



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CORAM: D.S. MAJANJA J.

CRIMINAL APPEAL NO. 56 OF 2017

BETWEEN

RONALD ONYINKWA NYAMOKOBA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. J. Mwaniki – SPM

dated 3rd July 2017 at the Principal Magistrate's Court

at Keroka in Criminal Case No. 1290 of 2015)

JUDGMENT

1. The appellant, **RONALD ONYINKWA NYAMOKOBA**, was charged and convicted of the offence of robbery with violence contrary to **section 296(2)** of the *Penal Code (Chapter 63 of the Laws of Kenya)* on the following count:

On the 1st September, 2015 at Mochenwa Shopping centre in Masaba North Sub-County within Nyamira County while armed with a dangerous weapon namely a hammer, robbed JOO one motorcycle Reg No. KMDQ 268R make Bajaj valued at Kshs. 105,000/= and immediately after such robbery used actual violence to the said JOO.

2. The appellant now appeals against the conviction and sentence of fifteen (15) years imprisonment. In his petition of appeal, the appellant complained that the prosecution did not prove its case. He submitted that he was not properly identified and that an identification parade was not carried out.

3. Ombuna Job Onchiri (PW 1) recalled that on 18th September 2015 he was at Keroka at the stage when the appellant asked to be taken to Mochenwa. The appellant attacked him by hitting him on the head and took off with the motorbike. PW 1 then raised alarm and fellow riders went after the appellant and caught up with him and recovered the motorbike and arrested him. In the meantime, PW 1 was treated at Keroka Hospital. Joel Ongaro (PW 3), who examined him and filled the P3 form on 21st September 2015, confirmed that PW 1 had an injury on the back of the head and neck and he classified the injury as harm.

4. PC David Toya Etole (PW 2) testified that at about 9.00 a.m, a group of boda boda riders came and brought the appellant to the police station complaining that he had robbed PW 1. They came with a shoe that was recovered from the appellant as he was running away.

5. In his unsworn defence, the appellant stated that he knew PW 1 and that on 18th September 2015 he boarded a vehicle from his home to Keroka where he arrived at 8.00 a.m. As he boarded the vehicle to Nairobi, he heard boda boda operators shouting “*thief, thief*” at him. They beat him up and took him to the police.

6. The offence of robbery with violence under **section 296(2)** of the *Penal Code* is proved when an act of stealing is committed in any of the following circumstances, that is to say, the offender was armed with a dangerous weapon or that he was in the company of one or more persons or that at immediately before or immediately after the time of the robbery the offender beats, strikes or uses other personal violence to any person (see *Dima Denge Dima & Others v Republic* NRB CA Criminal Appeal No. 300 of 2007 [2013]eKLR, *Oluoch v Republic* [1985] KLR 549 and *Ganzi & 2 Others v Republic* [2005] 1 KLR 52).

7. I have evaluated all the evidence before the trial court as required by the trial court and I am satisfied that there was a robbery with violence of 18th September 2015. PW 1's motorcycle was stolen and in the course of stealing, the assailant hit PW 1 on the head. That he was hit is corroborated by the testimony of PW 3.

8. What is in issue in this case is whether the appellant was identified as the assailant. The incident in this case took place at about 8.00am in broad daylight. PW 1 and the appellant knew each other as PW 1 testified that the appellant is the one who called him. The appellant also confirmed that he knew PW 1. Since the parties knew each other, it begs the question why PW 1 would lie or frame the appellant. In any case, PW 1 gave credible evidence how the appellant assaulted him and took away his motorbike.

9. Apart from the testimony of PW 1, PW 3 confirmed that the appellant was arrested immediately after taking the motorbike and when he was arrested he was wearing one shoe having left another shoe at the scene when he fell off the motorbike. Since the appellant was arrested at the scene immediately after the incident, there was no need for an identification parade particularly since the PW 1 and the appellant were familiar with each other.

10. The appellant's defence was a bare denial and when placed alongside the prosecution case, it withers away. I therefore affirm the conviction.

11. The appellant was sentenced to 15 years' imprisonment. It is well settled that this court may interfere with the sentence imposed by the trial court if it is satisfied that in arriving at the sentence, the trial court did not take into account a relevant factor or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive (see *Wanjema v Republic* [1971] EA 493).

12. The trial magistrate considered that the offence was serious and that the death penalty was the maximum sentence. I therefore do not consider the sentence harsh or excessive particularly given the sentence imposed in similar cases by the Court of Appeal (see for example, *Wycliffe Wangusi Mafura v Republic* ELD CA Criminal Appeal No. 22 of 2016 [2018] eKLR). I affirm the sentence.

13. The appeal is dismissed.

DATED and DELIVERED at KISII this 1st day of NOVEMBER 2018

D.S MAJANJA

JUDGE

Appellant in person.

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.