



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CRIMINAL APPEAL 134 OF 2004

THOMAS IRERI NGARI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with the offence of being in possession of Cannabis Sativa (Bhang) contrary to section 3 (1) (2) (a) of the Narcotic Drugs and Psychotropic Substances (control) Act 1994. The appellant was found being in possession of 73 Kg Bhang not medically prepared on 26/5/2004 at Kanyoriri village Mbeere District.

There was a second count of cultivating Bhang contrary to Section 6 (a) of the said Act.

In relation to count II there was evidence that the land upon which bhang was cultivated did not belong to him and therefore the State Counsel has conceded the appeal regarding this count. The appeal on the count II is allowed conviction quashed and sentence set aside.

Regarding the main count the Trial Magistrate find accused guilty and sentenced him to 12 years imprisonment. The ground of appeal complain of the very harsh and stiff sentence and that the evidence was flimsy and fabricated by the police who searched and found nothing in his house and the Trial Magistrate failed to see the grudge between appellant and the chief and failed to consider his defence. The evidence against the appellant was that on 26/5/2004 the Chief, of the area PW1, went with his administration officers to the appellant's home. They found him at his house. The Chief searched the house and in the appellants bedroom. They found 2 sacks full of bhang. The chief also searched the granary and found several guards which they emptied in 2 sacks full of bhang. They also recovered seed bhang in a gourd. They proceeded to the shamba. The case of bhang in the shamba and plants of bhang is now not pursued by the state. The appellant was present at all the material time. The appellant was arrested and taken to police station. The evidence of PW1, the chief, was subjected to lengthy cross-examination by the Appellant. However the cross examination did not weaken the prosecution case.

Prosecution called PW2 APC Titus Njeru who accompanied the chief to the house of appellant after searching the house 2 sacks of bhang were found and also a search in his granary yielded 2 sacks of bhang and seeds. The accused was arrested. This evidence was also tested by cross-examination. However the prosecution case was not weakened.

In his defence the appellant chose to make unsworn statement as he was entitled to do. He said there was a grudge between him and the PW1 (chief) over land and therefore this bhang was planted on him.

He had cross-examined the Chief on this grudge. The chief said that before reaching the appellant's house he had arrested one Rwigi who was with him on account of bhang. The chief clearly denied having any grudge against the appellant and his testimony in this respect is firm and believable. The appellant also called his wife to support his case but all she said in that PW1 came with sacks and blue plastic paper. The chief handcuffed the appellant and took him away. She seemed to know nothing of the search in the house and granary. She just chose to deny these facts.

Upon considering the above and the grounds of appeal I find that the evidence laid before the court was not flimsy or fabricated. The appellant was in his house when a search was carried out and bags of bhang were found therein. The police came to his house the following day after arrest just to check. The exhibits had already been taken to police station and the appellant arrested.

On the issue of the fifth ground that the chief plotted to impeach the appellant this ground has no merit. The chief denied the existence of a grudge and explained the matter clearly.

I therefore find all grounds of appeal without merit. Since the State concedes the second count the appeal is allowed in that count. However on count one I find the conviction was based on evidence which is firm and consistent.

I find the prosecution has proved the case beyond reasonable doubt. Regarding the sentence it is the duty of the Trial Magistrate to assess the punishment and an appellate court can only interfere if the sentence is harsh or excessive. I do not find sentence of 12 years imprisonment harsh or excessive in the circumstances for count one

I therefore dismiss the appeal on main count.

Dated this 1st March, 2007.

J. N. KHAMINWA

JUDGE

1/3/2007

Khaminwa –Judge

Njue – Clerk

Appellant present

Mr. Kimathi for State

Judgment read in open court.

J. N. KHAMINWA

JUDGE