

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

**PC. CRIMINAL APPEAL NO.47 OF 2004
(Originating from Criminal Case No.8 of 2003
Of the District Court of Mkuranga, H.S. Mnambya, SDM)**

SAIDI JEMBE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

SHANGWA, J.

The Appellant saidi Jembe was charged in the Primary Court of Mkuranga with the offence of robbery c/ss 285 and 286 of the Penal Code. He was found guilty and convicted

thereof. He was sentenced to 15 years in prison. Having been dissatisfied with both conviction and sentence, he appealed to the District Court of Mkuranga in Criminal Case No.8 of 2003. His appeal was dismissed and he decided to appeal to this court. He raised four grounds of appeal, but I will only consider the first and fourth grounds which are sufficient to dispose of this appeal.

The first ground of appeal is that the District Court erred in law and fact by upholding the trial court's conviction without evidence to show that he was identified to be the one who robbed P.W.1 during the night of the incident. The fourth ground of appeal is that, the District Court erred in law and fact by sustaining the trial court's conviction which was based on insufficient evidence.

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I have gone through the testimony of Pw.1 Zuhura Shabani and the testimony of Pw.2 Fatuma Saidi with the view of satisfying myself as to whether or not it is sufficient to base a conviction. Before expressing my opinion on this issue, I wish to point out the finding of the trial Primary Court which heard the testimonies of Pw.1 and Pw.2. In its finding, the said court was satisfied that Pw.1 and Pw.2 told the truth that on 5.12.2002 during the night at 1.00 p.m., the Appellant and another fellow who is at large did attack them while they were on their way from home to Tundwi Songani area for Idd El Fitri celebrations, and did snatch P.W.1's wrist watch and a bag containing Shs.27,000/=, two pairs of khangas and a gown.

I think that the said court's finding was properly based on evidence. The testimonies of Pw.1 and Pw.2 do show that at the time of the incident, the Appellant and another

fellow who is at large used violence to Pw.1 in order to obtain her properties which were snatched from her, and that the Appellant was reported to the village chairman during the same night who arrested him at 10.30 p.m. in connection to the offence with which he was charged. He was arrested from his house.

In his defence before the trial court, the Appellant raised an alibi that on the date of the incident, he was at the residence of Kondo Dilabu from 6.00 p.m. to 11.00 p.m. roasting fish. His defence was rejected by the trial Court.

For me, I think that his defence was properly rejected by the trial court. I think so because he did not call Kondo Dilabu to testify on his behalf and that at the time of his arrest at his house, it was hardly 11.00 p.m. when he claims to have left Kondo Dilabu's house for home.

As to whether or not he was identified to be the one who robbed Pw1, I am of opinion that he was indeed identified to be the one who did so. Although, the incident took place during the night, Pw.1 and Pw.2 were able to identify him. That is why immediately after the incident, he was reported to the village chairman by the said two witnesses as the one who had robbed P.w.1 and he was arrested during the same night.

All in all, I find that there was sufficient evidence for the District Court to maintain the trial court's conviction on the Appellant. The sentence of 15 years in prison which was imposed on the Appellant and upheld by the District Court is not excessive. In view of the fact that acts of robbery are very rampant in Morogoro Region, the said sentence is deterrent to others and I cannot reduce it.

For these reasons, I hereby dismiss this appeal in its entirety.



A. Shangwa

JUDGE

30/12/2005

Delivered in open court this 30th day of December,
2005.



A. Shangwa

JUDGE

30/12/2005