

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 339 of 2003

MARY NYAWIRA MUNENE APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from original Judgment and Conviction in Resident Magistrate's Court at Baricho in Criminal Case No. 149 of 2001 dated 5th March 2003 by Mr. J. M. Githaiga – R.M. – Baricho)

J U D G M E N T

Mary Nyawira Munene hereinafter referred to as the appellant was tried and convicted by the Baricho Resident Magistrate's Court for the offence of Greivous Harm contrary to section 234 of the Penal Code. She was sentenced to serve 7 years imprisonment. Being dissatisfied she has appealed against her conviction and sentence.

The grounds of appeal put forward by the appellant consists partly of explanations as to how the offence occurred and partly mitigation as to why her conviction and sentence should be reviewed.

I have reconsidered and evaluated the evidence which was adduced in the lower court.

The complainant's evidence was that, he was drinking at a Bar where the Appellant was working. At around 2.00 a.m., they left the Bar with the Appellant to go to her house as the Complainant had failed to get a room in a lodging. Shortly after arriving in the Appellant's house, the Appellant attacked the Complainant stabbed him and robbed him of Kshs.59,300/= and a mobile phone. The Appellant then started shouting that the complainant was a robber. The Complainant who was injured was forced to leave the Appellant's house when she started throwing stones at the Complainant. The Complainant collapsed, and lost consciousness about 50 metres away. It was not until the next morning when the Complainant was assisted and taken to Hospital.

The Appellant's defence during the trial was simply a denial as she claimed to know nothing about the case. She claimed the Complainant was just found injured. This however is contrary to what she is now telling this court in her memorandum of appeal when she claims that the complainant followed her and wanted to enter her house by force and that the Complainant got injured by the handle of the door as she was resisting. The trial magistrate who saw and assessed the demeanour of the witnesses found the Complainant's evidence the more reliable version. Having considered the evidence I find that the Complainant's evidence was consistent with the evidence of Reuben Mwangi a watchman who saw the Complainant and Appellant moving towards the Appellant's house and confirmed that there were no signs of a struggle. The Complainant's evidence was also consistent with that of Jane Wangu Mwangi a neighbour of the Appellant and Ernest Chomba Githu both of whom heard screams and found the Complainant lying bleeding in the Appellant's house.

I find that the trial magistrate was right in rejecting the defence of the Appellant. It is evident that the appellant injured and robbed the complainant. The Appellant is lucky not to have been charged with the offence of Robbery. There was clear evidence that the Complainant was seriously injured and had to be

admitted in Hospital and undergo two operations. There was sufficient evidence to support the appellant's conviction.

As regards the sentence, the offence of which the appellant was convicted carries a maximum sentence of life imprisonment. Given the circumstances of the case I find that the sentence of 7 years was not so excessive as to warrant the intervention of this court.

I therefore find no merit in this appeal and dismiss the appeal in its entirety.

Dated signed and delivered this 27th day of June 2006.

H. M. OKWENGU

JUDGE