



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL APPEAL NO. 133 OF 2015

(Being an Appeal arising from conviction and sentence in Eldoret Chief Magistrate's Court criminal case No. 5716 of 2014 delivered by Thrispsisa Wanjiku Cherere - Chief Magistrate on 1/10/2015)

ISAAC KIPCHUMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The appellant was charged with the offence of **Robbery with violence contrary to Section 295 as read with Section 296(2) of the Penal Code**. The particulars of the charge were that **on the 21st August 2014 at Segero village, Langas sub-location in Wareng Sub-county within Uasin Gishu County jointly being armed with offensive weapons namely stones robbed Robert Kipkemoi Lang'at of cash kshs 4000/=, 1 family Bank ATM card and 1 Television, Remote controller Make HEVD and immediately after the time of such robbery killed the said Robert Kipkemoi Lang'at.**

2. He was also charged with the offence of **handling stolen goods contrary to Section 322(2) of the Penal Code**. The particulars of the charge were that on the 23rd August, 2014 at Pioneer village, Langas sub-location in Wareng sub-county within Uasin Gishu county, otherwise than in the course of stealing, dishonestly retained 1 family Bank ATM Card and 1 Television Remote controller make HE VD knowing them to be stolen property.

3. His co-accused was acquitted. The appellant was convicted and sentenced to death hence this appeal. Before looking at the grounds raised in the appeal its appropriate to summarise the proceedings during trial.

4. **PW1 Stephen Omondi Ochieng** a bodaboda rider told the court that on 22/8/2014 at 11.30 a.m he was called by the appellant whom he had jointly been employed by the deceased to go and find him at Family Bank. He then gave him the deceased ATM card to withdraw money from the ATM machine but he could not as he did not have the PIN. He tried calling the deceased but his phone was switched off.

5. Later at 5.00 pm he was called by one Joyce aunt to the deceased and inquired about the deceased. She told him that he had been killed and his body dumped at a maize plantation. He went to the mortuary and saw his body.

6. He told the said Joyce about the ATM Card incidence with the appellant. They reported the matter at the police station and accompanied the police to the appellant's home where they recovered the ATM Card.

7. **PW2 Rajab Tum Omari** a lorry driver worked with the deceased who was his turn boy in lorry Registration no. KBP 544 E belonging to one Ramtilal. He said that he dropped the deceased on 21st August 2014 at 7.00 pm with a promise that they were to meet the following day. Unfortunately he did not turn up and he was given another turn boy.

8. He received a call from Yamumbi police officers who told him of the incident. He went to Moi Teaching and Referral Hospital mortuary where he identified the deceased body.

9. **PW3 Edna Chebet** the mother to the deceased was called after the incident. She also identified the body during post mortem exercise.

10. **PW4 P.C. Simon Likonyi** from the scenes of crime Eldoret produced the photographs which he took at the scene and which shows the deceased body and the injuries he suffered.

11. **PW5 Dr Francis Maina Ndiangui** from the Moi University school of medicine did post mortem exercise on the deceased body. He concluded that the cause of death was as a result of head injury due to blunt trauma.
12. **PW6 C.I Boniface Lomok** from Langas police station upon instructions from CPL Mulongo of Yamumbi police post recorded statement under inquiry from the appellant. He did produce the same.
13. **PW7 CPL Mulongo Nyongesa** from Yamumbi police post carried out investigations upon receiving information from one Julius Kurgat Nyerere who had spotted the deceased body at a maize plantation.
14. He called the scenes of crime officers who took the photographs and through the ATM card he was able to know the deceased's names. PW1 later called him and notified him of the ATM card which the appellant had given him.
15. He generally carried out the investigations, attended post mortem exercise as well as recovered the other deceased's stolen items. He recorded the statements from various witnesses and preferred charges against the appellant.
16. When given chance to defend himself he offered no evidence.

Analysis and Determination

17. I have carefully read the proceedings herein together with the lengthy submissions by the appellant as well as the learned State counsel.
18. What is evidently clear is the death of the deceased which was very cruel to say the least. What I find that clearly implicated the appellant in the offence is the evidence of PW1. Clearly I do not see how PW1. Simply as the appellant would want the court to believe culpable. His evidence was clear and straight forward.
19. Secondly, the inquiry by the appellant was unilateral free and I do not set any coercion in it. Infact at some point, he tried objecting and when the prosecution decided to go for a trial within a trial the appellant conceded to its production.
20. He did not raise any issue regarding it in his defence. Infact the only defence he had was silence.
21. The trial court acquitted the co-accused whom he tried to implicate. The said acquittal was appropriate in my view as the said accused mounted a strong defence to counter the appellant's allegations.
22. Based on the evidence of PW1 and the appellants confession I do not think this appeal shall succeed. The same is hereby dismissed.
23. The only area which I think should be considered in the sentencing is whether the death penalty was efficacious in the circumstances and taking into consideration the *Supreme Court advisory in the case of Francis Muruatetu Versus Republic Supreme Cort Petition No. 15 of 2015*.
24. In view of the said binding decision I shall proceed to rehear afresh the appellant sentencing and subsequently arrive at an appropriate sentence.
25. The appeal is otherwise dismissed.

Delivered, signed and dated at Eldoret on this 12th day of October, 2018.

H.K. CHEMITEI

JUDGE

12/10/18

In the presence of:-

Mr. R. Karanja for the Respondent

Appellant – present

Court Assistant – Christine

Judgment read in open court.