



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 1043 OF 2000

From Original Conviction and Sentence in Criminal Case No. 13115 of 1999  
of the SP Magistrate's Court at Kibera.

CHARLES OKANGA IRONDANGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was convicted of the offence of Robbery with violence c/s 296(2) of the Penal code and sentenced to death. This appeal arises from the said conviction.

The evidence was brief. The complainant had gone to watch a football match at Nyayo stadium when, after entering the main gate, he was accosted by two scouts one being the appellant herein. He had not paid the entry fee and when asked by the scouts why, he turned to go and pay but the appellant blocked his way. The two scouts are then said to have started to beat the complainant.

The appellant then allegedly "took the complainant's wrist watch, Kshs. 5,000 cash and Id card". The appellant's companion is said to have produced a knife with which he tried to stab the complainant but missed. Only the complainant's jacket was torn.

The complainant escaped and reported the matter to Nyayo police Post. The appellant was subsequently arrested and charged with this offence. In his defence he gave an alibi and alluded to some differences between him and the complainant. The learned trial magistrate however believed the evidence of the prosecution witness and convicted the appellant. The appellant was well known to the complainant. There was no mistaken identity. The appellant alluded to some disagreement with the complainant prior to that incident but that had no bearing with the offence charged.

The incident took place during broad daylight pw2 saw what happened his evidence and that of the complainant were corroborative. There is one issue however that we are unable to reconcile. It is true that the appellant was with another. Whereas we believe it was the appellant who took the complainant's watch, money and identity card, there is no evidence that there was a common intention with his colleague who pulled out a knife and tried to stab the complainant. That being the case, we find that the offence proved against the appellant is that of stealing from a person c/s 279(a) of the penal code.

Accordingly we quash the conviction under section 296(2) of the Penal Code and set aside the sentence imposed. In place thereto, we enter a conviction under section 279(a) of the Penal Code.

The sentence provided for that offence is fourteen years imprisonment with corporal punishment. The appellant was treated as first offender as his records were not available. The offence is serious and appropriate punishment is called for.

We sentence the appellant to five(5) years imprisonment with four(4) strokes of the cane. The term of imprisonment shall run from the date of conviction.

Orders accordingly.

Dated and delivered at Nairobi this 29th day of July, 2003

MBOGHOLI MSAGHA

JUDGE

R. M. MUTITU

JUDGE