expected anything more than that from the trial court as sufficiently analysed and evaluated the evidence. At this juncture that the 3rd , 4th, 5th, 7th, 14th, 15th and 16th grounds of appeal crumble for being devoid of any merits.

Third set of grounds may be termed as procedural irregularities which the appellant complains to have caused miscarriage of justice. The non-compliance to sections 9(3) and 10(3) of the CPA, non compliance to section 38 (3) of the CPA and delay of arresting the appellant. Regarding non-compliance with the provision of section 9(3) and 10(3) of the Criminal Procedure Act, Cap 20 R.E. 2022, it is my settled view that they are irrelevant, and they do not apply to the circumstances of the case. Section 9(3) relates to the situation where an offence is reported directly to the magistrate thus magistrate should take certain action. This is when there is no formal charge. The other section 10(3) concerns the need for the police to examine all those

acquainted with the facts of the reported crime. Simply, from those persons police officer interviews or interrogates some may end up being witnesses in court of law if reported crime have sufficient evidence to prosecute. These are relating to the earliest stage of reporting the alleged crimes only. They are not related with conduct of criminal trial once a charge has been instituted in court.

Regarding Section 38 (3) the Criminal Procedure Act, Cap 20 R.E. 2022 its about seizure. Prosecution side are the ones proves the case and are the ones choose what document to tender and not trial magistrate. After all, appellant was arrested some days later from the commission of the offence and it was not the day of crime. The available evidence reveals that there was nothing found in possession of the appellant thus there was nothing to seize in the circumstances. PW1, PW2 and PW3 evidence stated that after incident appellant ran away. It was PW4's testimony that on 21/5/2023 the accused was arrested at a bar called Florida B at Mnarani street. It was two days later from the fateful day of the incident of armed robbery. On the circumstances of this appeal, I am satisfied that the 2nd and 13th grounds of appeal have no iota of merits to warrant this Court interfere with a well-reasoned and critically analysed decision of the trial court. I shall proceed to dismiss those two grounds of appeal for being devoid of any merits.

Another set of grounds may be termed as failure to consider defence evidence resulting in erroneous decision. The appellant is of the view that the defence case was totally ignored contrary to the legal

requirement that analysis and evaluate of the evidence as a whole must be done by trial court prior to reach to a conclusion.

A perusal on the judgement of the trial court it is revealed as follows: First, the evidence of both prosecution and defence was summarised. This is at pages 2 to 5 of the judgment. Second, both parties' evidence was evaluated and specifically at page 9 of the judgment the evidence of defence was analysed. Third, upon weighing the evidence from both sides, at page 10 the trial court found that prosecution evidence was watertight to warrant conviction. Indeed, any lamentation that defence evidence was ignored is not informed by the available record especially judgment which reveals extent of accommodation and inclusion of the defence evidence.

Trial court had analysed and considered the evidence of defence and there was no any established doubt on the prosecution evidence on record. The fact that the appellant's evidence was rejected, does not mean that it was not considered this was stated in the case of **Jafari Mohamed vs Republic** (Criminal Appeal 112 of 2006) [2013] TZCA 344 (15 March 2013) (TANZLII).

Also in the case of **Bathromeo Vicent vs Director of Public Prosecutions** (Criminal Appeal No. 521 of 2019) [2024] TZCA 186 (18 March 2024) (TANZLII), at pages 10-11 the Court of Appeal stated that:

> *It is well settled that in criminal trials, the duty of the accused is to raise doubts on the prosecution case. In*

the circumstances of this case, we are convinced that the defence case put holes in the prosecution case against the appellant.

The trial magistrate having considered the evidence in totality, categorically stated that the defence evidence has not established any reasonable doubt on the prosecution case thus found that on strengths of the prosecution's case all the issues were answered in affirmative. At this point, I am certainly sure that partly ground four on ignoring defence evidence and 17th ground crumble naturally for being meritless.

Another set of grounds relates to the failure to write and announce the sentence of which imposed to the appellant. I have perused both the judgment and proceedings of the trial court to ascertain the validity and truthfulness of this ground. I find it to be unwarranted ground. I am so certain as the appellant would not have been committed to prison in absence of the sentence.

On page 11 of the judgment of the trial it is clearly stated that the accused is found guilty of the offence he stood charged and as such the appellant was convicted under section 287A of the Penal Code, Cap 16 R.E. 2022.

