



IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 111 OF 2015

(From original conviction and sentence in Murang'a CM Criminal

Case No 229 of 2015 – A K Mwicigi, PM)

JOSEPH IRUNGU KIMANI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant, **Joseph Irungu Kimani**, was convicted after trial of ***grievous harm*** contrary to **section 234** of the ***Penal Code***. It was alleged in the charge that on 09/03/2015 at Matongu Village, Rurii Sublocation within Murang'a County, he unlawfully did grievous harm to one **Loise Njeri Maina**. On 02/11/2015 he was sentenced to serve 15 years imprisonment. He has appealed against both conviction and sentence.

2. The Appellant has complained in his grounds of appeal that the evidence of the complainant was not supported by any other witness; that there were contradictions in the testimony of the complainant; that the knife used to commit the offence was not found in his possession, and that it was not forensically examined for his finger-prints; that the person who allegedly reported the assault to the assistant chief (PW3) by phone was never disclosed or called to testify; that the trial magistrate failed to note the previous grudge between PW3 and the Appellant; that his defence was rejected by the trial court without satisfactory explanation; and that the sentence meted out to him was "harsh and stiff".

3. At the hearing of the appeal the Appellant tendered amended grounds of appeal and written submissions, which I have read. The amended grounds introduced two new grounds, to wit, that the trial court erred by not warning itself of the danger of convicting him upon the testimony of a single witness; and that the knife allegedly used in the commission of the offence was never forensically examined to see if it bore the complainant's blood.

4. Learned prosecution counsel on the other hand supported the conviction and sentence.

5. I have read the record of the trial court in order to evaluate the evidence placed before it and arrive at my own decisions regarding the same. This is my duty as the first appellate court. I have born in mind however that I neither saw nor heard the witness myself, and I have given due allowance for that fact.

6. The complainant was attacked in her sitting room at about 8.00 to 8.30 a.m. She testified that the attacker was her brother-in-law whom she knew very well. Her husband (PW2) described him as a nephew whom he had employed.

7. The attack was apparently unprovoked and vicious, notwithstanding that it was only one blow. The

complainant appears to have suffered a defensive wound in her left hand, with the blow probably aimed at her head or neck.

8. The blow with the knife was so strongly administered that the knife went through the hand and destroyed some ligaments, such that even after healing, the complainant is unable to effectively use the hand. She also bled a lot and by the time she got treatment she was almost going into shock from blood loss. The injury was classified as maim. That was the medical evidence from PW5, a clinical officer.

9. PW2, the local assistant chief, arrested the Appellant after receiving report of the assault. She also recovered the knife that had been used in the assault from the complainant's compound. She handed him (and the knife) over to PW4, a police officer, who re-arrested and later charged him.

10. The Appellant gave sworn evidence in his own defence (no witnesses). He stated that the assistant chief asked him to accompany her to the police station while he was in his land farming (upon the accusation that he was peddling cannabis) and was taken to the police station. There he was arrested and placed in the cells. After 2 days he was arraigned in court with the offence of grievous harm. He denied the offence and alleged that he was falsely charged because he and his family had refused to sell their land to the assistant chief. In cross-examination he stated that he did not know the complainant or her husband who was not his uncle. He said he got to know the complainant in court.

11. That was the totality of the evidence placed before the trial court. It is highly unlikely that the complainant and her husband would claim the complainant to be their relative if he was not. The claim by the Appellant that the assistant chief (PW3) bore him a grudge because he and his family refused to sell to her their land is not supported by any evidence. He never even cross-examined the assistant chief on the issue. It was never suggested to the complainant and her husband that they were giving false testimony against the Appellant for whatever reason. The attack took place in daylight. The possibility that the complainant was mistaken in her recognition of the Appellant is slim indeed.

12. I find as a fact that the complainant was attacked by the Appellant. I am satisfied upon my own evaluation of the evidence placed before the trial court that the Appellant was convicted upon good and sound evidence. The conviction is safe.

13. As for the sentence, I note that there was only one blow struck, a vicious one nevertheless. The Appellant was a first offender and a very young man (20 years old) when convicted. Both these factors should have mitigated his sentence to a greater extent, notwithstanding that sentencing is the discretion of the trial court. A first appellate court has the same powers as the trial court. In these circumstances I consider that the sentence of 15 years imprisonment meted out to the Appellant was manifestly excessive. I will set aside that sentence and substitute therefor a sentence of seven (7) years imprisonment from the date of the original sentencing – that is, 02/11/2015.

14. To that limited extent only does the appeal against sentence succeed. The appeal against conviction is dismissed. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 7TH DAY OF DECEMBER 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 8TH DAY OF DECEMBER 2017