



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 92 OF 2008

ALEXANDER RONO.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGEMENT

ALEXANDER RONO, the appellant herein, was convicted for the offence of Assault causing actual bodily harm, contrary to Section 251 of the Penal Code.

After convicting the appellant, the learned trial magistrate called for a Probation Officer's Report. When the Report was received, it was not favourable. Consequently, the trial court sent the appellant to jail for a period of 18 months.

In his appeal, the appellant has raised five (5) grounds, which can be summarised as follows:

- i. **The entire proceedings were a nullity because the appellant was held in custody for over 24 hours before being taken to court.**
- ii. **The evidence on record did not link the appellant to the offence.**
- iii. **The evidence was full of contradictions.**
- iv. **The trial court failed to evaluate the evidence.**
- v. **The sentence was harsh and excessive in the circumstances.**

According to the appellant, he was arrested on 21st February, 2006. Therefore, he ought to have been taken to court within 24 hours, from that date. However, he was first taken to court on 23rd February, 2006.

It was submitted that if the trial court had investigated the reasons why there was a delay in taking the appellant to court, the proceedings could have been terminated.

In the understanding of the appellant, a person who has been arrested should be released if he was not taken to court within 24 hours. That understanding was said to be based on the provisions of Section 72(3) of the Constitution of Kenya, which was in force at the material time.

The second issue that the appellant raised was that it was only PW2 who appeared to link the appellant to the offence. However, the said witness had only learnt about the alleged incident from the complainant. Consequently, the appellant argued that that witness gave evidence which was not direct in nature, as anticipated by Section 63(2) of the Evidence Act.

Mr. Komen, the learned advocate for the appellant submitted that the evidence was contradictory. He

pointed out that whilst the complainant testified that he was attacked by one person, the doctor testified that the complainant had told him about two assailants.

The trial court was also faulted for failing to analyse all the evidence on record. However, Mr. Komen Advocate did not specify the particulars of the evidence which he believed had not been analysed.

Finally, the sentence of 18 months imprisonment was described as excessive. But Mr. Komen advocate also conceded that pursuant to Section 251 of the Penal Code, the prescribed sentence was five (5) years imprisonment.

When answering the appeal, Ms. Ruto, learned state counsel, submitted that although there was a delay of 2 days before the appellant was taken to court, the prosecution could only have been called upon to offer an explanation if the appellant had raised a complaint during the trial.

The Respondent also said that the remedy for the delay in taking the appellant to court was not an acquittal. It was compensation.

As to whether or not there was evidence connecting the appellant to the offence, the Respondent submitted that this was a case of recognition. The complainant was the complainant's father.

PW2 was said to have been a neighbour to the complainant. On the material day, PW2 heard a commotion from the complainant's home. Thereafter, the appellant told PW2 that the commotion was simply a fight between him and his father.

The Respondent's position was that the trial court analysed all the evidence on record.

And on the question of the sentence, the Respondent submitted that it was not excessive at all.

Being a first appellate court, I have re-evaluated all the evidence on record.

PW1, JOHN CHEBII, is the complainant. He is also the father of the appellant.

On the material day, he noticed that the door to his house had been locked. He therefore inquired from the appellant why the door had been locked. The appellant responded by telling PW1 to leave that place, saying that if PW1 did not leave, the appellant would beat him.

PW1 walked off. However, the appellant caught up with him, after a short distance, and hit him on the head, using a stick. The appellant also used a knife to stab PW1 on the wrist.

PW1 took his bicycle and rushed to Iten Hospital, where he was treated. After being discharged, PW1 reported the incident to the police.

PW1 testified that after the appellant was arrested, he asked PW1 to forgive him. However, the appellant also continued threatening PW1 when they were at home.

During cross-examination, the appellant suggested to the complainant that he had chased away the appellant's mother. He also suggested to PW1 that the latter had refused to give him a shamba.

The complainant denied both suggestions.

I pause here to point out that even if there had been some truth in the suggestions which the appellant put to his father, that would not have justified his actions, of assaulting the complainant.

