

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

Criminal Appeal 725 of 2002

(From Original Conviction and Sentence in Criminal Case No.1181 of 2001 of the Senior
Principal Magistrate's Court at Kibera).

KENNEDY OUMA ODUOR.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with robbery contrary to Section 296(1) of Penal Code. He was tried, convicted and sentenced to serve 6 years imprisonment. He now appeals to this court against both that conviction and sentence.

Briefly the prosecution case was that on the 19th March 2001 at Kware Village, Ongata Rongai Township in Kajiado District while the complainant was asleep, the appellant and another person at large entered her house and robbed her of 2 bed sheets, one blanket, two sufurias, one bag and cash Shs.500/=. The complainant in her evidence told the court that on the material date at about 3 a.m. while she was asleep in her bed she heard someone touch her. He closed her mouth using his hand and started raping her while another one was ransacking the house. They had gained entry into the house by making a hole next to the door and managed to open the door. She managed to identify him through moonlight as the door was wide open. She screamed and neighbours rushed to her rescue. One Njeri who arrived at the scene first met the appellant at the door.

The appellant pushed that Njeri down but he also fell down. Assisted by other neighbours they managed to arrest the appellant but they later released him.

The other witness called by the prosecution apart from the complainant is PW2 AP Sgt. David Tirop to whom the complainant had reported the robbery.

In convicting the appellant the learned trial magistrate relied on the evidence of the complainant, a single witness. The neighbours who allegedly rushed to the scene when the complainant screamed and who arrested the appellant were not called to testify nor was the investigating officer called. As I have said earlier the trial magistrate relied on the evidence of a single witness. The appellant says he was framed.

It is trite law that subject to certain well-known exceptions a fact may be proved by a testimony of a single witness. **ABDALA BIN WENDO AND ANOTHER VS. R(1953) 20 EACA 166**; however, in the exercise of its duty the court has to satisfy itself that in all the circumstances of this case it is safe to act upon the evidence of identification by a single witness. Further it is alleged that the appellant was arrested at the scene but none of the robbed items were recovered.

For the reasons stated above I find the conviction of the appellant unsafe, and the same is quashed and the sentence set aside. The appellant to be set at liberty immediately unless otherwise lawfully held.

Dated and delivered at Nairobi this 7th day of February, 2005.

J.L.A. OSIEMO

JUDGE