



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
CRIMINAL APPEAL NO.29 OF 2015

ALI GABABA DABASAAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No.291 of 2015 of the Principal Magistrate's Court at Marsabit by T.M Wafula – Resident Magistrate)

JUDGMENT

The Appellant, **ALI GABABA DABASA**, was Charged with an Offence of grievous harm contrary to section 234 of the Penal Code.

The particulars of the offence were that on 15th May 2015 Manyatta Ginda within in Marsabit sub county within Marsabit County, he unlawfully did grievous harm to Abkul Bakasa Roba.

The appellant pleaded guilty and was convicted for the offence and sentenced to serve life imprisonment. He now appeals against both conviction and sentence.

The Appellant raised seven grounds of appeal. The first three are on sufficiency of evidence whereas the other four are really not grounds but mitigation.

The state opposed the appeal and was represented by Mr. Mwangangi, the learned counsel. He contended that the appeal offends the provisions of section 348 of the Criminal Procedure Code which provides as follows:

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence”

At the time of hearing of this appeal, the Appellant abandoned his grounds and prayed for a retrial. A retrial is ordered whenever it is noted that an important procedure was not followed and which may be prejudicial to an accused person. I note that in the instant case all procedure was observed. No retrial can therefore be ordered.

The Appellant's case ended at the plea stage after he had pleaded guilty. The facts were read and he confirmed them to be correct. It was after his confirmation of facts that he was convicted and sentenced. His grounds on the sufficiency of evidence cannot stand.

Section 234 of the Penal Code provides as follows:

"Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life."

The complainant's hand was completely severed at the wrist. The record is scanty as to the cause of such a brutal act, except that it was done after the Appellant went to the home of the complainant.

The Appellant indicated to this court that he is 23 years old. He indeed looks young. He is a first offender. These two facts ought to have persuaded the trial court not to mete out the maximum sentence.

After considering that the complainant lost his hand and that the Appellant is a first offender and that he is only 23 years, I set aside the life sentence meted out by the trial court and substitute it with 15 years imprisonment to run from when he was sentenced by the trial court. His appeal succeed to that extent. Orders accordingly.

DATED at Marsabit 8th day of December 2015

KIARIE WAWERU KIARIE

JUDGE