REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL APPEAL NO. 505 OF 2000

FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE

NO. 1545 OF 1999 OF THE PM'S COURT AT KITUI – NJERU ITHIGA

ESQ. PM KITUI

DAVID MUNYOKI KATUTU &

KIMANGI KITUO ……………………………………………………APPELLANTS

VERSUS

REPUBLIC ……………………………………………………………… RESPONDENT

JUDGMENT

The appellants were convicted and sentenced to hang in a case of robbery with violence contrary to section 296(2) of the Penal Code by Mr. Njeru Ithiga the Principal Magistrate Kitui on the 10th May 2000.

The two appellants relied on two main grounds of appeal namely – that the trial magistrate erred in relying on evidence which was not adequate to establish the guilt of the appellants and that the appellants defences were not considered by the trail magistrate.

We have carefully considered the evidence adduced by the prosecution witnesses more so PW1 and PW2. We have noted that the robber took place in broad daylight and that the two witnesses knew the two appellant's according to the evidence on record.

In cross-examination, it is noted that the two appellants did not deny being known to the two eyewitnesses. All the stolen items were recovered form the 1st appellant by PW4 and PW5 according to the evidence on record. The fact that the complainant was injured during the robbery was confirmed by PW6 and PW8 when the 1st appellant was arrested. He was found with a knife, which fitted into a sheath which was retained by PW1 during the robbery and which PW1 had given to the police.

We are in agreement with the learned state counsel that the appellants were convicted and sentenced to death by the learned trial magistrate while acting an sufficient and congent evidence. We do not find any sufficient grounds to enable us to interfere with the findings of the learned trial magistrate herein.

We therefore dismiss this appeal in its entirety in so far as the charge under Section 296(2) of the Penal Code is concerned.

On count two which relates to the second appellant the conviction should be quashed and the sentence set aside since no evidence from the Government analyst was adduced to prove that the substance recorded by PW7 was bhang. Evidence of PW7 to the effect that the substance recovered on the second appellant was cannabis sativa was not corroborated by any other independent evidence.

In conclusion we allow the 2nd appellants appeal on court two and set aside his sentence of three years imprisonment. Order according.

Delivered this 13th day of August, 2003.

M. MBOGHOLI

JUDGE

R.M MUTITU

JUDGE