



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANGA**

**HIGH COURT CRIMINAL APPEAL NO. 281 OF 2013**

AMOS MURAYA NJOROGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(From original conviction and sentencing in Criminal Case No. 3295 of 2007 at the Chief Magistrate's Court at Thika by L.W. Gicheha - Senior Resident Magistrate on 17<sup>th</sup> September, 2008)*

**JUDGMENT**

The appellant Amos Muraya Njoroge was convicted of the offence of Robbery with violence contrary to Section 296 (2) of the Penal Code and sentenced to death. He was aggrieved by the said conviction and sentence and filed this appeal. The evidence adduced before the learned trial magistrate was that the complainant was on her way home when she was attacked by two people who snatched her handbag and spectacles valued at Kshs. 2500/=. In so doing they, subjected her to some violence.

She raised an alarm and P.W. 3 and P.W. 4 came to her aid. The appellant was chased, arrested and found with spectacles which however he dropped on the ground upon being apprehended. The complainant was injured in the process and subsequently examined by P.W. 5 who prepared the P3 form produced in evidence as exhibit 1. In his defence the appellant denied the offence and gave a chronology of his movements on the day of the alleged offence stating that, he was involved in an accident while riding a bicycle whereupon he was beaten by some people who stole his bicycle. They went to the GSU camp before being taken to Ruiru Health centre where he was advised to take a bath. Since he could not take a bath, a doctor poured some water on him and said he will be treated the next day. He was never taken to hospital but arraigned in court after 12 days.

The appellant has challenged the judgment of the learned trial magistrate in that, she relied on the evidence of only one witness whose identification of the attackers was clouded in shock and fear. It is also his position that, the conditions obtaining were not favourable for proper identification. Further, P.W. 3 and P.W. 4 never witnessed the robbery and that the recovery of the spectacles was not proved. Finally he complained that his defence was rejected without any reason. On the other hand, the Republic opposes the appeal on the ground that the prosecution proved the offence beyond any reasonable doubt to justify the conviction.

We have evaluated the evidence as required of us being the first appellate court. The offence took place at about 4.30 p.m. when the complainant was accosted by two people. She gave a vivid account of what transpired in that she was holding a handbag which the assailants struggled to snatch from her. The first person who held her, threw her down but she refused to release her handbag. This person called his colleague and told him to bring a machete. His colleague came and he the first assailant asked him to cut the complainant's hand which was holding the handbag. Using the flat part of the machete he threatened to cut the complainant. He was then instructed by the first assailant to cut the bag where upon the complainant started screaming and the assailants left her alone on the ground.

A group of people arrived and she pointed towards the direction the robbers had taken. She knew one of the assailants and when she rose, she saw one had been arrested. Her glasses had been recovered. The evidence of the complainant was corroborated by P.W. 3 who heard the screams of the complainant and helped in apprehending the appellant. In fact, it is this witness who recovered the complainant's spectacles which the appellant is alleged to have removed from his pocket and dropped them.

P.W. 4 also gave evidence in support of that of the complainant and P.W. 3. He participated in the chasing of the appellant and his colleague and managed to apprehend the appellant. From the evidence, he did not lose sight of the appellant because he said, “ I was chasing people I was seeing”; he also witnessed the appellant removing spectacles from his pocket and throw them onto the ground. The injuries sustained by the complainant were not disputed by the appellant. In fact he never asked the doctor any questions after his evidence in chief.

The complainant did not see the appellant with any bicycle and going by the evidence of the prosecution witnesses, the defence advanced by the appellant cannot withstand the weight of the prosecution case.

The evidence adduced before the learned trial magistrate clearly proved that the appellant was attacked and robbed as stated in the charge. There is sufficient evidence that the appellant was one of the attackers and violence was visited upon the appellant.

We have come to the irresistible conclusion that the charge was proved beyond any reasonable doubt against the appellant and that the conviction was justified. The sentence imposed is mandatory and we have no reason to disturb the same.

Accordingly this appeal is dismissed.

**SIGNED, DATED and DELIVERED in open Court this 29<sup>th</sup> day of November, 2013.**

**A. MBOGHOLI MSAGHA**

**RADIDO STEPHEN**

**JUDGE**

**JUDGE**