



REPUBLIC OF KENYA

High Court at Embu

Criminal Appeal 52 of 2012

CHARLES MURATHI NJERU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

From original conviction and sentence in Cr. Case No. 354 of 2006 at the Chief Magistrate's Court at Embu

R U L I N G

The Applicant herein moved the Court for Revision of his sentence under section 362 and 364 Criminal Procedure Code. He was charged with the offence of attempted murder contrary to section 220(a) of the Penal Code. He was further charged with wounding contrary to section 237 of the Penal Code as a 2nd Count. After a full hearing he was convicted and sentenced on both Counts as follows;

Count 1 – 7 years imprisonment

Count 2 – 4 years imprisonment.

The order was that the sentences run concurrently.

The Applicant has in his grounds for review indicated that the sentence was harsh, yet he was a 1st offender. And that he is traumatized by the imprisonment. He wants to be given a suspended sentence for the remaining period.

The State through learned State Counsel Mr. Omayo opposed the application saying the evidence was overwhelming. The Applicant confessed and relied on this confession. He said the sentence is lenient and should not be interfered with. Section 362 Criminal Code provides;

“The High Court may call for and examine the record of any criminal proceedings before any subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such

subordinate Court”.

This Court was in this case moved by the Applicant. Section 364 Criminal Procedure Code provides that once the Court has been moved or on its own motion may under section 364 (1) (a) Criminal Procedure Code -

“In the case of conviction, exercise any of the powers conferred on it as a Court of Appeal by section 354, 357 and 358 and may enhance the sentence”.

As a Court of Appeal I would have to evaluate the evidence that was adduced. But before I do so I wish to address the issue of the 2 charges.

From the particulars in the charge sheet and the evidence on record the facts forming the basis of the 2 Counts are just the same. The cutting on the head in the 1st Count and the wounding in the 2nd Count is the same action. The Prosecution ought to have preferred just one Count. The injuries were located on the head. The doctor (P.W.4) who examined the complainant found as follows;

- ***He had a cut wound on the head which was actively***
- ***bleeding.***
- ***Bruise on the peri-orbital region laterally.***

He assessed the degree of injury as **“HARM”**.

In the confession the Applicant admitted having been found fighting with P.W.1 at the latter's home. He explained the reasons. In the confession he did not admit to attempting to kill P.W.1.

From the totality of the evidence I do find that charge of attempted murder was uncalled for and the two counts could not stand in the same charge sheet as they arose from the same circumstances. The Applicant was however not aware of the charge he was actually facing.

I therefore quash the conviction on the 1st Count and set aside the sentence of 7 years.

I am however satisfied that the trial Magistrate arrived at the correct finding in respect of the Count of wounding which should have been the only Count. The sentence was lawful and was not harsh given the circumstances. Section 237 of the Penal Code provides for a sentence of 5 years.

The Revision therefore partially succeeds. The Applicant will complete the sentence on the Count of wounding if it has not been fully served. If it has been fully served he will be released forthwith.

Orders accordingly.

DATED AND DELIVERED AT EMBU THIS 17TH DAY OF OCTOBER 2012.

**H.I. ONG'UDI
J U D G E**

In the presence of;

Mr. Omayo for State

Applicant

Njue – C/c