

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: LUBUVA, J.A., NSEKELA, J.A. And KAJI, J.A.)

CRIMINAL APPEAL NO. 48 OF 2000

BETWEEN

MOHAMED ABUBAKARI..... APPELLANT

AND

THE REPUBLIC..... RESPONDENT

**(Appeal from the Conviction of the High Court of
Tanzania at Arusha)**

(Munuo, J.)

dated the 1st day of June, 1999

in

Criminal Appeal No. 7 of 1999

JUDGMENT OF THE COURT
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LUBUVA, J. A.:

This is an appeal against conviction and sentence. It arises from the decision of the High Court at Moshi in Criminal Appeal No. 7 of 1999.

The circumstances giving rise to the case are peculiar and unusual. The incident, leading to the offence, subject of the appeal, took place on 5.4.1997, the day Suzana Justin Frank (PW1) and Frank Lyimo (PW2) got married. After marriage ceremony, a wedding reception was held at the Pan Africa Hotel in Moshi. Thereafter, at about 9.30 p.m., PW1 and PW2 together with their best man, matron and flower girls were driven from the hotel, in a car Registration No. MSH 504, driven by Saria Ulomi (PW3). They were heading to their home in Soweto, within the outskirts of Moshi township. On the way, somewhere, near the airport, the car broke down. As the driver of the vehicle (PW3) was checking on the vehicle, a gang of bandits invaded. On seeing this, the bride groom (PW2), the matron, best man and one flower girl, got out of vehicle and fled leaving the bride (PW1) and another flower girl in the car.

The bandits got into the vehicle one of whom sat next to the bride in the back seat and two others in front. The car was driven away together with the bride (PW1) for sometime until it again broke down at Interchem area where it was abandoned and the bandits ran

away. The bride and the flower girl walked away and later rejoined the bride groom (PW2) and the rest of her companions searching for her together with the police. Upon investigation, following information by PW1 that the appellant was among the bandits, the appellant was arrested and charged with the offence, subject of this appeal.

At the trial, the appellant raised the defence of alibi. He claimed that he could not have participated in the alleged robbery on 5.8.1997 in Moshi because he was admitted in hospital at Muhimbili in Dar-es-Salaam between 27/3/1997 and 6/4/1997. However, he was unable to produce the medical documents to prove his admission to Muhimbili hospital because he had given them to the investigating officer.

The trial magistrate found PW1 a credible witness whose identification of the appellant was satisfactory. As the defence of alibi had not been raised in terms of the law under the Criminal Procedure Act, 1985, it was regarded as an afterthought and therefore no weight was accorded to it. The appellant was, as

already indicated found guilty as charged, he was sentenced to thirty years imprisonment.

He unsuccessfully appealed to the High Court (Munuo, J. as she then was). Dismissing the appeal, the learned judge was satisfied that the crucial issue of the identification of the appellant had been proved satisfactorily. The judge was live to the fact that Suzan Justin Frank (PW1) was the sole witness on the identification of the appellant and being aware of the danger of convicting on the evidence of a single witness, she was satisfied that the evidence was sufficient to sustain the conviction against the appellant. The appeal was dismissed and hence this appeal.

The appellant was unrepresented in this appeal. He had filed a memorandum of appeal comprising five grounds. Essentially, the complaint was that the evidence on the identification of the appellant was not sufficient. That it was based on the evidence of a single witness, namely Suzan Justin Frank (PW1), the bride, which is unsafe in a criminal charge. The possibility of mistaken identity could not be ruled out.

At the hearing of the appeal, the appellant addressed the Court briefly. He reiterated the point that the evidence of PW1 should not have been relied on in convicting him. He conceded, however that he and PW1 come from the same area and know each other. He further stated that coming from the same area, they invite each other to social functions although this time he was not invited to the wedding ceremony of PW1 and PW2. To show that PW1 was unreliable, he wondered why there was a delay in arresting him on 10.4.1997 after the incident on 5.4.1997 since PW1 knew him. He cast doubt on the evidence of PW1.

For the respondent Republic, Mr. Mulokozi, learned Senior State Attorney, appeared. He did not support the conviction on the ground that the identification of the appellant was solely based on the evidence of the single witness, PW1, under unfavourable conditions. The circumstances were such that, in his view, the possibility of mistaken identity could not be ruled out. Mr. Mulokozi however, conceded that the evidence of a single witness in identification can sustain conviction if the court warns itself of the danger of acting on such evidence and finds the evidence truthful.

