



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO.21 OF 2018

CHARLES KIPTOO RONO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the Conviction and Sentence by Hon

B. R. KIPYEGON (SRM) in Criminal Case No.467 of 2017

delivered at Kericho Law Courts on 9/10/2018)

JUDGMENT

1. The Appellant CHARLES KIPTOO RONO was convicted with the offence of Grievous Harm contrary to section 234 of the Penal Code and he was sentenced to 10 years imprisonment on 9/10/2018.
2. The particulars of the charge were that on 6/11/2017 at KAMARUS village in MAILI NNE in CHEPSEON location of KERICHO County, the Appellant unlawfully did grievous harm to GEOFFREY ARAP KOECH.
3. The prosecution called three (3) witnesses whose evidence in summary was that on 6/11/2017, the Appellant assaulted the complainant by throwing a stone at him hitting him on the right leg.
4. The incident occurred on 6/11/2017 at 8.30pm at Kamarus Village when the Appellant attempted to grab a motor cycle ignition from the complainant. The motor cycle lights were on and the complainant saw the Appellant.
5. The complainant was with Daisy and Collins (PW2) who were his neighbours. The complainant stayed in hospital for two weeks and an x-ray which was done on his right leg revealed that he suffered a fracture of the right femur and he was on crutches when he testified.
6. The clinical officer who examined the complainant assessed the degree of injury as grievous harm.
7. In his defence before court the Appellant said the complainant fell down and sustained the injuries. He said he did not know the complainant and he would not injure him over nothing.
8. The trial court found the Appellant guilty as charged and sentenced him to 10 years imprisonment.
9. The appellant has now appealed to this court against both conviction and sentence on the following grounds –
 - (i) THAT the prosecution did not prove its case to the required standard.
 - (ii) THAT the trial court failed to note that the crucial witnesses were not availed to adduce evidence.
 - (iii) THAT section 211 of the Criminal Procedure Code was not complied with.
10. The parties filed written submissions in the appeal which I have duly considered. The Appellant submitted that the prosecution evidence was inconsistent and insufficiently cogent to satisfy the burden of proof.
11. The Appellant further submitted that the investigating officer and the arresting officer were not called to testify and further that the prosecution case and a gap which is unbridgeable.

12. The Appellant also submitted that section 211 was not complied with by the court when he was placed on his defence.
13. The Respondent opposed the appeal and submitted that the prosecution case was proved to the required standard and further that PW1 (the complainant) knew the Appellant and he was able to recognize him.
14. The Respondent also submitted that the prosecution proved that ingredients of grievous harm since the complainant sustained a fracture of his right leg.
15. On the issue of failure to call the investigating officer and the arresting officer, the Respondent submitted that this was not fatal to the prosecution case and relied on the case of LUCAS ODINGA ONYANGO V REPUBLIC (Criminal Appeal No.127 of 2017) where the court held that failure to call the investigating officer is not fatal.
16. On the issue that Section 211 was not complied with the prosecution submitted that the trial court considered the defence evidence and found that it amounted to mere denials.
17. This being a first appeal it is the duty of this court to re-evaluate the evidence before the trial court and to arrive at its own conclusion whether or not to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses [see the case of OKENO v R]
18. The issues for determination in this appeal are as follows;
- (i) Whether the prosecution proved their case to the required standards in case.
 - (ii) Whether failure by the prosecution to call all witnesses was fatal to the prosecution case.
 - (iii) Whether section 211 was complied with.
19. On the issue as to whether the prosecution proved its case to the required standard, I find that the prosecution established the ingredients of grievous harm. Section 4 of the Penal Code defines Grievous harm as ***“any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense.”***
- The court of Appeal in *John Oketch Abongo Versus Republic, (2000) eKLR* stated as follows ***“Whether or not grievous harm or any other form of harm is disclosed must be a matter for the court to find from the evidence led and guided by the definition in the Penal Code. A court will be assisted by medical evidence given in coming to the conclusion on the nature and classification of the injury. In many cases the courts have accepted and gone by the findings and opinions in the medical evidence. But, in appropriate circumstances, the court is at liberty to form its own opinion, having regard to the evidence before it as to the nature and classification of the injury.”***
20. The complainant sustained fracture of the right leg. The evidence of the complainant was corroborated by that of PW2 who was at the scene and PW3 who confirmed the injuries sustained.
21. On the issue as to whether failure to call the investigating officer and the arresting officer was fatal to the prosecution case, I find that the arrest was not in dispute. There is evidence that the complainant was injured and that it was the Appellant who inflicted the injuries on the complainant.
22. On the issue as to whether section 211 of the Criminal Procedure Code was complied with, the record is clear that although section 211 was not quoted, the trial court explained the options available to the Appellant when he was placed on his defense and therefore no prejudice was suffered by the Appellant.
23. In a nutshell I find that the appeal herein lacks in merit and the same is dismissed for want of merit.
24. The conviction is upheld and the sentence confirmed.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 1ST DAY OF OCTOBER 2021.

A. N. ONGERI

JUDGE