



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO. 81 OF 2015

RONALD KIBET SANG alias ONE RACE.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being the appeal from the original conviction and sentence in Criminal Case No. 116 of 2015 PM's Court Bomet- Hon Achieng PM)

JUDGMENT

The appellant was convicted and sentenced to suffer death as per law provided for the offence of robbery with violence C/S 296(2) of the Penal Code. The particulars being that on the 22nd day of January 2015 at 2.00 a.m at Bomet Town – Bomet County jointly with others not before the court robbed ANDERW KIPLANGAT KORIR of motor cycle registration No. KMDK 205Y Toyota Bajaj Boxer red in colour and of the value of Kshs.90,000/= the property of ERICK KIPROTICH NGENO and at or immediately before or immediately after the time of such robbery stabbed the said ANDERW KIPLANGAT KORIR.

This is a first appeal. It is the duty of the first appellate court to evaluate and reconsider the evidence on record so as to arrive at its own conclusion. Bearing in mind that it did not have the opportunity to observe the demeanour of the witnesses.

The prosecution called three witnesses in support of their case. The defence called two.

PW1 Erick Kipngeno operates a butchery at Silibwet. He testified that on the 21st day of January 2015 he requested one Robert his employee who was a boda boda rider to hand him over the proceeds of the day. He informed him that he had kept the motor cycle at Silibwet.

The following day Robert's brother called him and told him that his employee was at family bank. He went there and found a large crowd. He enquired and he was informed that a motor cycle thief was locked there. He found Robert in the crowd who told him that one Andrew Korir who had the motorbike was attacked with a knife and the motorbike stolen.

Andrew Kiplangat Korir (PW2) testified to have been using motorcycle registration No. KMDK 205Y which had been given to him by one Robert an employee of PW1. On 21/1/2015 at 2.00 p.m. he was approached by the accused whom he knew before and told him to take him to Chelsa area. Upon reaching Chelsa academy he alighted and told him to provide light with his motor bike to enable him to check his wallet, so as to pay him. At that juncture he was hit on the back and he fell down. He was stabbed on the sides by the accused and the two men fled. He lost consciousness. His motor cycle was stolen. Later he heard that the accused had been arrested.

Analysis

Upon a careful evaluation of the evidence on record, I find that the ownership of motor cycle registration number KMDK 205Y is not in dispute.

What appears unclear is how this motor cycle changed hands between one Robert an employee of the complainant and another person called Andrew Kiplangat (PW2) from whom it was allegedly stolen and who it is said was stabbed by the Accused/Appellant.

The said Robert to whom the motor cycle had been contracted by the complainant was not availed in court so as to explain this anomaly more so in the dire situation whereby the motorcycle has not been recovered to date.

The robbery is said to have taken place at 2.00 a.m. which was in the dead of the night at a place called Chelsa. It must have been dark because PW2 had testified that he had provided light to the passenger he was carrying so as to see his wallet properly in order to pay him.

He further told the court that he was hit from the back by somebody he had not seen before and that it's the Accused who stabbed him twice

while on the ground and he lost consciousness. I am not satisfied the circumstances obtaining at the time of the robbery afforded a fair opportunity for a proper identification.

In the instant case both the arresting and the investigating officers did not avail themselves in court to testify. The court is in the dark as to how and where the Appellant was arrested. There are allegations that the appellant was arrested and locked in family bank Bomet. There is no evidence from those who arrested him.

Further there is no evidence from the investigating officer to help fill in the many gaps in the prosecution case. This case was not proved beyond reasonable doubt. The conviction was not safe.

The appeal has merit. It is allowed. The conviction is quashed and the sentence set aside. The appellant to be set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this 11th day of May 2017 in the presence of learned counsel for the prosecution Miss Kiptoo, the appellant present. Court assistant Miss Mercy

M. MUYA

JUDGE

11/5/17