



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CORAM: E. K. O. OGOLA, J.

CRIMINAL APPEAL NO. 233 OF 2013

COLLINS JEMANGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by J. K. Ngarngar, SPM, dated 12th November, 2013 in Hamisi Magistrates Court Criminal Case No. 69 of 2011)

JUDGMENT

1. The appellant herein **COLLINS JEMANGA** was convicted and sentenced to death for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code on 18th November, 2013 in Criminal Case No. 69 of 2011 Hamisi PM's Court.
2. The appellant is not satisfied with the death sentence imposed on him, and has filed this appeal raising the main ground being that the death sentence imposed on him is manifestly harsh and excessive and amounts to a misdirection. The appellant also wanted to be supplied with the proceedings of the trial court and to be present in court during this appeal, which he did.
3. The facts are that on 3/2/2011 at around 10.00 p.m. the complainant on this case Julius Kahunzuka who works at Nairobi alighted from Nairobi at Majengo. He was travelling in Eldoret Express. At Majengo he boarded a motorcycle which brought him to Gisembai. From Gisembai he walked from the junction to his place at Chepkirani Village. He had a bag that had food and his items. While on his way at Cheptol Village he was stopped by the appellant and 2 others. They emerged from a nearby bush. They ordered complainant to stop. They were armed with a panga. The complainant tried to run away but he was cut on head twice. He started to bleed and fell down. While down the appellant robbed him phone motorolla CC113, foodstuffs, and money Ksh. 5,500/=, driving licence, Equity ATM card. He struggled with the appellant and others and was able to identify them as his neighbours. The appellant ran to a nearby bush while complainant raised alarm. Later helped by a good Samaritan, the complainant was taken to the hospital at Hamisi. He was referred to Vihiga hospital due to the reactive of injury of the head. He was admitted for 3 days and later discharged. He reported to Serem Police Station and a P3 form was issued. On 16/2/2011 the complainant spotted appellant in his area. He went with Administration police officer to the homestead of appellant and was arrested and taken to Serem and later charged with this offence. The P3 form was produced by Dr. Manyu.
4. The court stated that it had only one option in sentencing being the mandatory death sentence for offence of robbery with violence.
6. The prosecution while opposing the appeal submitted that pursuant to ***Francis Karioko Muruatetu & Another –Vs- Republic (2017) eKLR*** this court can interfere with the mandatory death sentence and substitute therefor a certain period of term.
7. I have carefully considered the submissions of prosecution. The offence committed by the applicant is a serious one which must be adequately punished to achieve the objective of sentencing being retribution, rehabilitation and reformation. Even though the mandatory death sentence is unconstitutional the court can still grant death sentence after considering mitigating and other circumstances. The prosecution has submitted for a jail term of not less than 25 years. In my view a jail term for 20 years would be adequate in this matter to achieve the above objectives of sentencing.
8. The appeal therefore succeeds and Judgment is entered as follows:-
 1. The death sentence herein is hereby reversed and set aside. In substitution therefor the appellant is herewith sentenced to a term of twenty (20) years from the date of conviction.

That is the Judgment of the court.

Right of appeal in 14 days.

Delivered, dated and signed in open court at Kakamega this 13th day of September, 2019.

E. K. O. OGOLA

JUDGE

In the presence of:

State Counsel –

Appellant -

Court Assistant – Mr. Erick