

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

CORAM: MAKAME, J.A.; KISANGA, J.A. And OMAR, J.A.

CRIMINAL APPEAL NO. 4 OF 1986

BROWN PETER KASWELA. APPELLANT

VERSUS

THE REPUBLIC. RESPONDENT

(Appeal from the conviction of the High Court
of Tanzania at Mbeya) (Mtenga, J.) dated the
5th day of December, 1985

in

Criminal Appeal No. 122 of 1984

JUDGMENT OF THE COURT

OMAR, J.A.:

The appellant Brown Peter Kaswella was charged at the District Court with the offence of store-breaking and stealing contrary to section 296(1) of the Penal Code. Appellant was found guilty of receiving stolen property contrary to section 311(1) of the Penal Code and was convicted and sentenced to three years imprisonment. In the first appellate court this sentence was enhanced to five years as the property stolen was assessed to be worth more than Shs. 5,000/-

The facts of the case are that on the 9th April, 1984 at night 34 bags of sugar were stolen from the Regional Trading Company's Godown at Kyela in Mbeya Region. The same night Appellant approached P.W.8, a porter, and asked him to take some bags of sugar to a certain house which P.W.8 did. In the morning news of the theft broke out and police started their investigations. They went to P.W.4 Ester and P.W.5 Florence and asked them if they had any sugar. They agreed they had and went to their houses and brought four half bags of sugar which they showed to the police officer (P.W.3). P.W.4 and P.W.5

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stated that they had paid 1,000/- for each half bag of sugar and the person who sold them the sugar and to whom they paid the money was Brown the appellant. The two women pointed at Brown the appellant and he was arrested by the police. Later P.W.3 accompanied by the cell leader P.W.7 went to the house of P.W.6 Sofia wife of one Goodluck and there found 14 bags of sugar, 9 bags of 100 Kilograms each, and 5 bags of 50 Kilograms each. P.W.6 informed the police that it was the appellant who brought those bags of sugar in her house and that he the appellant had sold some sugar in her presence to Ester and Florence P.W.4 and P.W.5. In his defence the appellant denied to have hired P.W.8 to carry sugar anywhere. He denied to have known P.W.4 and P.W.5 and to have transacted any business with them. He denied also to have sent sugar to P.W.6 and to be related to her husband as P.W.6 claimed.

Four people were charged for this offence for store breaking. Goodluck the husband of P.W.6 was acquitted because the sugar was put in his house without his knowledge and consent. The watchman of the godown was acquitted because the godown was not broken into and the sugar was taken by the same officials of the Company one of whom was convicted of stealing and sentenced to five years imprisonment.

The Counsel for the appellant has strenuously argued in the three courts that the incriminating evidence against his client was from the P.W.4, P.W.5 and P.W.6 whom he deems to be accomplices and therefore their evidence is weak and needs corroboration. As for P.W.8 who took the bags to P.W.2's house he was discredited because he was stumbling heavily and did not know how to count. The courts below found as a fact that P.W.8 knew the appellant that he also knew that he was carrying the sugar to a known house on the orders of appellant. He was held to be a witness of truth. P.W.8 may have missed the number of bags he carried and also was hesitant

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whether he was paid for it. Ultimately he agreed he was paid Shs.100/- for carrying the bags. These questions of facts were resolved at the District Court and the High Court. The question posed for our consideration is who is an accomplice and whether those three witnesses are accomplices. An accomplice is a person who concurs in the criminal design of his collaborators and joins in some way or other in the execution of those designs or is privy to it or aids in some form or other.

It is clear that when this crime was conceived the two women buyers of the sugar had no knowledge of it. They were people who had felt the shortage of sugar in the country and needed it badly and were prepared to pay any reasonable price for it. They were in the business of brewing liquor. The offences of stealing and receiving stolen property were already completed by the time P.W.4 and P.W.5 came into the picture. It was then a question of disposing the property and sharing the loot among the criminals that was being pursued. The two women were contacted, and solicited to ^{buy it,} and many more customers would have been if the police did not act fast. They were told by the appellant that the transaction was clean: the sugar was allocated to certain villagers but the villagers could not be reached as the bridge leading to them had collapsed. So it was ~~miraculous~~ from heaven so to speak, getting this scarce sugar so easily. P.W.4 and P.W.5 then fell for it and bought the sugar. The accepted view of an accomplice does not therefore fit these two people. These witnesses were hoodwinked by the appellant just as RTC was hoodwinked by its officials in spite of the presence of a watchman outside the godown and all the locks within and out. P.W.6 on the other hand may or may not be ^{an} accomplice. She received 14 bags of sugar in her house may be an act of ~~the~~ ^{her} relative of her husband

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but she may also have known what her brother in law, the appellant, was up to. On our part we see no reason to presume that she is unworthy of credit. We appreciate her forthrightness in naming the appellant who had brought the bags of sugar to a house to keep, and also when she stated that she knew that he the appellant had a much bigger house of his own in the same area in which to store them.

We must also observe that it is not possible to formulate in all cases what kind of evidence should be regarded as corroboration; its nature and extent must necessarily vary with the circumstances of each case and of the offence charged.

We hold therefore that the testimony of P.W.4, P.W.5 and P.W.6 was corroborated by that of P.W.8 that, sugar was taken to the house of P.W.6 on the orders of the appellant and that as P.W.6 had said it was sold there to unsuspecting customers by the appellant. This sugar was proved to be the same sugar stolen from RTC Kyela. As for the sentence of 5 years imprisonment consequent on the value of the sugar being found to be Shs. 5,000/- and above, this question of fact i.e. the price of sugar had been dealt with by the first appellate court. The value of the sugar was so obviously above Shs. 5,000/-.

We find the case against the appellant proved beyond reasonable doubt and so uphold the conviction and dismiss the appeal.

DATED at MBEYA this 28th day of April, 1986.

L. M. MAKAME
JUSTICE OF APPEAL

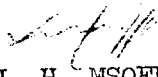
R. H. KISANGA
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

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


(J. H. MSOFTE)

DEPUTY REGISTRAR.