

IN THE HIGH COURT FOR ZANZIBAR

HELD AT VUGA

CRIMINAL APPEAL NO. 7 OF 2011

FROM ORIGINAL CRIMINAL IN CASE NO. 3 OF 2010
OF REGIONAL COURT MFENESINI

JUMA OMAR SAID APPELLANT

V/S

MKURUGENZI MASHTAKA (DPP) ... RESPONDENT

DATE OF LAST ORDER: 28/12/2011

DATE OF JUDGEMENT: 10/01/2012

JUDGEMENT

OMAR O. MAKUNGU – CJ

The appellant **JUMA OMAR SAID** was charged and convicted under Sections 285 and 286 (1) of the Penal Act No. 6 of 2004 for robbery. He was sentenced to five years imprisonment. He is now appealing against conviction and sentence.

The appellant was unrepresented while **Mr. MAULID AME**, state Attorney Represented the respondent.

The appellant raised seven grounds of appeal on his memorandum of appeal and I quote them in Kiswahili as follow:-

1. Kwamba, ilipita miezi mitatu kabla ya kukamatwa mrufaani, tokea tukio linalodaiwa kutokea. Huu ni muda mrefu sana na unatoa mwanga wa ubandikiwaji wa kesi.
2. Kwamba, mrufaani alikamatwa nyumbani kwake tena bila ya warrant, Polisi walijuaje kuwa mrufaani alihusika na tuhuma hizo wakati mlalamikaji amekiri kuwa hawafahamu waliomuibia.
3. Kwamba, mlalamikaji anafanya biashara ya haramu, Hakimu amejiridhisha vipi kuwa kweli aliibiwa? Shahidi huyu mlalamikaji kuwa PW2 ni dhahiri amelazimishwa na Polisi kuja kutoa ushahidi wake miezi saba tokea kesi ianze kusikilizwa.
4. Kwamba, Judgment iliyopo imetolewa kimamkosa, hukumu hii imesomwa na Mhe. Rabia tarehe 18/04/2011 halafu adhabu imetolewa na Mhe. **FARAJI** tarehe 9/05/2011. Mrufaani hakutendewa haki kwa hukumu kusomwa na Mahakimu wawili.
5. Kwamba, Mhe. hakimu amekosea kisheria kutoupa nguvu utetezi wa alibi wa mrufaani hasa ukizingatia mrufaani si mtaalamu wa sheria na suala la alibi ni la kisheria.
6. Kwamba, PW3 amedai kuwa ameendesha Gwaride la utambulisho lakini ameshindwa kueleza Mahkama jinsi alivyoliendesha Gwaride hilo kiasi cha kutambuliwa mrufaani.

7. Kwamba, PW2 amedai kuwa anamjua mwizi mmoja kwa sura kwani humuona mara kwa mara ufukweni lakini hajasema mtu huyo kuwa ni mrufaani na badala yake amemtambua mrufaani Mahkamani (dock identification) tu.

Before this court the appellant had nothing much to add apart from what has been written on his memorandum of appeal.

On his part, Mr. Maulid, state Attorney for the respondent strongly opposed this appeal on the ground that all grounds have no merit except ground No. 6 of the appeal. In this ground he admitted that PW3 failed to conduct identification parade as required under the law.

In this case the prosecution side brought three witnesses to prove the offence. Two of them are Police officers and the complainant (PW2).

In her Judgment the trial Magistrate failed to analyse the evidence of the prosecution and to give reasons how she came to satisfy herself that the prosecution has proved the offence beyond reasonable doubt. She laboured herself in analysing the point of alibi raised by the appellant instead of evidence of the prosecution.

After going through the record I observed that the Magistrate based her conviction on the evidence of PW2 only. After a very careful examination of the evidence before her, the learned trial Regional Magistrate was fully satisfied that PW2 was a truthful witness. She accordingly convicted the appellant as charged.

It is now trite law that before basing a conviction solely on evidence of PW2, such evidence must remove all possibilities of any false allegation and the court must be fully satisfied that the evidence is watertight.

I observe from the evidence that PW2 did not know those attacked him. He came to know the appellant at the Police station. PW3 testified that he connected the accused (appellant) with this offence after the identification parade being conducted whereby accused was identified by the victim.

Mr. MAULID conceded that there was no such identification parade conducted by PW 3. Therefore PW2 just told by the Police this is your culprit as alleged by the appellant. From that observation I feel that it is unsafe to rely on the evidence of PW2 above without corroboration. The Magistrate never warned herself of the danger of getting a conviction on the Uncorroborated evidence of the complainant (PW2), That is wrong.

Before I conclude appeal I wish to observe although very briefly that the handling of this case was not at all satisfactory. The investigation of it was most superficial, and the presentation of it in court was only half-hearted leaving too many loose ends. I hope that all those concerned will make the necessary efforts to overcome such situations in future.

In the last analysis I am of the view that the evidence adduced in support of the charge was not at all strong, and the appellant's defence, properly considered, raises serious doubts as to his guilty. In the circumstances I am satisfied that there is merit in this appeal which ought to succeed. In the result I allow the appeal, quash the conviction

and set aside the sentence with an order for the immediate release of the appellant unless he is otherwise lawfully held in custody.

(Sgd) OMAR O. MAKUNGU, J

10/01/2012

COURT:

This Judgement is read before Mr. KHAMIS JAFFAR, state Attorney and the appellant.

(Sgd) OMAR O. MAKUNGU, J

10/01/2012

The right of appeal is hereby explained.

(Sgd) OMAR O. MAKUNGU,

CHIEF JUSTICE

10/01/2012

I certified that this is true copy of the original.

Sgd. GEORGE J. KAZI

REGISTRAR

HIGH COURT-ZANZIBAR