Similarly, on pages 33 to 35 of the proceedings the sentence was stated and pronounced against the appellant. This was done upon the trial Court having considered the mitigation and aggravating factors from the appellant and prosecution respectively.

This is in line with section 312(2) of the Criminal Procedure Act which states:

> *(2) In the case of conviction, the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted and the punishment to which he is sentenced.*

As such, there is no reason to complain on the part of the appellant that there was no sentence written and announced before against the appellant. The 9th ground of appeal crumbles for being devoid of any merits.

Lastly grounds on failure to prove the case beyond reasonable doubts by the prosecution side. The prosecution side has the duty to establish the case and to prove essential elements of the offence beyond reasonable doubts. On pages 8 to 10 of the judgment, the trial court analysed the available evidence in the light of the provisions of section 287A of the Penal Code, Cap 16 R.E. 2022. It was found that the evidence of PW1, PW2, PW3, PW4 and PW5 proved that victim was robbed, and her handbag was stolen, and appellant used screwdriver to threaten and cause injury to the victim to retain the stolen property. Three were a total of three eyewitnesses who witnessed the occurrence of the crime.

It is the duty of the prosecution to prove the case against the accused person beyond all reasonable doubt. Thus, the duty to prove a criminal case lies on the prosecution and the standard of proof is beyond

reasonable doubt. In the case of **Chausiku Nchama Magoiga vs Republic** (Criminal Appeal No. 297 of 2020) [2023] TZCA 17810 (9 November 2023) (TANZLII), it was stated that:-

> *The duty of the prosecution to prove a criminal case beyond reasonable doubt is universal and, in our case, it is statutorily provided for under section 3 (2) (a) of the Evidence Act, Chapter 6 of the Revised Laws. Further, in the case of* ***Woodmington v. DPP*** *[1935] AC 462, it was held inter alia that, it is a duty of the prosecution to prove the case and the standard of proof is beyond reasonable doubt. The term beyond reasonable doubt is not statutorily defined but case laws have defined it. In the case of* ***Magendo Paul & Another v. Republic*** *[1993] T.L.R. 219, the Court held that: "For a case to be taken to have been proved beyond reasonable doubt its evidence must be strong against the accused person as to leave a remote possibility in his favour which can easily be dismissed."*

The main issue is whether in the circumstances of this appeal had the prosecution discharged the burden of proof to the required standard. I am certain that the answer is in the affirmative. In the case of **Bathromeo Vicent vs Director of Public Prosecutions** (Criminal Appeal No. 521 of 2019) [2024] TZCA 186 (18 March 2024) (TANZLII), at pages 7-8, the Court stated that:

It is a cardinal principle of criminal law that the duty of proving the charge against an accused person always lies on the prosecution. In the case of ***John Makolebela Kulwa Makolobela and Eric Juma alias Tanganyika v. Republic*** *[2002] T.L.R. 296 it was held that: "A person is not guilty o f a criminal offence because his defence is not believed; rather, a person is found guilty and convicted of a criminal offence because of the strength of the prosecution evidence against him which establishes his guilt beyond reasonable doubt.*

The analysis of the evidence of the case at hand has revealed that the prosecution case was proved beyond reasonable doubt. Evidence of PW 1, PW 2, PW 3, PW 4, and PW 5 was watertight and sufficient to warrant the conviction of the appellant. It is on that reason that trial magistrate at pages 10 to 11 found that prosecution managed to prove its case against the appellant to the required standard of proof beyond reasonable doubt. At this juncture, I am boldly dismissing the eighth ground of appeal for lack of merits.

This Court has demonstrated in the foregoing analysis that available evidence on record is sufficiently revealing that the prosecution case was proved to the standard of proof beyond any reasonable doubt through oral testimonies of PW 1, PW 2, PW 3, PW 4 and PW 5 as well as Exhibit PE.1 which was cementing that dangerous weapons or

instrument was applied and directed to the victim thus causing injury in course retaining the stolen property.

In totality of the events, this appeal lacks merits as the prosecution proved the case beyond reasonable doubt. The appeal deserves only one conclusion which is dismissal on its entirety. I uphold both conviction and sentence of the appellant as entered by the District Court of Kondoa. The appeal stands dismissed in its entirety for lack of merits.

It is so ordered.

DATED at **DODOMA** this 4th day of April 2024.

E.E. LONGOPA
JUDGE
04/04/2024.