



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 221 of 2010

AYUB SUBEYA SAADAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the Original Conviction and Sentence in the Traffic Case No. 4761 of 2009 of the Chief Magistrate's Court at Mombasa: E. Micheka – RM)

JUDGMENT

The appellant was Convicted on four (4) Counts. The first Count he had been charged with careless driving contrary to section 49(1) of the traffic Act and he was Sentenced to three (3) months imprisonment. 2nd Count failing to report an accident 3 months imprisonment. 3rd Count of driving uninsured motor vehicle – fined Ksh. 7,000/= in default 2 months and the 4th Count fined Ksh. 1,000/= in default fourteen (14) days imprisonment.

Being aggrieved and dissatisfied with the Conviction and Sentence the appellant appealed against both.

The main grounds are that there was no evidence to link the appellant with the alleged accident and that there was doubt that the accident did in the first place happen.

Thirdly, the ingredients of careless driving were not proved and that PW 1 did not have the opportunity to establish that it was the appellant who had caused the accident and in which manner did the accident occur.

Lastly it was argued that the Sentences meted out on the appellant were harsh.

The appeal is opposed on the grounds that the appellant was clearly identified by PW 2 as the hit and run motor cyclist.

The Complainant was hit by a person riding motor bike registration number KBF 729Z. He told the learned trial magistrate that he was not able to see the rider of the motor bike as he was facing the other direction.

PW 2 did testify before the trial Court to the effect that he was across the road when he saw the motor bike in question hit the Complainant whom he later took to Hospital after taking the registration

number of the motor bike. When he later saw the motor bike and the rider he reported to police and the Accused was arrested.

The learned trial magistrate did frame the issues for his determination among them whether the Accused rode his motor bike carelessly and knocked down the Complainant on the 12th day of June, 2009 and did find that he rode carelessly and hit the Complainant, the motor bike was damaged as per the report of the motor vehicle examiner.

It was further found that the accident was not reported, the motor bike was not insured and the appellant had no driving license.

I find no reason to fault his findings. There was evidence of careless driving. The appellant was seen by PW 2 riding the motor bike and knocking down the Complainant . He was therefore placed at the scene.

On the issue of Sentencing I do find that the trial magistrate did not give the appellant the option of fine. He did not give reasons apart from stating that the appellant did not show remorse.

Section 49(1) of the traffic Act provides for a fine not exceeding Ksh. 5,000/= . The Sentence in the 1st Count is substituted with a fine of Ksh. 5,000/= in default three (3) months imprisonment.

On the 2nd Count of failing to stop after an accident. The Sentence of three months is substituted with a fine of Ksh. 1,000/= in default three months imprisonment.

The Sentences on the 3rd and the 4th Counts are left undisturbed.

This appeal partially succeeds to that extent only.

Judgment dated and delivered this **5th** day of **December, 2012**.

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M. MUYA
JUDGE

In the presence of:-

Mr. Mushelle holding brief Ngunya

Mr. Gioche for the State