



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
(CORAM: GICHERU, TUNOI, & SHAH JJ.A)
CRIMINAL APPEAL NO.6 OF 1998
BETWEEN

GEORGE NGESA OUMA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from conviction, sentence and judgment of the High Court of Kenya at Kisumu (Mr. Justice Wambilyangah) dated 18th July, 1997

in

H.C.CR. APPEAL NO. 326 OF 1996)

JUDGMENT OF THE COURT

George Ngesa Ouma, the appellant, was convicted by the Resident Magistrate in Siaya of the offence of causing grievous harm contrary to section 234 of the Penal Code. The particulars of the offence were as follows:-

"George Ngesa Ouma, on the 26th day of July, 1995 at Bar Gulu sub-location, South Alego location in Siaya District within Nyanza unlawfully did grievous harm to Margaret Odia Murunga."

The evidence as led by the prosecution was that the complainant is the step-grandmother of the appellant, that is the grandson of her co-wife. On the date in question, at about 10.00 p.m. the appellant entered the complainant's house after breaking open the door. The complainant had lit her lamp after knocking her down stepped on her chest and face. On being asked by the complainant why she was being "killed" the appellant dropped her in the fire which the complainant had lit. When the appellant screamed some persons came to her rescue. None of these people gave evidence that was before that court, in regard to the assault, was that of the complainant. This factor is relief upon by the appellant as one of the grounds of his appeal, namely, that there was only uncorroborated evidence of the complainant and that was not enough to warrant a conviction, more so as the persons who came on to the scene were not called to give evidence in support of her testimony.

The complainant's evidence was accepted by the learned magistrate and upon re-evaluation thereof also by the superior court (Wambilyangah, J). It would be proper to point out at this stage that evidence of a single witness, if accepted, could lead to a conviction. Corroboration of such evidence is not a necessity

before a conviction can be entered. The nature of injuries suffered by the complainant were consistent with the manner in which she was assaulted and then thrown onto fire. Dr. Michael Dagaye (P.W.3) confirmed that the complainant had lost most of her eye-sight in the left eye and she had deep bruises on her buttocks. P.W.3 concluded that the cause of her injuries "was a fire and she also suffered blunt injuries on her other parts of the body. The evidence of P.W.3 was unchallenged. The consistency of the complainant's evidence was also, to a certain extent shown by Eliakim Otieno Ohanya (P.W.2) an assistant chief of Bar Agula sub-location in that he was informed of the injuries suffered by the complainant and he arranged for her medical treatment and also arrested the appellant.

The learned magistrate who heard the case did not accept the appellant's version, namely, that he was framed Because of some land dispute. The learned magistrate said:

"I do not think that the complainant could have burnt herself so seriously like thin in order just to frame the accused. And there is no way another person could have injured her and then forgives that person and blames the accused instead."

What the learned magistrate said stands to reason. The first appellate court on hearing the appeal came to the conclusion that there was ample proof by credible evidence adduced by the prosecution to enable him to convict. We think both courts below came to the correct decision.

The appellant argued in this court that the conditions for identification were not adequate. It was, apart from a visual identification a recognition. Obviously a stepgrandmother would know the voice of a grandson who lives nearby. But apart from recognition there is also evidence that the complainant had lit a lantern and she saw her stepgrandson.

There cannot be a mistake on such identification; and as the magistrate found, it could not have been a framedup charge. The upshot of all this is that we see no ground upon which to disturb the conviction which was based on correct application of the law and the appeal against conviction is dismissed.

Dated and delivered at Nairobi this 27th day of March, 1998.

J.E. GICHERU

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR