



On the night of 26/2/97, the complainant, Kadapawo Samuel, was at his home sleeping in a room which was connected to the shop. He was awakened by the noise of the robbers whom he heard cutting the lock on the shop. When he opened the door of the middle room of the shop and flashed his torch he recognised the appellant and two other persons called Muslimu and Kawuya. The appellant was carrying goods from the shop. The complainant raised an alarm which was answered by the neighbours. The complainant mentioned the appellant's name to the L.C.I Chairman of the area Sam Dudu to whom he reported the robbery. He also mentioned the same name to the police at Butebo Police Post the following day. The appellant was later arrested at Mukongoro village in Kumi District on 29/2/1997. He was charged together with another suspect, Kasani Opedun who was acquitted by the trial court

At his trial, the appellant denied ever having committed the offence. He pleaded an alibi to the effect that on the night in question he was in another village called Mukongoro where he had gone to visit his sister.

The trial judge and Court of Appeal rejected the appellant's defence of alibi and accepted the case as presented by the prosecution with the above stated results.

The following two grounds of appeal were filed by the appellant's counsel namely:

- "1. The learned Justices of the Court of Appeal erred in fact and law when they failed to re-evaluate the evidence and thereby rejected the appellant's defence of alibi.
2. That the learned Justices of the Court of Appeal erred in fact and law in holding that the appellant participated in the robbery by relying on the identification by a single witness when conditions were not conducive for correct identification or where (sic) not free from error"

Learned counsel for the appellant, Ms Charity Nakabuye, argued the two grounds together. She submitted that it was not possible for the complainant to identify the appellant through a "spy hole" in the door of the shop. She contended that the only reason why the complainant claimed to have seen the appellant was that he had allegedly known him as a notorious robber in the village. Learned counsel further submitted that the complainant's evidence could not be treated as having been free from error as he must have been scared when he was awakened from sleep.

On his part, Mr. Vincent Okwanga, Principal State Attorney, who opposed the appeal, submitted that the appellant was correctly convicted as there was overwhelming evidence adduced against him. According to him there were conditions favouring correct identification of the appellant since there was light from complainant's torch and the appellant was known to the the complainant before the robbery. He argued that the appellant was under the complainant's observation for two minutes, which in his view, was a considerable time. Judging from the evidence on record, it is evident that the prosecution case was mainly based on the evidence of a single identifying witness, Kadapawo Samuel (PW1). *The* law relating to this kind of evidence was stated in: Abdallah Bin Wendo and Sheh Bin Mwambere V R (1953) 20 EACA 166 at page 168 as follows:

"Subject to certain well-known exceptions it is trite law that a fact may be proved by the testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which Judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the possibility of error".

The learned Justices of Court of Appeal were alive to this cardinal principle of our law as may be seen in the following passage of their lordship's judgment.

"We agree with Mr. Okwanga State Attorney that the learned trial judge was justified in believing the evidence of the complainant, PW1, as a single identifying witness on the ground that conditions were favourable for him to identify the appellant. The appellant was known to PW1 before the incident. PW.1 saw the appellant, Muslimu and Kawuya in the shop at a distance of about 3 meters

away with the aid of a torch light of 3 new dry battery cells. He observed them for 2 minutes when the middle door was partially opened. He mentioned them by names to L.C.I Chairperson, PW.2, who answered the alarm and both PW.1 and PW.2 in their report repeated the same names to the police. In pursuit of the thieves that same night, Muslimu and Kawuya were killed in the process. In the circumstances, we find also that the third ground of this appeal lacks merit and fails".

We are in no doubt that the evidence on record clearly shows that conditions favouring correct identification of the appellant by the complainant existed and both courts below rightly found so. The complainant's evidence was consistent from the beginning and this is sufficiently corroborated by the testimonies of the L.C.I Chairman Sam Dudu (PW2) and Omoding Peter (PW3) to whom he mentioned the name of the appellant as being one of the people who had attacked him. The disappearance of the appellant from his village corroborates the complainant's testimony. We do not agree with the contention of the appellant's counsel that there was a mistaken identity. The evidence of the complainant placed the appellant at the scene of crime and that disproved his alibi. Both grounds of appeal must fail.

It was for those reasons that we upheld the decisions of the lower courts and dismissed the appeal.

*Dated at Mengo this 5th day of March 2003.*

**A.H.O. ODER**

**Justice of the Supreme Court**

**J.W.N. TSEKOOKO**

**Justice of the Supreme Court**

**A.N. KAROKORA**

**Justice of the Supreme Court**

**G.W. KANYEIHAMBA**

**Justice of the Supreme Court**

**CM. KATO**

**Justice of the Supreme Court**