



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE SIDE

CRIMINAL APPEAL NO.1268 OF 1991

(From Original Conviction and Sentence and in Criminal Case No.2686 of 1991

of the Senior Magistrate's Court at Nairobi S.O. Odak Esq.,)

FRANCIS IRUNGU WAMBUI APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was convicted of the offence of robbery with violence contrary to section 296(2) of the Penal Code and was sentenced to death. His appeal to this court is against both conviction and sentence.

Briefly the prosecution case is that on the 3rd May, 1991 at around midnight while the complainant was on his way home two men attacked him and robbed him of cash Shs.800/=. In the course of the robbery he was stabbed with a knife. He screamed. There was a police officer nearby who witnessed the robbery. He chased those who two robbers and managed to arrest the appellant. P.W.1 in his evidence said that the person who stabbed him was the appellant. He grabbed the knife and as they struggled splashed blood on the appellant's clothes.

The appellant was arrested immediately after the robbery and his clothes were stained with blood.

P.W.3 a police officer was a witness. He was nearby on patrol. He saw when the 2 robbers attacked the complainant. The place where the robbery took place was well lit. He chased the appellant and arrested him. He said he did not lose sight of the appellant from the scene of the attack until he arrested him. When the appellant was arrested his clothes were blood stained. The Learned State Counsel submitted that although this was identification by a single witness at night, the place was well lit and the appellant was arrested immediately after the robbery. After the arrest P.W.1 identified the appellant to the police as the one who had attacked him. The complainant was rushed to Guru Nanak hospital where he was admitted for treatment. The injuries sustained by the complainant were assessed by P.W.4 Dr. Nganga as grievous harm.

The appellant in his defence denied that he was involved in the robbery. But he admitted that he was arrested at the scene by P.W.3. He filed written argument during the hearing of the appeal, and in the arguments he admitted that he when he arrested his clothes were stained with human blood. But the explanation he gave was that he had been a victim of a robbery and he referred us to his defence. In his defence in the lower court he said he had gone to collect payment from his employer where he works as a

matatu conductor and at about 9.30 p.m. he went to Commercial Bus stage to wait for bus for route Number 6. He waited upto midnight but no bus came. He then decided get into the last matatu for Eastleigh. He alighted at St. Theresa. As he walked home he was attached by a gang of 4 men who robbed him of cash Shs.100/=. He was injured during the attach. He was left on the ground, unconscious. When he regained consciousness, he saw some police officers suddenly coming running after him and he was arrested after 30 seconds. He was taken to a police vehicle, which was on patrol and was driven to the police station where he was charged. He attributed the blood on his clothes to this attach. His defence was considered by the learned trial magistrate who had the benefit of seeing the witness's testy, and was rejected and rightly so. After we have re-evaluated the evidence on record, as we are required to do, we find that the evidence against the appellatant was overwhelming and we see no good reason to interfere with the finding of the learned trial magistrate.

The offence of robbery with violence was proved beyond any reasonable doubt as required in criminal cases and therefore the conviction was proper.

We therefore dismiss the appeal against both conviction and sentence.

Dated, delivered and signed at Nairobi this 29th day of July 1998.

J.L.A. OSIEMO

JUDGE

S.C. ONDEYO

JUDGE