



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANGA
CRIMINAL APPEAL NO. 217 OF 2013
(Originally Nyeri Criminal Appeal No. 85 of 2011)

CHRISTOPHER MWANGI KIHU
APPELLANT

v

REPUBLIC

RESPONDENT

(Appeal from conviction and sentence by S. Mbungi, Senior Principal Magistrate in Kigumo Senior Resident Magistrate's Court Criminal Case No. 988 of 2010 on 16 May 2012)

JUDGMENT

1. Christopher Mwangi Kihui (Appellant) was charged before the Kigumo Senior Resident Magistrate's Court on 11th August 2010 with robbery with violence contrary to section 296(2) of the Penal Code and an alternative charge of handling stolen property contrary to section 322 of the Penal Code.
2. The particulars of the robbery charge were that the Appellant together with others not before court while armed with dangerous weapons namely a pistol and metal bars robbed one Simon Njoroge Mwangi of a motor cycle registration number KMCJ 584K Jincheng chassis number LJCACK LA3A engine number VMA 6f00399 valued at Kshs 80,000/-.
3. On 16th May 2012 the trial court convicted the Appellant of the robbery with violence count and sentenced him to death as prescribed by law. The Appellant was aggrieved and on 25th May 2012 he filed an appeal listing some 4 grounds of appeal.
4. The Appellant was convicted on the basis of the doctrine of recent possession. We will therefore evaluate the evidence and discuss whether there was sufficient evidence to convict the Appellant on the basis of the doctrine of recently stolen property.
5. PW 1 Simon Mwangi (complainant) testified that he owned a motor cycle KMCJ 584K and stated that PW 2, Peter Macharia, introduced a customer to him who was to be taken to Gatundu on 2nd August 2008 at around 7.45 pm. PW 1 together with PW 2 took the customer to Gatundu. After dropping the customer, PW 1 and PW 2 were accosted by five men armed with pangas and a gun in a motor vehicle who blocked their way but they managed to escape. PW 1 made a report to the Police. The Appellant was later found with the motorcycle. PW 1 did not know him.
6. PW 2 confirmed introducing a customer to PW1 and that he accompanied him and the customer to Gatundu. After dropping the customer, they were accosted by men with covered faces in a motor vehicle. The customer joined them in the process. He was hit on the nose. The attackers were armed with a gun. They made a report to the police and Appellant was later arrested but he did not know the Appellant. PW 2 went to hospital and a P3 was produced.
7. PW 3 APC Simon Mokira (arrested appellant) received a call from a colleague about a stolen

- motor cycle being driven towards Karega- Maragua. He and others went to the road and stopped a motor cycle which had been reported stolen. They arrested the driver (the appellant) and took him to the police station.
8. PW 4 Cpl. Julius Oware was the Investigating Officer and he simply narrated what the other witnesses had stated in court.
 9. Section 111(1) of the Evidence Act is applicable in this case. The section provide that

when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him.

10. The Appellant was found in possession of recently stolen property shortly after the robbery was reported to the police and the evidential burden shifted to him to explain how he came into the property. In his unsworn defence statement, the Appellant stated that the motor cycle was planted on him by two police officers. The trial Court did not accept his defence. The Appellant did not state any details regarding these two police officers. Neither did he challenge PW 3 in cross examination as to his testimony that he is one of the officers who arrested him. The explanation given by the Appellant was not plausible.
11. In our view, the trial Court reached a correct conclusion of fact that the Appellant was found in possession of recently stolen property and he did not satisfactorily explain his possession of the motor cycle.
12. Further, PW 3 and his colleagues moved timeously after receiving a report of a stolen motor cycle and arrested the Appellant with the motor vehicle.
13. There was unchallenged evidence from PW 1 and PW 2 that the attackers were armed with pangas and a gun. There was evidence from PW 2 and PW 5 that PW 2 sustained injuries.
14. In our view the prosecution presented a coherent and credible case against the Appellant and the trial court reached a correct finding as to the guilt of the Appellant based on the doctrine of possession of recently stolen property and he must have been one of the attackers.

Conclusion and Orders

15. Considering the foregoing, it is our considered view that the trial court properly convicted and sentenced the Appellant as charged and we refuse to interfere with the conviction and sentence.
16. The upshot is that the appeal is dismissed and conviction and sentence are confirmed.

Delivered, dated and signed in open court in Muranga on this 27th day of November 2013.

A. Mbogholi Msagha

Judge

Radido Stephen

Judge

Appearances

Appellant in person

Mr. Njeru, State Counsel

for Respondent