



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.48 OF 1999

(From original conviction and sentence in Criminal
Case No.2180/97 of the Principal **Magistrate's Court at**
NYAHURURU (W. KARANJA PM))

JULIUS SAMBU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

This is an appeal against the Judgment of the lower Court (MRS. KARANJA, P.M.) dated and delivered on September 9, 1998 by which she convicted the Appellant of the offence of robbery with violence contrary to Section 296(2) of the Penal Code and sentenced him to suffer death in a manner prescribed by law. The Appellant who in the lower Court is referred to as Samwel Korir Sambu appeals against both the conviction and sentence.

The Appellant was charged in the Subordinate Court with another person of the offence already mentioned. The particulars of the offence were that on July 24, 1997 in Gituamba area of Laikipia District within the Rift Valley Province, the Appellant and his coaccused jointly while armed with a dangerous weapon namely an iron bar, robbed Lucy Wambui Njoroge of cash Kshs.5,000/-, three skirts, two pairs of shoes, two handbags and a kiondo all valued at Kshs.8,900/- and at or immediately before or immediately after the time of such robbery wounded the said Lucy Wambui Njoroge. The Appellant and his co-accused pleaded not guilty. At the conclusion of the trial, the Learned Magistrate acquitted the Appellant's co-accused and said as follows:-

“As far as accused 2 is concerned, I note that he was only mentioned by the complainant. Neither PW2 nor PW3 who rushed to the scene immediately thereafter saw him. Nothing belonging to the complainant was recovered from him.”

The case which was presented by the Prosecution at the trial was that the complainant was robbed at around 8.00 p.m. There was moonlight and she was able to identify her attackers. The Appellant was the complainant's neighbour. After the attack, the complainant screamed for help and other neighbours came to her rescue. These were PW2 and PW3. These two witnesses also knew the Appellant. PW2 said that he

had seen the Appellant and two other persons a few minutes before the incident as he walked past them on the road. He rushed back when he heard the screams. He found two iron bars at the scene. He had seen the Appellant with one of them a few minutes previously as he passed them. He had seen the Appellant with that iron bar severally.

PW3 was in a house near the scene of the robbery. He rushed to help when he heard the complainant scream. This witness said that he had seen the Appellant run from the scene of the robbery. Other people came. They all knew the Appellant. They went to his house. They surrounded the house. A report was made to the Police. The Police recovered the two iron bars from the scene and went to the house of the Appellant. The members of the public were still surrounding it. They shouted for the Appellant to come out. He came out disguised as a woman wearing a skirt and blouse and carrying a baby on his back. He was nevertheless arrested. A search was carried out and a number of things which had been robbed from the complainant were recovered at his house. These are all matters the Trial Magistrate considered in her Judgment.

Mr. Karanja for the Appellant argued that the Appellant's identification was questionable. He said that since the Trial Magistrate did not accept that the Appellant's co-accused was identified sufficiently, she should have made a similar finding in respect of the Appellant. He also argued that the Court did not take into account the defence of alibi proffered by the Appellant.

We have carefully gone through the record of the Trial Court and are in total agreement with the Trial Magistrate's treatment of the evidence before her. The complainant knew the Appellant. There was moonlight and she saw him. Other witnesses (PW2 and PW3) also knew him and said they saw him. PW2 saw him a few minutes before he committed the offence. One of the bars found at the scene of the robbery was sufficiently connected with the Appellant. The goods which had been robbed were found at his house on the very night. After the incident, members of the public surrounded his house. There was no other explanation of how those goods came to his house other than from the robbery committed by the Appellant. What alibi was available to him in the circumstances? According to the general evidence of the prosecution, the Appellant was linked to the crime in circumstances which would not accommodate his alibi. The complainant saw him. This was corroborated by PW2 and PW3. There was no way the Appellant could dispute having been one of the robbers who robbed the complainant. That is unlike the Appellant's co-accused who was only identified by the complainant alone. In any case, we are not concerned with that other person in this appeal and we cannot interfere with the Trial Magistrate's treatment of the case against him save to say that the Trial Magistrate was entitled to weigh the case against the accused on the basis of the material before her and decide according to what she found. In respect of the Appellant, her findings are cogent with the material on record.

We, therefore, dismiss this appeal and affirm the trial court's finding on conviction. As the sentence imposed was the only one permitted by statute, we also uphold the same.

Dated and Delivered at Nakuru this 24th day of September, 2002.

ALNASHIR VISRAM

JUDGE