



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 50 of 2001

SALESIO NJERU NJOKE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Salesio Njeru Njoka was charged with the offence of Robbery contrary to section 296 (1) of the Penal Code. He was tried convicted and sentenced to 10 years plus 10 strokes. He brings this appeal and sets out his grounds of appeal thus:-

Ground 1

The Trial Magistrate failed to consider evidence of PW1 who alleged that appellant is a person of dubious character.

Ground 2

Appellant had no knowledge that the radio was stolen otherwise he would not have been ferrying it during the day light.

Ground 3

The Trial Magistrate failed to consider that the radio was not tampered with as he had no motive or suspicious its origins.

Ground 4

The Trial Magistrate deferred my defence and mitigation as per my responsibility in marital state.

Ground 5

Trial Magistrate contradicted law by convicting under 296 (1) instead under handling of stolen property.

Ground 6

Sentence of 10 years imprisonment and 10 strokes is harsh and excessive on a first offender.

The prosecution case is that the complainant was robbed of his radio on 12.11.1999 at about 2.00 a.m. That night was rainy and he had not seen his attacker before. His attacker took Shs.170/= and complainant's radio. The complainant reported to the police. Three days later the complainant was called to the police station. There was a radio recovered and the complainant was able to identify it as his. He showed several numbers and his permit.

PW2 also testified that the same night he was robbed by men who demanded money. The PW2 said the appellant was the one who robbed him. He had shown his torch on the appellant that night.

On 14/11/1999 PW3 a police officer was walking at Nthambo when he saw the appellant passing him. He ordered him to stop but the appellant ran away. The officer chased the appellant. The appellant dropped a paper bag he was carrying into the river. The officer ran following him and arrested him and recovered the radio. This is the radio that was stolen from the complainant home and it is the one that PW1 positively identified as his.

In his defence the appellant made unsworn statement, he said that at Njukiri he found 3 persons one of whom came to testify, one of 3 men ran away and dropped a parcel. He was found by a police office and charged with stealing the radio.

I have read the Judgment of Trial Magistrate and I find his finding on the issue of identification correct. The circumstances surrounding the commission of the offence were not favourable being a dark rainy night. However the Trial Magistrate found that the doctrine of recent possession applied because the appellant was found with the stolen radio soon after the incident. A person found with goods so soon after they are stolen is the thief. This is a principle of law. The charge sheet was not carrying any alternative charge.

I find that the prosecution proved its case beyond reasonable doubt and there is no reason to interfere with conviction. The grounds of appeal are therefore dismissed. On the issue of sentence section 296 (1) sets down sentence at fourteen years. The Trial Magistrate gave reasons why he sentences the appellant to 10 years imprisonment. Since sentencing the Appellant punishment has been outlawed. After considering the reasons given by the Trial Magistrate on sentencing I do not find that the sentence is harsh or excessive. However the corporal punishment is set aside as unlawful.

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

Dated on this 22nd September, 2006.

J. N. KHAMINWA

JUDGE

22/9/2006

In Court,

State Counsel for the Appellant

Judgment read in open court

J. N. KHAMINWA

JUDGE