PW2, MICHAEL KIPROTICH TANUI, is a neighbour to the complainant. On the material day, at about 11.00a.m., PW2 was at home, when he heard a bang from the house of the complainant.

PW2 came out and sought to find out from PW1 what was happening. PW1 told him that it was a domestic affair.

However, PW2 later learnt that Alexander (the appellant) had fought his father (PW1).

PW3, SILAS RUTO, is a Clinical Officer at the Iten District Hospital. He attended to PW1 at the said hospital.

It was the evidence of PW3 that PW1 had told him that he had been assaulted by a person known to him.

When the Clinical Officer examined the complainant, he noted blood stains on his green coat and his red shoes.

The Clinical Officer also noted that the complainant had a swelling on the right upper eye; tenderness on the posterior region of the scapula; and a cut on the left medial lower throat. The complainant told him that he had been assaulted using a wooden stick and a sharp weapon.

PW3 produced the P3 Form as an exhibit.

During the trial, the Clinical Officer was not asked any questions in cross-examination, save whether or not he had seen the patient and then prepared a P3 Form.

PW4, PC GEORGE KAGIRI, was a police officer who was attached to the Iten Police Station at the material time.

He told the trial court that on 18th January, 2006, PW1 had made a report to the police, that the appellant had threatened him.

Later, PW1 reported that the appellant had assaulted him. Therefore, the police arrested the appellant, and they issued a P3 Form to the complainant.

After PW4 testified, the prosecution closed its case. And when the appellant was put to his defence, he simply denied committing the offence.

Having re-evaluated the evidence, it is clear that the offence was committed in broad daylight, at about 11:00a.m.

The complainant is the father of the appellant. Therefore, this was a case of recognition. And considering the circumstances in which the complainant was assaulted, I find that there was no room for any mistaken identification.

The complainant testified that he was hit with a stick, and also that he was stabbed with a knife.

The Clinical Officer who examined the complainant verified the injuries he sustained. The said injuries were consistent with the weapons which the appellant used to assault the complainant. In effect, the evidence of the Clinical Officer corroborated the evidence of the complainant.

I therefore find and hold that it is the appellant who assaulted the complainant, causing him to suffer injuries.

In the face of that clear and substantial evidence, the appellant's defence was simply that he denied committing the offence. The said evidence appears to be a mere denial. At any rate, the appellant's defence did not cast any doubt on the consistent and corroborative evidence which the prosecution had adduced.

Contrary to the appellant's contentions, I found no contradictions of any substance.

Whilst the record does not reflect a detailed analysis which was conducted by the learned trial magistrate, I find that that alone would not be a basis for overturning the conviction.

On the issue of the delay in taking the appellant to court, I find that the same would not render the proceedings a nullity. The delay was on the part of the police who had arrested the appellant. Thus the said delay took place before the trial of the appellant commenced.

The mistake cannot therefore have had the effect of rendering the trial a nullity.

In the event that the appellant felt aggrieved by the delay in taking him before the court, he may wish to consider instituting proceedings against those responsible for the delay. Such proceedings could be instituted pursuant to Section 72(6) of the Constitution, which made provision for compensation as the remedy available to the person whose right to be taken to court timeously, had been violated.

The said provision of the Constitution also made it clear that the remedy provided would be obtainable from the person who had violated the rights of the person who had been taken to court late.

Accordingly, I reiterate that the delay in taking the appellant to court did not, and could not render the trial proceedings a nullity.

The final issue for consideration is the sentence.

Although the appellant submitted that imprisonment for 18 months was excessive, his lawyer conceded that pursuant to Section 251 of the Penal Code, the court could imprison the offender for a period of up to 5 years.

In the circumstances, I find and hold that the sentence which the learned trial magistrate handed down to the appellant was not harsh or excessive.

In the result, there is no merit in this appeal. It is therefore dismissed in its entirety. I uphold both the conviction and the sentence.

DATED SIGNED AND DELIVERED AT ELDORET

THIS 8TH DAY OF APRIL, 2014

FRED A. OCHIENG

JUDGE