



JOSEPH SHINAIAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal Case No. 1376 of 2006 of the Senior Resident Magistrate's Court at Kajiado by R. A. Oganyo – Senior Resident Magistrate)

JUDGEMENT

The appellant was charged with robbery with violence contrary to section 296(2) of the Penal Code. The particulars are that on 18th day of August 2006 at Kitengela township in Kajiado District of the Rift Valley Province jointly with others not before court robbed Agnes Tuwan Glario of cash Kshs.2,500/= and at or immediately before or immediately after the time of such robbery bit the said Agnes Tuwan Glario. The evidence tendered before the trial court by the prosecution is that PW1 Agnes Tuwan Glario was attacked on 18th day of August 2006 at about 11.15 p.m. as she was heading to her house in Kitengela on foot. As she was walking she noticed that she was being followed by two men from behind. One of them caught up with her and engaged her in a conversation until she was about to reach the gate to her house. As she was about to enter her house she was attacked by the person who was walking with her who took Kshs.2,500/= from her but who insisted that she gives him her mobile and other personal belongings. It is alleged the person who attacked PW1 gave the money to his colleague who immediately

disappeared into darkness. As PW1 was struggling with one of the attackers she fell down and started screaming for help. PW1 was then hit on the head by the attacker and slapped on the face but nevertheless she attracted the attention of her children and other neighbours who immediately came to the scene. PW1 stated that she held on to the shirt of the attacker but he tried to get away from her he hit himself in a nearby kiosk shade and the person fell to the ground. PW1's son and other neighbours caught up with the attacker who was now lying down having injured himself by the way he fell in the kiosk shade. It is alleged the person who attacked PW1 and who was arrested immediately fleeing from the scene is the appellant. The appellant was beaten seriously by members of the public before the police came to his rescue.

PW2 Wilson Chepserson stated that on 18th day of August 2006 at about 11.30 p.m. he was at the house of PW1 when he heard a person screaming for help. He immediately went out with others and found a person struggling with his cousin who was then lying down. As he was about to arrest him the man started running away but he immediately bumped into a kiosk and fell on the ground. He then found that he had injured himself but nevertheless members of the public started beating him. According to PW2 the appellant was arrested 5 metres from the scene and that there was no possibility for him to escape from the persons who had come to the rescue of PW1.

PW3 Anthony Munyoki is a son to PW1 and stated that on the material day he was attracted to the screams of his mother and he immediately came out of the house in order to help or rescue his mother. He then found his mother on the ground being strangled by a person who was not known to him while another one was standing next to the one who was attacking his mother. The intruder then started to run away but he hit himself on a kiosk post nearby and he fell to the ground. He was then arrested and beaten by the

members of the public.

PW4PC Samuel Kiso re-arrested the appellant from the members of the public and later took him to Kitengela hospital for treatment.

PW5 is a Clinical Officer at Kajiado District hospital who filled the P3 form in respect of PW1 and who confirmed that she had suffered injuries on her leg and other parts of her body. He produced the P3 form as exhibit 1 and confirmed that PW1 was actually assaulted by people who robbed her cash and other person items.

When the appellant was put on his defence he stated that he did not commit the offence he was charged with and that he was arrested from his workplace near Kwa Saitoti hospital where he was a watchman. He stated that as he was guarding his place of work he was confronted by a large group of people who accused him to have robbed PW1 who was walking to her house on the material night. He said that he was beaten badly by members of public and later was taken to Kitengela police station while he was unconscious.

In his judgement the trial court found that the charge against the appellant was proved beyond reasonable doubt and that there was sufficient evidence to link the appellant to the charges that were preferred against him.

As the first appellate court, we have to treat the evidence tendered by the prosecution and the defence by the appellant to a fresh and exhaustive scrutiny in order to satisfy ourselves whether the appellant was properly convicted. It is clear that PW1 was attacked on the material night and that she was attacked by two men who robbed her of Kshs.2,500/=. As she was struggling with one of the attackers who wanted to rob her of her mobile phone and other personal items she attracted the attention of PW2 and PW3 who immediately responded to her cries for help. PW2 and PW3 found that the complainant was lying on the ground while two people were attempting to steal from her.

They immediately swung into action and attempted to help PW1. The intruders sensing danger started to run away from the scene but one of them hit himself into a kiosk shade and fell to the ground. PW2 and PW3 who were following the said persons immediately arrested him with assistance with members of public. The person who was arrested is the appellant and he was later handed over to PW4 who re-arrested him and preferred the current charges against him. We are therefore satisfied that the appellant was arrested at the scene having attacked PW1 and trying to escape having accomplished his mission. He was in the company of another which is a clear indication that ingredients of robbery with violence were proved beyond reasonable doubt. In our mind there is sufficient evidence to link the appellant to the robbery under our determination and although he denied the offence it is clear that he was apprehended by PW2, PW3 and other members of the public while trying to escape from the scene. We are satisfied that he was caught in the act and that his defence is unsustainable. We are also of the view that the chain of events from the time the complainant was attacked to the time when the appellant was arrested had not been broken. We have come to the inevitable conclusion that there is satisfactory evidence to show that the appellant is the one who attacked the complainant and that he was arrested trying to escape from the scene. He did not reach far and he was arrested about 5 to 10 metres away from the scene of crime. We have no choice but to state that the case against the appellant was proved beyond reasonable doubt and that the defence tendered by him cannot change the strong evidence tendered by the prosecution. The appeal by the appellant has no merits and it is hereby dismissed. We affirm the sentence as meted out by the trial court.

Dated, signed and delivered at Machakos this 21st day of October 2009.

ISAAC LENAOLA

JUDGE

M. WARSAME

JUDGE