

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

HCCRA NO. 98 OF 2013

VICTOR INYANGU VODONGO APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence of SPM's Court in Hamisi Criminal Case no 215 of 2012)
– J. K. NG'ARNG'AR SPM, Esq.

JUDGEMENT

The appellant herein Victor Inyangu Vodongo was charged before the SPM's Court Hamisi on 2 counts of robbery with violence. On the 1st count, the appellant was charged with robbery contrary to Section 296(2) of the Penal Code. Particulars were that on the 1st day of April 2012 at Shipala village, Kisasi Sub-Location, Shamakhokho Location in Vihiga County, jointly with another not before court, robbed Roselyne Shijinga of one mobile phone make Nokia C130 valued at Ksh 3,500/= and a loaf of bread valued at Ksh 50/= and at or immediately before or immediately after the time of such robbery wounded the said Roselyne Shijinga.

On count 2, the appellant was charged with robbery with violence contrary to Section 296(2) of the Penal Code. Particulars of the offence were that on the 1st day of April, 2012 at Shipala village, Kisasi Sub-Location, Shamakhokho Location in Vihiga County jointly with another not before court being armed with offensive weapons namely; pangas, robbed Christine Khavere of her mobile phone make Nokia 1110 valued at Ksh 2,500/= and cash the sum of Ksh 500/= and at or immediately before or immediately after the time of such robbery, threatened to use actual violence on the said Christine Khavere.

During the hearing, the prosecution called 4 witness. The first witness PW1 told court that on 1.4.2012 at 10 am she was going to a burial. She was with Christine Khavere. They met 2 boys on the road who asked them where they were going and they told them that they were going for a funeral. The 2 boys ordered them to sit down and give them all that they had. She took it as a joke as they were claiming to be police officers. They dropped her to the ground and she screamed. Victor the the appellant took her phone Nokia C130. They had pangas. She screamed and they cut her. It is the appellant who cut her up on the head and then they ran away. They also took her bread and knife. The people at the funeral came and took her to hospital. She says she knew the appellant and there was enough light. She was treated at Kaimosi and stitched and admitted until the following day. She then reported to the police. The appellant was arrested later. He had been arrested by members of public and also brought to hospital for treatment.

PW2 told court that on 1.4.2012, he was in the office when the appellant was brought in by a group of people. He had been injured and was bleeding. The people claimed that the appellant had beaten up some girls. They took the appellant to Kaimosi hospital for treatment. He was admitted but escaped from hospital on 3.4.2012. He was traced again and arrested on 5.4.2012. He later received complainant who narrated their ordeal. They knew the assailants and Christine said she knew Victor the appellant herein who was her former boy friend. He issued them with a P3 form and then charged appellant with this offence.

PW3 Christine told court how the appellant attacked them claiming to be police officers. She said she knew the appellant before as he used to be her boy friend. Appellant was later arrested by members of public. The last witness was the medical officer who filled the P3 form of complainants and produced it in court as evidence.

Put on his defence, the appellant stated that he was arrested as he went about his business of car washing. He denied the charges. The trial magistrate convicted and sentenced the appellant for this charge after determining that there was indeed a robbery on the complainants by the appellant. He was sentenced to death on count 1 and sentence in respect of count 2 was to remain in abeyance.

The appellant has now appealed before this court on the ground that he was convicted on uncorroborated evidence without proper recognition.

We have considered evidence that was adduced by prosecution. Despite the fact that the appellant submitted that the evidence was not corroborated, we do find that the evidence was corroborated. PW1 corroborated PW3's evidence. The issue of improper identification does not arise as the appellant and PW3 were known to one another, the appellant having been PW3's boy friend. She was able to recognize him the time of the offence and the appellant was arrested by members of public.

We find that the evidence of prosecution was corroborated. The appellant was rightfully convicted and sentenced. We confirm both the conviction and sentence and dismiss the appeal accordingly.

DATED THIS 10TH DAY OF DECEMBER 2013

GEORGE DULU

HELLEN S. WASILWA

JUDGE

JUDGE

DELIVERED THIS 10TH DAY OF DECEMBER 2013

S. J. CHITEMBWE

JUDGE