REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 61 OF 2002

RONALD SHITANDA ……..…….APPELLANT

VERSUS

REPUBLIC……...……..RESPONDENT

JUDGEMENT

The appellant was charged with causing grievous harm contrary to section 234 of the Penal Code. The particulars were that on 25th October 1998 at King'ong'o village within Uasin Gishu District of the Rift Valley Province, he unlawfully did grievous harm to one Florence Alili Shivonje. At the end of the trial the magistrate convicted him and sentenced him to serve 14 years imprisonment and to suffer 10 strokes of the cane. The appellant having been aggrieved by the decision of the magistrate has appealed to this court both against conviction and sentence. He filed his petition of appeal on 14th June 2002 and later his advocate Buluma and Company Advocates filed supplementary grounds of appeal on 19th April 2004.

At the hearing of the appeal on 24th April 2004 the Counsel for the appellant Mr. Obudho informed the court that he would rely both on the petition of appeal filed by the appellant in person as well as the supplementary grounds of appeal. He submitted that the charge of causing grievous bodily harm was not proved against the appellant. Seven witnesses testified for the prosecution, while two testified on behalf of the appellant. In his view, the prosecution failed to prove its case beyond any reasonable doubt as the prosecution evidence was fraught with contradictions. The evidence of PW1 who was the complainant was that she was locked up by the appellant in his house and set ablaze. The only person who could have supported this evidence is PW4.

While according to PW1, PW4 broke the door, PW4 stated on oath that she saw the appellant dragging out the complainant from his house. This, in his view, was a serious contradiction. Secondly, PW1 stated that the door was opened for her by PW4, which evidence was not confirmed by PW4. The only person who sought to confirm this was PW6 who was the arresting officer. Another contradiction was that PW2 stated that he called the Administration Police officers who arrested the appellant while there is evidence that the appellant was brought to the police station by members of the public and not Administration Police officers. Another contradiction was that PW5 stated that he held the complainant's skirt and remained with it, which does not tally with the evidence of PW1.

Also the magistrate erred in not considering the defence and believing that it was uncontroverted. Therefore, the magistrate erred in finding that the prosecution had established a case against the appellant. No exhibits were produced of any burnt clothes or any vessel that contained paraffin. The magistrate, in his view, shifted the burden of proof to the defence. The magistrate imputed motive from the utterances which had transpired between the appellant and PW1, while there was insufficient evidence of motive. He submitted that there were no proper investigations and a proper medical report and therefore the conviction should be quashed and sentence set aside.

Mr. Omutelema for the State supported the conviction. On the issue of motive, he submitted that the trial magistrate was right in making the finding as the appellant had threatened to ruin the life of PW1. There is no law that requires corroboration of such evidence. The evidence of the disagreement is supported by the testimony of PW3. The magistrate believed the evidence of PW1, which she was entitled to. This was a case where the magistrate was either to believe or not to believe the evidence of PW1. On the issue of the contradictions in the evidence, the contradictions did not go to the substance of the charge. The evidence of substance was that PW1 and the appellant had disagreed and that the appellant set PW1 on fire. PW1 gave detailed evidence and PW4 said that she heard the complainant (PW1) and appellant quarrelling.

It was only the two (appellant and PW1) who were in the house, therefore there was nobody else who could have witnessed the pouring of paraffin. In his view, the magistrate considered the defence and disbelieved the same. He further submitted that the date on the P3 form must have been a typographical error on the record. The issue was who set the complainant ablaze. The magistrate did not shift the burden of proof. The sentence of imprisonment is justified, however, corporal punishment can be set aside as the law has outlawed such sentence. I have re-evaluated the evidence on record and I find that the evidence of PW1 the complainant, was quite detailed. PW3 testified that he heard screams and he found PW1 and the appellant quarrelling. There is evidence that the complainant (PW1) was burnt.

The defence basically is that PW1 set herself ablaze. The learned magistrate considered all the evidence of the prosecution and the defence and believed the evidence of the prosecution. She was entitled to do that. I find no reason to interfere with her finding as she had the advantage of seeing the witnesses testifying and was able to assess their demeanour. I find no contradiction that goes to controvert the evidence of PW1, that she was set ablaze by the appellant. I therefore uphold the conviction. On the issue of sentence, the sentence of strokes of the cane has been outlawed by the Statute and I therefore quash the same. However, the sentence of 14 years imprisonment is, in my view, justified as this was quite a serious offence, where the complainant (PW1) suffered very severe injuries.

I therefore dismiss this appeal, uphold the conviction and sentence except the sentence of strokes of the cane, which is hereby quashed.

Dated and Delivered at Eldoret this 9TH Day of JUNE 2004.

George Dulu

Judge

(I certify this a true copy of the original)

DEPUTY REGISTRAR