



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 15 OF 2014

PETER ESOKON MEJA ALIAS UNCLE "P" ::::::::::::::: APPELLANT

VERSUS

REPUBLIC ::::::::::::::: RESPONDENT

[Being an appeal from original conviction and sentence of Hon. W. WACHIRA AG.PM at Lodwar in Criminal Case No. 407 of 2012 on the 7th day of February, 2014]

J U D G M E N T

Peter Esokon Meja Alias **Uncle P** (herein, the appellant) and another appeared before the Principal Magistrate at Lodwar charged with Robbery with violence, contrary to section 296 (2) of the Penal Code.

It was alleged that the appellant and others while armed with dangerous weapons namely knives and clubs did rob Sadia Hussein Abdalla of a Nokia Mobile phone NI280 S/No.359726047269672 valued at Kshs.2,500/= and in the process used actual violence against the said Sadia Hussein Abdalla. The incident occurred on the 2nd June 2012, near Don Bosco Lagga within Kakuma Refugee camp Turkana West District.

After full trial, the appellant was convicted and sentenced to life imprisonment. His co-accused was placed on probation on account of his age.

Being dissatisfied with the conviction and sentence, the appellant filed this appeal on the basis of the grounds in his petition of appeal dated 14th February, 2014.

At the hearing of the appeal, the appellant appeared in person and fully relied on his written submissions in support of the appeal. The State/Respondent opposed the appeal though the Learned Prosecution Counsel, **M/S Kiigi**, who submitted that the burden of proof was discharged by the prosecution. That, PW1 was in the company of PW2 when she was robbed of her phone at 10.30 a.m when three people armed with a knife and rungu (club) attacked and assaulted her. That, PW3 confirmed that the complainant suffered injury. That, shortly after the incident, the appellant was arrested near the scene and was found in possession of a knife and the complainant's phone which was duly identified by the complainant who also identified the appellant as having been one of the three attackers.

The Learned Prosecution Counsel contended that the case for the prosecution was proved beyond any reasonable doubt.

With regard to sentence, the learned prosecution's counsel contended that the sentence imposed by the trial court was improper as the offence carries a mandatory death sentence.

Learned Prosecution Counsel called for the enhancement of the sentence and urged this court to dismiss the appeal. In response to the foregoing, the appellant contended that possession on his part was not established as there was no inventory and no dusting for finger prints was undertaken.

We have considered the vival submissions in the light of the grounds of appeal.

Our duty was to re-visit the evidence and arrive at our own conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witnesses.

In that regard, the prosecution case was briefly that, on the material date at about 10.30 a.m. The complainant **Sadia Hussein (PW1)**, boarded a motor cycle Taxi (boda boda) heading to Kakuma 1. The boda boda operator was **Manleed Isaac (PW2)**. On the way the motor cycle developed a problem. It's tyres were punctured. The two (PW1 and PW2) decided to walk and while doing so, they were attacked by a group of three people armed with a club and knives. The motor cycle operator ran away with two of the assailants in hot pursuit. He managed to reach a lagga where he found security personnel. The two assailants ran away and escaped. He (PW2) returned to the scene of the attack with the security personnel who included **Ahmed Saibu (PW4)**. They found that the complainant had been robbed of her mobile phone and was injured in the process.

The complainant confirmed the robbery and together with the motor cycle operator, the security personnel and police officers who had also arrived at the scene they went in search of the offenders.

The police officers included **P.C Samwel Kanyi (PW5)**. He said that the offenders were on the run but had already been spotted. He (PW5) and the others pursued them into some thicket. He went after the two who had taken a different direction. He fired two rounds of ammunition into the air from his official firearm thereby prompting the two offenders to lie down. He arrested and conducted a quick search on their bodies and it is then that he recovered the complainant's stolen phone from one of them who was the appellant herein commonly known as "**uncle P**". A knife was also recovered from the appellant.

The complainant and the motor cycle operator (PW2) identified the appellant as one of the offenders. The complainant also identified the recovered mobile phone as her property.

Dr. Stephen Chelo Kiwa (PW3), produced the medical report (P.3 form) signed and completed by his colleague Dr. Victoria Muviko and which showed that the complainant had suffered bodily harm during the robbery.

IP Simon Kirui (PW6), investigated the case and thereafter preferred the present charge against the appellant and his accomplice.

In his defence, the appellant denied the offence and indicated that he was a businessman operating a kiosk and on the 1st June, 2012, he travelled to Lodwar and returned to Kakuma on 3rd June, 2012. It was upon his return when he was walking towards home after alighting from a vehicle that he was confronted and arrested by three people who took him to Kakuma police station where he was placed in the cells after his finger prints were taken. He was later taken to Lodwar and arraigned in court.

All the foregoing evidence was carefully considered by the learned trial magistrate who thus concluded that the case for the prosecution had been proved against the appellant and his accomplice beyond any reasonable doubt.

On our part, we fully agree with the learned trial magistrate that the charge against the appellant

was duly established. Not only were the necessary ingredients of the offence fully established by the evidence availed by the prosecution, the identification of the appellant as having been one of the offender was also clearly and reliably established by both direct and indirect evidence availed by the complainant, (PW1), the motor cycle operator (PW2), the doctor (PW3), the security personnel (PW4) and the police officer (PW5).

The defence raised by the appellant was clearly discredited by evidence availed by the witnesses aforementioned who went as far as dislodging the alibi raised.

In essence, no particular dispute arose that the complainant was indeed robbed of a mobile phone and in the process violence was meted out against her. It was also not disputed that the recovered mobile phone belonged to the complainant and that it was violently and unlawfully taken from her on the material date.

Apparently, the bone of contention was the appellant's involvement in the offence. This was however resolved in favour of the prosecution as there was sufficient and credible evidence from the complainant (PW1) and the motor cycle operator (PW2) which established the appellant's involvement in the offence. The two witnesses clearly saw and identified him. The offence occurred in broad daylight meaning that favourable conditions for identification existed at the time such that the possibility of erroneous or mistaken identification was remote.

Identification of the appellant was further confirmed and corroborated by the recovery of the complainant's stolen phone from him a few minutes after its theft and within the vicinity of the scene of the offence. This constituted sufficient and credible circumstantial or indirect evidence against him.

In sum, we are satisfied that the appellant was properly and lawfully convicted by the learned trial magistrate. We uphold the conviction.

With regard to the sentence, we agree that it was not only improper but also unlawful as the offence of robbery with violence under section 296 (2) of the Penal Code carries with it a mandatory death sentence which is also sanctioned by the Constitution and remains a lawful sentence in this Country. **(See, Joseph Njuguna Mwaura & others Vs. Republic Criminal Appeal No. 5 of 2008 at Nairobi).**

Accordingly, we hereby set aside the life imprisonment sentence imposed against the appellant by the learned trial magistrate and substitute it with a sentence of death. Thus, the appellant shall suffer death in the manner prescribed by law.

This appeal stands dismissed.

J. R. KARANJA K. KIMONDO

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JUDGE

JUDGE

[Delivered & signed this 18th day of November, 2014]

[In the Presence of the Appellant and M/S Koga for the state]