



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL APPEAL NO. 117 OF 2003

MARTIN MUNENE KAGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Appellants were charged with offence of robbery contrary to Section 296 (1) Penal Code. They were convicted and sentence to four years imprisonment.

The two appeals arising were consolidated and Mr. Martin Munene is first appellant. Mr. Anthony Nyaga Mutema is second appellant both appellants filed separate petitions of Appeal.

The first Appellant set out his grounds of appeal as follows:-

1. Trial Magistrate failed to consider his defence
2. Convicted on insufficient evidence.
3. relied on false allegation of prosecution witnesses while there was no evidence to support the allegations
4. failing to consider mitigation.
5. the sentence was excessive in the circumstances.
6. failed to deal with the grudge between the appellant and the complainant.

The second appellant also complained:-

1. that Trial Magistrate failed to appreciate evidence of PW1.
2. P3 form was inconsistent with evidence of PW1 and PW2.
3. there was contradictory evidence of prosecution witnesses
4. disregarded defence of appellant without reason.
5. Judgment was not supported by evidence.

6. Prosecution evidence was contradictory inconsistency and outright lies and fake.
7. failed to give benefit of doubt to appellant.
8. shifted the burden of proof to the appellant.

On a perusal of the evidence it will be seen that the evidence of PW1 was not in connection with the charge. PW2 and PW3 gave evidence as to how the complainant was roughed up by people and the (2nd accused) 2nd appellant was arrested by members of public at scene while first appellant ran away with complainant's jacket. At police station 2nd appellant was searched and shs.1100/= was found on him. This was said to be money of complainant which was in the pocket of his jacket and which fell down from the jacket pockets.

PW4 an oxcart driver was at the scene "**Mbogo Hotel**". He found the 2 appellants struggling with complainant and later the mob came as stated by PW3. 1st Appellant ran away. 2nd Appellant was taken by the mob to police station. He added that the appellants were matatu touts while the complainant was a matatu driver. He also added that Appellant one was threatening to hit the complainant with a panga and he was demanding money from the complainant.

PW5 added to above evidence. He said he knew the two appellants were touts. He saw 1st appellant cover the complainant with his own jacket on the head. Some money got out of his jacket pocket. 2nd appellant took it. Appellant one scared people and left the scene after taking some more money.

PW6 is the officer who received report and recorded the same on Daily Occurrence Book. The report was that complainant had been robbed of Shs.6300/-. He admitted on cross examination that what he had written in OB as 6300/= had become illegible for it was interfered with and was rubbed out and the figure 1100/= in the OB appears to have been added later. He also said it was appellant 2 who told him that appellant 1 mutilated the notes. The prosecution case was closed after the evidence of PW6.

The appellants gave evidence on oath denying the offence and alleging that it is them who were assaulted. This evidence is unbelievable. The 2nd appellant was arrested at the scene and escorted to police post straight away. The first appellant was arrested the following day. None of them reported their complaints to the police and the allegations they made cannot be true. Police Officer Otieno mentioned was not called. The prosecution evidence is firm and consistent

I agree with the Trial Magistrate that the prosecution's case was proved beyond reasonable doubt. On the issue of sentence this offence is punishable by 14 years imprisonment and therefore 4 years was not harsh or excessive. The upshot is therefore this court finds the grounds above to be without merit. The same are dismissed.

I therefore do not find any merit in the appeal and the same is dismissed.

Dated this 25th May, 2007.

J. N. KHAMINWA

JUDGE

25/5/2007

Khaminwa –Judge

Njue –Clerk

Appellants –Present

Mr. Kimathi for State

Judgment read in open court.

J. N. KHAMINWA

JUDGE