



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION 168 OF 2019

VINCENT OSETE SINGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged with two (2) counts of robbery with violence contrary Section 296(2) of the Penal Code. The particulars of count I were that on the 24th of March, 2005 at Muhuti Crescent Langata within Nairobi County, jointly with others not before court, while armed with crude weapons namely Maasai sword, robbed on Gita Kandan Solanki of three gold rings, one silver ring, one gold chain, one coin(rupee) one mobile phone make samsung and cash Kshs. 20,000/- all valued at Kshs 90,350/- and at or immediately before or immediately after the time of such robbery threatened to use personal violence Gita Kandan Solanki.
2. In count II, the particulars were that on the 24th of March, 2005 at Muhuti Crescent Langata within Nairobi Count, the Applicant, jointly with others not before court while armed with crude weapons namely Maasai sword robbed one Pratibha Solanki of wrist watch make Titan, mobile phone Sagem all valued at Kshs 6000/- and at immediately before or immediately after the time of the robbery threatened the use of personal violence to the said Pratibha Solanki.
3. At the conclusion of the trial, he was convicted of both counts and sentenced to suffer death as prescribed by law in the two (2) counts. His appeal to the High Court was dismissed on 10th July, 2008. The Court ordered that the sentence in the second count be held in abeyance pending the execution of the sentence in the first count.
4. The Applicant thereafter sought resentencing in line the Supreme Court decision in **Francis Kariokor Muruatetu V R [2017] eKLR**. He was resented by the Magistrate's Court and ordered to serve 25 years imprisonment. He has approached this court seeking a review of this sentence which he submits is too harsh and excessive in the circumstances of the case. He cites that he is remorseful.
5. Counsel for the Respondent, Mr. Momanyi, urged that the sentence ought to be deterrent. He stated that the Applicant was known to the victims. Further, that the Applicant removed the undergarments of PW4 who was in the house at the time of the robbery and threatened to rape her if she failed to give him money. This was further aggravated by the fact that she was recovering after undergoing a surgery.
6. The Applicant had served 12 years as at the time of resentencing. Counsel for the Respondent was of the view that the remainder of the sentence of 12 years would be harsh. He therefore opined that the period remaining should be substituted with five (5) years.
7. The brief background to the case is that PW1 who was the complainant was in the kitchen of her house cooking whilst her two house helps, PW2 and PW3, were outside washing clothes. PW2 heard the gate bell ring and on checking found two men. She identified one of them as a man who used to come to cook for PW1 when she had visitors. This man enquired of the presence of PW1 and so PW2 alerted PW1. The man who was used to borrowing PW1's charcoal jiko pretended that he wanted to borrow it from PW1.
8. The two men accessed the compound leaving PW1 to close the gate. She later went to the two men at the store where the jiko would be kept leaving PW2 to lock up the gate. Later one of the men went and called PW2 who found PW1 seated on the floor and her hands tied. PW2 was held by the two men and her hands tied up with the same rope that was tying PW1. One of the men then went and fetched PW3 who too was tied up with an electric cable. One of the men grabbed the key to the gate and opened for two new intruders, one of whom PW1 identified as the Applicant. The robbers led PW1 to the main house where they demanded for Ksh. 2,000,000/. The Applicant went into the store and fetched weapons namely, a sword and chisel and was left guarding PW2 and PW3.
9. PW1 surrendered her purse which had between Ksh. 15,000/ and 20,000/. They also stole her three rings, a chain, a cell phone, two bangles and one Indian Rupee. Meanwhile, the robbers also demanded money from PW4, PW1's sister in law who was nursing some surgery wounds. She had none. This annoyed the robbers, more so the Applicant who threw her on a bed and attempted to rape her. This forced PW1

and PW2 to scream. They were in turn tied up and thrown into a toilet. Shortly afterwards, gun shots were heard forcing the robbers to flee but after stealing PW4's cellphone and wrist watch.

10. It is clear from this background that the robbery was violent especially against PW4 who is ailing and whom the Applicant wanted to rape. He deserves no mercy. However, noting that no actual injuries were occasioned on any of the complainants, I am of the view that a sentence of 25 years imprisonment is harsh and excessive. I thus revise it downwards to 15 years imprisonment.

11. From the charge sheet, the Applicant was arrested on 24th March, 2005 and was never granted bail. He has therefore been in custody for fifteen years, implying that he has served his sentence. I order that he be forthwith set free unless otherwise lawfully held. It is so ordered.

Dated and Delivered in Nairobi his 29th Day of April 2020.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Applicant in person.*

2. *M/s Nyauncho for the Respondent.*