

IN THE HIGH COURT OF TANZANIA

AT SONGEA

DC CRIMINAL APPEAL NO. 7 OF 2005

(ORIGINAL SONGEA D/C CRIMINAL CASE NO. 385/2004)

SALVIUS MBAWALA APPELLANT

VERSUS:

THE REPUBLIC RESPONDENT

26/10/2005 - HEARING CONCLUDED

13/03/2006 - JUDGMENT DELIVERED

J U D G M E N TKAGANDA, J.

The appellant, Salvius Mbawala was charged together with Pameras Mbawala his brother, of cultivating cannabis plant, contrary to section 16 (a) (f) of Act No. 9/1995. Which has been amended under section 12 (a)(d) Chapter 95. The drugs and Prevention of that Traffic in drugs Act. The Laws were consolidated for control of all narcotic drugs. The ammended Laws provide that:-

"Any person who:- Cultivates any cannabis, coco plant or gethers any portion of coco plant; commits an offence and upon conviction is liable to a fine of one million shillings or three times the Market value of the prohibited plant, which ever is the greater, or to Imprisonment for a term of not exceeding twenty years or to both the fine and Imprisonment."

On judgment the 2nd accused was acquitted and the appellant sentenced to five years Imprisonment.

Section two of the Law defines "cannabis to include any part of the plant of the genus cannabis, excluding the seeds, the mature stock, or fibre produce from the cannabis plant or cannabis resin."

The facts and evidence adduced by the two prosecution witnesses both being police officers was that, they found large plants of bhangī in the 1st accused's farm. During the Preliminary hearing that fact was one of the undisputed matters as such no evidence was required to prove. That is clearly provided under section 192 (4) of the Criminal Procedure Act, 1985 which states:-

"Any fact or document admitted or agreed (whether such fact or ^{document} is mentioned in the summary of evidence or not) in a memorandum filed under this section shall be deemed to have been duly proved."

Matter which were not indispute include:-

1. that the 2nd accused admitted of 47 cannabis plants being found in their shamba.
2. The plants were found by P.W.I and another police, Militiamen, and the Ward Secretary.
3. the 1st accused admit to have planted the cannabis in his shamba with a purpose of making animal and fish food to his goats and fish.

Those were among the facts which need not be proved by any other evidence.

Furthermore the appellant admitted planting the cannabis in his cautioned statement, which state among other things:-

"Nakumbuka mnamo mwaka 2002 nilipanda miche ya bhangi katika shamba langu lililopo eneo la limalakilo katika kijiji cha Mbinga Mhalule. Nililima bhangi hiyo kwa lengo la kulishia mbuzi na samaki, baada ya Msimu kwisha mimea yote ilitolewa na ilibaki miwa tu. Mwaka 2003 niliacha kulima na sikupita kabisa katika shamba lile, Mwaka 2004 mwezi wa pili niliondoka kwenda kijiji cha Liganga hivyo sikulima katika shamba lile kwa msimu ule hadi nilifika tarehe 01-02-2004 wakati nipo kwenye shughuli ya upasuaji mbao katika kijiji cha Liganga niliona polisi wanakuja kunikamata. Ni kweli kwamba bhangi ile iliyokuwa katika shamba langu nililima miaka ya nyuma ya 2003 na nilijua kuwa mimea ile imeota kutokana na mbegu niliyopanda miaka ya nyuma."

The appellant argued in his memorandum of appeal that, the plants were not identified by an expert. The learned State Attorney submitted that there was no need to get the experts opinion, it was sufficient for the Police to identify. More so because the facts was not disputed. I agree with the Learned Resident Magistrates finding on that issue and the Learned State Attorney's submission. That is correct because the fact was one of the undisputed. Matters during the Preliminary hearing also it was admitted by the appellant in his cautioned statement.

On the second ground regarding the number of witnesses. I support and agree with the Learned State Attorney, that is, specific no specific number of witnesses is required to prove a fact. Section 143 of the Evidence Act, 1967 is clear on that Law, the provision states:-

"Subject to the provisions of any other written Law, no particular number of witnesses shall in any case be required for the proof of any fact."

The argument advanced by the appellant is therefore rejected.

The appellants admission was clear and need not be doubted as such the court was not required to conduct a trial within trial. The learned State Attorney correctly pointed out by citing the decision in the case of Mazambi V. R. (1991) TLR. 200. The Court in that case held that a trial within trial should only be conducted whenever an accused person objects to the tendering of any statement he has recorded.

During PW2's testimony on 24th November, 2004, he stated as follows:-

"I framed charges and on 4th October, 2004, all accused persons were brought before this honourable court. I pray to read and tender the 1st accused's cautioned statement.

1st accused No objection.

Court 1st accused's cautioned statement admitted and marked exhibit

P.2."

Had the appellant objected to the tendering of that statement, his argument could be valid and the trial courts decision could be faulted.

In the event that ground of appeal is hereby rejected. The learned Resident Magistrate was correct on his reasoning that since the appellant did plant the cannabis plants it does not matter of his purpose nor the period which had elapsed before the police discovered. The Law under section 12 (a) creates an offence by mere cultivation of the plant.

Having considered all the grounds of appeal, I find that the appeal has no merit at all and it is hereby dismissed.

I need not disturb the sentence passed by the learned Resident Magistrate because it is reasonable and within his jurisdiction. Appeal dismissed.

S.S. Kaganda,
Judge.

12/12/2005

13/3/2006

Coram: Hon. S.S. Kaganda, J.

For the Appellant: Absent.

For the Respondent: Mr. Sedekia State Attorney.

C/C: Mshana.

Court: Judgment read over and delivered this 13/3/2006 in the presence of the Learned State Attorney and in the absence of the Appellant. Right of appeal explained. Appellant to be notified of the Judgment the soonest.

S.S. Kaganda,
Judge.

13/03/2006.

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


D.E. MRANGO

DISTRICT REGISTRAR.

SSK/ESY.