The crucial issue pertains to the identification of the appellant. From the evidence on record, it is clearly stated by PW1 that before the car broke down the lights of the headlamp of the car were on. However, PW1 further stated that after the car broke down and the bandits got into the car, the lights inside the car were on. In that situation, according to PW1, she was able to recognize the appellant who was seated next to her at the back seat of the car. Furthermore, PW1 also stated in her evidence that she was able to identify the appellant because although she did not know the name of the appellant yet during her stay at Soweto for three months, she had been seeing him (appellant) at the Soweto area where he also lived. It is also to be noted that according to PW1, from the time the bandits drove off the car until it reached Interchim, it took considerable time before the bandits fled, the appellant searched her (PW1) and snatched from her golden ring, wrist watch and a porch containing money in envelopes to the estimated amount of shillings 600,000/=.

In the circumstances, having regard to the fact that the appellant was known to PW1 before the incident, the time spent in

the car with the appellant seated next to her (PW) in the back seat of the car and that the lights inside the car were on, we have no hesitation in agreeing with the learned judge and the trial magistrate that PW1 had ample opportunity of identifying the appellant. The question of mistaken identity raised by Mr. Mulokozi does not therefore arise. It would perhaps be different if there was no light in the car and also there was no proximity between the appellant and PW1 in the car. As for the fact that PW1 knew the appellant though not by name, it is born out from the record that the appellant and PW1 were residing at Soweto, Moshi town. What is more, in Court, at the hearing of the appeal before the appellant heard the Senior State Attorney's submissions on mistaken identity, in clear and unequivocal terms admitted that they knew each other with PW1 though not by name. In addition, the fact that PW1 had visited the appellant's house on the pretext of buying milk before the police were shown the place, is also evidence that PW1 knew the appellant and where he resided.

Therefore, in the circumstances, the question of mistaken identity has no basis in this case. The conditions set out in **Waziri**

Amani V. Republic (1980) TLR 250 for visual identification were, in our view, satisfied in this case.

In this regard, the issue is whether the lone evidence of PW1 was sufficient to found conviction against the appellant. As said before, Mr. Mulokozi, learned Senior State Attorney was not at ease on this. He was inclined to the view that it was not safe to sustain conviction against the appellant solely based on the evidence of PW1.

We are respectfully not in agreement with him on this point. The legal position regarding the number of witnesses required in any case is settled. Under section 143 of the Evidence Act, 1967, no particular number of witnesses shall be required for the proof any fact. However, in this particular case, as the identification of the appellant depended on the evidence of PW1, as a rule of practice did evidence of PW1 require corroboration? We do not think so. The reason is that it is apparent from the record that the learned judge on first appeal, after evaluating the evidence and warning herself of the danger of convicting on the evidence of a single witness, correctly in our opinion, sustained the conviction. The Court had

occasion to state this point in **Hassan Juma Kanenyera And Others V. Republic** (1992) TLR 100. The Court *inter alia* stated:

It is a rule of practice, not of law, that corroboration, is required of the evidence of a single witness of identification of the accused made under unfavourable conditions, but the rule do not preclude a conviction on the evidence of a single witness if the court is fully satisfied that the witness is telling the truth.

In the instant case, the situation is different. As already found, the conditions of identification were favourable, so, the question of corroboration did not arise. All the same, PW1 having been found a truthful witness and the judge being alive to the danger of acting on the evidence of a single witness on the identification of the appellant, we are satisfied that the learned judge was entitled in dismissing the appeal. On the evidence, the conviction was justified.

The appellant had also complained that there was something fishy about the evidence of PW1. If the incident took place on

5.4.1997, why was there such a delay that he was not arrested until 10.4.1997. We are unable to see anything unusual about the alleged delay in reporting the matter to the police by PW1. In proper perspective, sight should not be lost of the fact that PW1 and PW2 were in a wedding mood which was marred by this ugly incident. PW1 stated so in her evidence. For the period between 5/4/1997 and 9/4/1997, apparently, PW1 and PW2 were away to an undisclosed place, possibly on a honeymoon. Upon her return on 9/4/1997, she showed the police the house of the appellant. The following day, namely, 10/4/1997, the appellant was arrested. In that light, we see nothing fishy or unusual in the alleged delay of about 5 days before the appellant was arrested. There is no merit in this complaint.

Accordingly, for the foregoing reasons, the appeal is dismissed in its entirety.

DATED at ARUSHA this 5th day of October, 2004.

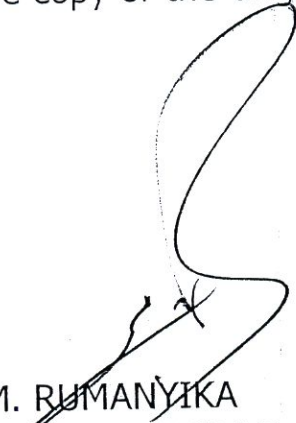
D. Z. LUBUVA
JUSTICE OF APPEAL

H. R. NSEKELA
JUSTICE OF APPEAL

S. N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




S. M. RUMANYIKA
DEPUTY REGISTRAR