



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO. 587 OF 1998

(From Original Conviction and Sentence in Criminal Case No.16095 of 1997 of the Principal Magistrate's Court at Makadara).

ISAYA ASWAN KHAYO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant's appeal is against his conviction for Robbery with Violence contrary to section 296(2), P.C. and the sentence of death.

The evidence for the presentation established that the complainant (PW1) was robbed of his cash Sh.1000/- at about 7 p.m. on 17th September, 1997 when he was on his way along Race Course road in Nairobi by a gang of about 7 to ten people.

The complainant testified that during the course of the robbery one of the thugs held him by his neck and his Shs.1000/= was removed from his pocket. He was not able to identify any of the robbers.

The appellant denied the charge. His defence was that when he was on his way he saw a person with a pistol who held him and beat him up wanting to know where the others were. He was arrested, taken to the police station and charged with the present offence.

The evidence against the appellant connecting him with the offence came from two police officers, i.e. PW2 and 3. Their evidence was that they were on patrol at the material time on the race course road when they saw a group of people mugging the complainant. Thereupon I.P Matu (PW2) fired a shot from his gun. He saw the appellant who was holding the complainant. The appellant ran. They chased him. The appellant climbed a wall to the first floor and hid behind a water tank. They climbed up, the appellant jumped from the top and they arrested the appellant.

The learned Senior Resident Magistrate considered the evidence for the prosecution and the defence with care. He believed the two police officers and rejected the appellant's defence. We find no merits in any of the grounds raised on the appeal. The appellant was caught red handed.

Mr. Monda, the learned state counsel has opposed the appeal. However, he considers this case as a proper one for the substitution of the conviction for Robbery, contrary to section 296(1), P.C. Having given our minds to this point we are very much inclined to agree with the learned state counsel. It is clear that the complainant was not at all seriously injured. The doctor, PW4 classified his injuries, viz soft tissue injuries on the neck and bruises on the left knee and leg as harm. The complainant was robbed of Shs.1000/= only.

The appellant had no previous conviction. He was in remand from September, 1997 until 19th May, 1998, i.e. for about eight months. There is no remission for robbery sentence.

Order:

We substitute the conviction against the appellant for Robbery, contrary to section 296(1), P.C. and set aside the death sentence. We sentence the appellant to four years imprisonment with effect from 19th May, 1998 plus two strokes.

Dated and delivered this 23rd January, 2002.

V.V. PATEL

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JUDGE

W.K. TUYOIT

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JUDGE