



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 90 OF 2005

SHARON WANJIKU MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

AND

CRIMINAL APPEAL NO. 87 OF 2005

PURITY MUTHONI CHOMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

AND

CRIMINAL APPEAL NO. 80 OF 2005

JAMES MURIMI KARIUKI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(CONSOLIDATED)

JUDGMENT

Appeals No. 90/2005, Appeal No. 87/2005 and Appeal No. 80/2005 arose from one single trial. The appeals were consolidated. The first appellant was Sharon Wanjiku Mwangi she addressed the court and said she relied on her grounds of appeal in her petition and nothing to add.

The second Appellant James Murimi Kariuki had filed 6 grounds of Appeal. He relied on the grounds and had nothing to add. The third Appellant also relied on grounds set out in the Petition and she asked the court to examine both sides. The appeals were opposed by State Counsel who submitted that there was overwhelming evidence against the appellants. The charge was Robbery contrary to Section 296 (1). The prosecution evidence is that the complainant PW1, was walking in the street when he was

confronted by the three appellants. He knew them. He had seen them for about one year. They attacked him and he was left lying on the street unconscious and he was robbed of items mentioned. He was taken to a Nursing Home where he was admitted for one week. The incident occurred at 9 p.m. and there was a street light.

PW2 said that the complainant suspected a certain Murimi and through information received by a watchman near the scene, he was able to get the police to arrest the appellants. PW2 like PW1 was an employee of Kenya Power and Lighting Company Ltd.

PW4 a police officer and others traveled to the scene which was in front of a hotel called Kutus Hotel. The area was surrounded by electricity and the whole place was lighted by electricity.

The Appellants gave unsworn statements denying the charge. After conviction they were sentenced to 5 years imprisonment each.

I have examined the grounds of appeal filed by Sharon and Purity they raise similar issues. That of James Murimi Kariuki raises the issue of identification and evidence contradiction and that their defence was not considered. The evidence was that the complainant knew the appellants well for at least one year. In such circumstances it would not have been necessary to conduct an identification parade. There was light of electricity at the scene and it was in front of a hotel. The circumstances of identification were satisfactory.

Regarding the evidence of PW2 it is true he was not at the scene but he was an employee colleague of complainant. When he received the information about the complainant, he traveled to the scene and found the complainant being cleaned of blood and unconscious. At this stage he was present and he does not give hearsay evidence. He saw the complainant injured and he took him to hospital. He spoke to complainant directly later.

On the issue of defence it is to be noted that they gave unsworn statements. Unsworn statements cannot overrule evidence that is sworn. The only consideration is that it is a right of accused to give unsworn evidence the court cannot ignore the same. In this case the Trial Magistrate considered the statements and found that the prosecution evidence against the appellants was overwhelming. The other issue raised is that the sentence of 5 years is harsh and excessive, I do not agree. The maximum sentence prescribed is 14 years and therefore regarding the circumstances surrounding this case I do not say the sentence is harsh or excessive.

I therefore find no merit in this appeal the same is dismissed.

Dated this 14th May, 2008.

J. N. KHAMINWA

JUDGE

14/5/2008

Khaminwa – Judge

Njue- Clerk

Read in presence of Mr. Omwega and 3 Appellants.

J. N. KHAMINWA

JUDGE