



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL CASE NO. 238 OF 2009
LESIIT, KASANGO, J. J.

BENARD MUCHOMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From: Original Criminal Case No.839 of 2009 Tigania; S.O. Mogute SRM)

JUDGEMENT

The appellant challenged the evidence of recognition adduced against him. There were four eye witnesses of the incident. There was the complainant himself, PW1. His testimony was that the incident took place at 4 pm. That when the appellant demanded money from him, he chopped the fingers of his left hand. The complainant said he continued to scream for help and PW2, 3 and 4 responded and went to where he was. Each of these witnesses were alone when they went to the complainant's rescue. They met at the scene and found the appellant busy chopping the complainant's fingers on the left hand.

We find that the evidence adduced by the four witnesses was consistent. All four witnesses knew the appellant before this incident for a considerable time He was no stranger to them. The incident was at 4 p.m. and therefore in broad daylight. Each of the eye witnesses described the clothing in which the appellant was dressed that day, a red T-shirt and a black trouser. There was nothing to prevent the complainant and PW2, 3 and 4 from seeing and recognizing the appellant.

We have considered the appellant's defence. He did not allege that any of the witnesses had any grudge against him. We find that none of the eye-witnesses had any reason to fabricate the evidence against the appellant.

The prosecution has shown that the appellant robbed the complainant of 860/= and that during the attack, the appellant chopped off four fingers from the complainant's left hand. The injuries were classified as grievous harm as shown in the P3 form produced by PW5.

The appellant challenged the evidence of PW5 as being incompetent for reason PW5 was merely a Clinical Officer and not a Medical Doctor. Part III of the Evidence Act deals with Documentary Evidence. S 77 (1) of the Evidence Act which deals with expert reports provides thus:

“77(1) Report under the hand of a Government analyst, medical practitioner or of any ballistics expert, document examiner or geologist upon any person, matter or thing submitted to him for examination or analysis may be used in evidence.”

This provision gives the court discretion to use the P3 form report as evidence. The prosecution has shown that it was prepared by a medical practitioner. PW5 was a Clinical Officer at Miathere District Hospital. He is the one who examined and treated the complainant as part of his routine duties at the hospital.

In order to discredit the report, other expert evidence needed to be adduced to show either that the P3 form was not made by a qualified personnel, or prove some other basis for rejecting the report. The appellant did not oppose the admission of the P3 form at the trial. It is rather late for the appellant to oppose the report at this stage.

Even if the P3 form were to be disregarded, we still find that there was sufficient evidence on record to find that the appellant chopped off the complainant's four fingers during the robbery. The ingredients for the offence of robbery with violence were met as the appellant used actual violence in order to steal money from the complainant which he succeeded in doing.

Having carefully considered this appeal, we find that the evidence adduced against the appellant was overwhelming. The prosecution has proved beyond any reasonable doubt that the appellant violently assaulted the complainant and violently robbed him of money. The appellant's defence was a mere denial which could not withstand the prosecution case against him. We agree with the learned trial magistrate's finding that the prosecution proved the case against the appellant beyond any reasonable doubt. Accordingly we find no merit in the appellant's appeal and do hereby dismiss it accordingly.

We uphold the conviction entered against the appellant and confirm the sentence.

Dated, Signed and Delivered at Meru this 31st day of March, 2011.

LESIIT, J.

JUDGE

KASANGO, J.

JUDGE

