



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION**

Criminal Appeal 303 of 2003

**(From original conviction (s) and Sentence(s) in Criminal case No. 3075 of 2002 of the
Chief Magistrate's Court at Nairobi (D. Kavedza (Mrs.) - S.R.M.)**

JESSE MWANGI THEURI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

JESSE MWANGI THEURI has appealed against both the conviction and sentence of death passed against him by **KAVEDZA MRS.** The Appellant had been charged of violently robbing the Complainant **DAVID MWANGI** of cash money and mobile phone.

DAVID told the Court that he escorted a colleague, **PW2**, to a bus stage at University Way where he took a matatu. As he walked along Koinange Street, **DAVID** said that he was grabbed by four men; one of them started strangling him while the rest frisked his pockets and robbed him of cash, identity card and mobile phone. **DAVID** said that he heard a gun shot after which three of the robbers ran away. **DAVID** decided to grab the one who had been strangling him and he held on to him until **PW3**, **PC KIPKURUI** came and re-arrested him. The one the Complainant and **PW3** arrested was identified as the Appellant.

In his defence the Appellant said that he was a matatu conductor and that on the material night he was looking for change when he met the Complainant. He said that the Complainant alleged he had robbed him leading to his arrest.

The Appellant raised three grounds of appeal that one, the trial magistrate failed to analyze the evidence of **PW1** and **PW3** to find that it had material contradictions. That the Complainant's credibility was tainted and was therefore unreliable, and finally that his alibi defence was not given due consideration.

We have re-evaluated the evidence adduced before the trial court. The Appeal was opposed. **MRS. KAGIRI** learned counsel for the State submitted that the Complainant held the Appellant until Police came and arrested him and therefore there was no doubt that he had committed the offence.

The evidence of identification was very clear and without doubt. The Appellant was apprehended by the Complainant at the scene of crime after the Appellant's accomplices had robbed the Complainant before fleeing from the scene. The Complainant's evidence that he held onto the Appellant until police re-arrested him was corroborated by **PW3**, **PC KIPKURUI**. **PC KIPKURUI** is the police officer who re-arrested the Appellant from the Complainant at the scene of incident. **PC KIPKURUI** said that he witnessed the entire incident from the time the four men surrounded and robbed the Complainant while one of them tried to strangle him to the time the robbers fled leaving the Appellant behind. The Appellant

is the one who had been strangling the Complainant. The Complainant grabbed the Appellant before he could escape with his accomplices.

We find that the evidence against the Appellant was overwhelming. We find that the evidence was very clear that the Appellant was an accomplice to the robbery in question. The

Appellant's denial that he was an innocent passerby could not shake the evidence of the prosecution adduced against him. We also find that his defence cannot be classified as alibi defence because he was at the scene of this incident at the time the offence took place and at the time of his arrest. The Appellant's grounds of appeal have no merit in the circumstances and we accordingly dismiss them.

Having considered this appeal at length we find that the conviction entered against the Appellant was safe and should not be disturbed. We dismiss the appeal accordingly.

Dated at Nairobi this 20th day of September 2005

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LESIIT, J.

JUDGE

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M.S.A.MAKHANDIA

JUDGE