



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 102 OF 2014

PATRICK MULI MBITHI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the conviction and sentence of D.G. Karani in Kithimani Principal Magistrate's Court Criminal Case No. 375 of 2010 delivered on 13th November, 2013)

JUDGEMENT

1. The appellant was charged with robbery contrary to section 295 as read with section 296 (1) of the Penal Code. The particulars were that the appellant on 11th May, 2012 at Kithukini Sub-location Muthesya Location in Masinga District within Machakos County robbed Catherine Mueni Mwilu cash KShs. 5,700/=, National Identity Card, handbag, pouch, KWFTA ATM card, passport size photograph, a jacket and a bunch of keys all valued at KShs. 6,500/= and immediately before or immediately after the time of such robbery used actual violence on Catherine Mueni Mwilu.
2. Brief facts are that Catherine Mueni Mwilu (PW1) was on 11th May, 2012 at around 7:00 pm on her way home. When crossing a river at Kwa Mboo at around 8:00 pm, she saw a person on the river bank. He jumped into the river and PW1 shone her torch towards his direction. She saw it was the appellant who was known to her. The appellant attempted to cover his face with a sweater. PW1 took to her heels but the appellant caught up with her and held her by her neck. He strangled her and took her handbag which had cash. She screamed and people rushed to her aid. The appellant took off with the bag which was said to contain KShs. 5,700/=, Identity card, ATM card, passport size photo and a bunch of keys all valued at KShs. 6,500/=. Those who heard her scream were Muniyinyi Njenga, Mutisya Mueni a watchman at Kwa-Mboo market. The assistant chief was called and proceeded to the scene. She informed the chief that it was the appellant who had robbed her. Some youth were gathered to look for him. On PW1's way home, she passed by the appellant's home looking for her items. She asked the appellant's mother where he was and her mother indicated that he was tethering goats. PW1 then informed the assistant chief of the appellant's whereabouts. The appellant had been arrested and PW1 proceeded to where the appellant was arrested. He was escorted to the police. The appellant led the police to a place where he had dug and hid the items underground and all the items were recovered. The appellant was taken to Yatta Police Station and charged.
3. Julius Mutungi (PW2) who was the assistant chief of Kathukini sub location was called by Muoki who was PW1's neighbour informing him of the incident. He proceeded to Kwa Mboo where he found PW1 and other people. PW1 informed him that she had been robbed by the appellant and he sent some youth to search for the appellant who was found at Muthesya market and was arrested and handed over to the police. PW2 conducted a search on the appellant before the police officers arrived and he recovered KShs. 3,527/=. The appellant was interrogated by the police and led them where the bag and other items were recovered.
4. At around 8:00 pm Josephine Munini (PW3) was at her house when she heard someone screaming saying "*Muli stop killing me, take the handbag.*" She shone her torch and saw PW1 on the ground with someone struggling with her. When he saw the light he took off. She went to PW1 who was bleeding from the mouth. She stated that when she asked PW1 on how she had met the appellant, she stated that she felt someone was following her before she called.
5. Joshua Mutisya (PW4) a watchman at Muthesya market was at work on the material day when he heard screams at about 8:00 pm from the river. He stated that the person screaming mentioned Muli wa Mbithi. They went looking for the appellant when the chief came. The appellant was arrested and taken to Muanyatta Chief's camp.
6. Samson Kilonzo Musyoka (PW5) a Clinical Officer at Matuu District Hospital filled PW1's p3 form. He assessed the injury sustained by PW1 and termed the degree of injury as harm. The p3 form was produced as P. Exhibit 9.
7. Police Constable John Muchiri Muteti (PW6) received information that the appellant had been arrested. He re-arrested and interrogated him. The appellant led him to where he had hidden the handbag, jacket, purse, ATM card, passport size photographs and two keys. He detained the appellant and later took him to Matuu Police Station where he was charged.

8. Police Constable Jared Owiti (PW7) received the appellant who was brought by PW5 and Corporal Mukuria on allegation that he had robbed PW1. He re-arrested him and took the exhibits and money handed over to him by a member of the community policing. PW 7 produced the items namely handbag, jacket, purse, ATM card, passport size photographs money and two keys as P. Exhibit 1-8.

9. Put on his defence, the appellant stated that he was arrested at Muthesya market where he had gone for lunch. That the assistant chief took his KShs. 4,000/= and tied him up using the rope he had used to tether the goat. He was then handed over to the police who charged him. He was convicted and sentenced to 10 years imprisonment.

10. The appellant's submission was in form of mitigation. He expressed that by the time he was imprisoned, he had no skill but has since acquired life skills particularly, carpentry and has changed both emotionally and spiritually and can be self-reliant. He sought revision, review, reduction or alternative sentence under section 362 and 364 of the Criminal Procedure Code.

11. The respondent in contention submitted that the court is not meant to convict but to promote justice and reconciliation but that reconciliation would have been a resolve in the first instance. That justice and reconciliation are key for any court and the same can only be achieved by everyone performing their part as expected. The respondent in conclusion submitted that the appellant was convicted on sound and credible evidence and the conviction and sentence should thereby be upheld and confirmed respectively.

12. Section 296 (1) of the Penal Code prescribes for a maximum sentence of 14 years imprisonment. The Appellant herein was sentence to serve 10 years imprisonment a sentence within the law. This court will not interfere with a sentence unless there was an injustice. It is clear from the record that the trial court indeed considered all the factors surrounding the case as well as the Appellant's mitigation before it settled on the sentence of ten (10) years imprisonment. I find the said sentence quite reasonable in the circumstances and ought not to be interfered with.

13. In the result I find the appeal herein lacks merit. The same is dismissed.

Orders accordingly.

Dated and Delivered at Machakos this 21st day of March, 2018.

D.K.KEMEI

JUDGE.

In the presence of:

Patrick Muli Mbithi - for the Appellant

Machogu - for the Respondent

Kituva - Court Assistant