



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 902 of 2003

OKWARO GEORGE WILLIAM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

OKWARO GEORGE WILLIAM was charged with one count of **ROBBERY WITH VIOLENCE** contrary to **Section 296(2)** of the **Penal Code**. He was convicted of the offence and sentenced to death as by law prescribed. It is against the conviction and sentence that the Appellant now lodges this appeal.

The facts of the case are that the Appellant alighted at Ambassador Hotel at 3.00 a.m. on the material day. He walked to a taxi at York House where before he could choose one, he was held by the neck from behind and pressed until he fell down. He was robbed of his wallet in which contained Kshs.5,000/- and personal documents. When he stood up, he saw three men who had robbed him disperse and start running. He decided to run after the one who had taken his wallet. That as he chased him, Police Officers emerged ahead of the man and managed to arrest him. The Complainant's wallet with all its contents was recovered from him and produced in court as Exhibits 2 to 8. PW3 was the arresting officer. On the Appellant's part he denied the offence and stated that he was selling coffee with his wife along Ronald Ngala Street when they ran out of water. That when he went in search of water, on his return he found Complainant talking to his wife. That when he tried to find out what the issue was, the Complainant started beating him. That as he ran from the Complainant he was arrested by the Police.

In his petition of appeal, the Appellant raised four grounds;

One that the learned trial magistrate erred in failing to observe that the case was a fight between the Appellant and the Complainant.

Two that the exhibits produced in court had not been entered in the OB which should mean nothing was recovered from the Appellant.

Three that there were material contradictions in the prosecution case that should have been resolved in the Appellants favour.

Four that the prosecutor in the case was unqualified to conduct the prosecution of the case.

The appeal was opposed. **MRS. OBUO** represented the State in this appeal.

We have carefully analyzed and re-evaluated the entire evidence adduced in the lower court in this case.

The last ground of appeal seems to have been abandoned by the Appellant in his written submissions and rightly so because after perusing the proceedings before the lower court, we found that nowhere during these proceedings was the prosecution conducted by an unqualified person. The ground has no merit and is dismissed.

On the first ground, the Appellant in his written submissions stated that he had not robbed the Complainant but had fought with him over his wife. The Appellant submitted further that even though the charge sheet read that the Complainant was robbed by the Appellant and others armed with knives, the Complainant never saw any weapons.

MRS. OBUO submitted that the evidence of identification and recent possession of Complainant's stolen items both established beyond reasonable doubt that the Appellant had robbed the Complainant on the material day. Learned counsel submitted that the evidence was quite clear that there was sufficient light along the road where the Complainant chased the Appellant. That on arrest by PW3 and his colleagues, the Complainant's wallet was recovered from the Appellant's underpants.

We have no doubt that the scene of crime was well lit, that the Complainant never lost sight of the Appellant from the time he started running away up to the time PW3 arrested him. Upon the Complainant's identification we also have no doubt that the Complainant's wallet was recovered inside the Appellants underpants.

The Appellant argues that he had fought with the Complainant and that he was arrested as he ran away from him. We do not doubt that the Appellant was running away from the Complainant at the time PW3 apprehended him. However, the Appellant's submission and even defence that the case before the Court was a fight was rightly rejected by the learned trial magistrate. We have considered the Appellant's defence and this ground of appeal and find no merit in it. We are satisfied that the only reason why the Complainant's wallet, exhibit 2, with all its contents exhibits 3 to 8, were recovered from the Appellant's underpants was two fold. One that he was the one who removed it from the Complainant's pockets after knocking him down. Secondly, he hid it out of sight in order to permanently deprive the Complainant of his property.

The Appellant raises issue with the fact that the Complainant did not see any weapons with his assailants. That too was admitted by the Complainant. However, the Complainant's evidence was that he was injured and was bleeding from wounds inflicted on him as the Appellant robbed him. PW1, **DR. KAMAU** who examined the Complainant confirmed that the Complainant had been injured. The Doctor stated that the injuries were probably caused by both sharp and blunt objects. While that evidence is inconclusive as to any weapons as described in the charge sheet having been used, the evidence proves that the Complainant was injured during the course of the robbery. The Complainant's evidence is also very clear that he struggled with three people before being knocked down and robbed. His evidence therefore supports two important ingredients for the offence of **ROBBERY WITH VIOLENCE** contrary to **Section 296(2)** of the Penal Code. One that the Appellant was in company with more than one other person during the robbery and secondly that they used actual violence against the Appellant.

The Appellant has raised another issue that the Complainant paid him a visit in the Court cells on the day the case was heard. Actually the Appellant put that question to the Complainant in cross-examination and while admitting that he checked on him in cells, the Complainant explained that all he wanted to confirm is whether the Appellant had been produced from remand. In her submission, the learned State Counsel submitted that even though the visit was irregular, it nonetheless did not prejudice the Appellant nor affect the prosecution case.

We agree with the learned state counsel's submission in this matter. The visit to the Appellant's cells was not motivated by any ulterior motive and even though irregular, we are satisfied that it did not cause any prejudice to the Appellant nor adversely affect the prosecution case.

On the issue of the exhibits not having been booked in the occurrence book, that matter never arose during the trial. It is too late for the Appellant to raise it before this Court and especially in the manner he did. In any event, we are satisfied that the items were recovered from the Appellant's person by PW3, a Police Officer who happened to be on duty at the time and place that the Appellant was being chased by the Complainant.

Finally on the issue of contradiction in the prosecution case, we found none whatsoever. Even if there may have been any, we are satisfied that they were immaterial and that they could not adversely affect the prosecution case.

Having carefully considered this appeal, we find that the learned trial magistrate correctly applied the facts and the law in this case and that she came to the right conclusion. The conviction is safe and cannot be challenged. Consequently this appeal lacks in merit and is dismissed. We uphold the conviction and confirm the sentence.

Dated at Nairobi this 27th day of April 2006.

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LESIT, J.

JUDGE

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MAKHANDIA

JUDGE

Read, signed and delivered in the presence of;

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LESIT, J.

JUDGE

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MAKHANDIA _

JUDGE