

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL APPEAL NO 292 OF 1995

VIOLET HAYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant, Violet Haya, was convicted after trial by the learned Resident Magistrate, Mombasa of the offence of being in possession of cannabis sativa (bhang) contrary to section 10 (e) as read with section 18 (2) (b) of the Dangerous Drugs Act (now repealed). Upon her conviction, she was sentenced to serve 2 years imprisonment. Her appeal to this court is against conviction and sentence.

The circumstances leading to the arrest of the Appellant are well set out in the judgment of learned trial Magistrate. There is no dispute on the evidence that at the time of her arrest, the Appellant was in the company of a certain young man who ran away on seeing the police officers. The appellant says that the said man was a stranger to her but this was doubted by the learned trial Magistrate.

Both the appellant and the young man in her company were heading towards Tononoka area. There was a certain lady who was walking slightly ahead of the according to the testimony of the appellant.

The arresting officer, AP. C. Joseph Kuto Mugo (P.W.1) of Tononoka Chief's Camp, testified that on the material day at about 4 p.m. while he and 2 other AP.'s were on foot patrol duties in Tononoka area, they spotted the Appellant and another man carrying between them one bag. Each of them were holding onto one strap of the said bag as they walked along. On seeing them, the man who was in the company of the appellant left the strap of the bag he was holding and took to his heels. They became suspicious but did not give chase. They decided to inspect the said bag which had remained with the appellant, inside the said bag, they found some 37 stones of cannabis sativa (bhang). They arrested the appellant and took possession of the said drugs. Samples of the said exhibits were taken for examination by the Government Analyst and the same were found to have been cannabis sativa (bhang) (see Analyst report Ex. 5). The same were not in medicinal preparation. The appellant was subsequently charged.

The appellant in her defence doe not dispute that the bag she was alleged to have been found with was on inspection found to have contained some cannabis sativa. She however states that the said bag did not belong to her saying that the man, who ran away on seeing the Administration Police Officers, was the one who had that bag. She states that the said man was a stranger to her and that she was merely showing him the route to Buxton area as the man did not know that direction. She denied that she was assisting the said man in holding that bag as they walked along, saying that she was about one meter ahead of that man and that he was the one who was carrying that bag alone.

The incident took place in broad daylight when the police officers were able to observe accurately the events giving rise to the charge against the appellant. As was observed by the learned trial magistrate, P.W. 1 was a stranger to the appellant and there was no evidence of any bad blood between them that could make him testify falsely against the appellant to put her in trouble with the law. I believe him, as was the learned trial magistrate, that he was a witness of truth. His evidence as to how the appellant and the man who was in her company were holding the bag in question (Ex. 1) was to be preferred. I find as a fact that the appellant and the said man were each holding one strap of the bag in question which appeared to have been heavy as they walked along. On seeing the police, the said man left the bag with the appellant and took to his heels. The bag in question was found on inspection to be containing bhang.

I agree with the submissions of the learned Senior Principal State Counsel, that the conduct of the appellant in holding one strap of the said bag while the man who was in her company was holding the other strap with the bag between them as they walked, was not the conduct of one who was merely assisting a stranger find his way to Buxton. Similar sentiments were held by the learned trial Magistrate. I am not persuaded by the submissions of the learned counsel for the Appellant, Miss Chivusia that the appellant had nothing to do with the bag in question that was found to be containing some bhang. In law, I find that he was found in possession of the bag in question. She was holding it. The contents thereof must have belonged to her and the man who was in her company who fled on seeing the police.

I find that the appellant was proved to have been in possession of the cannabis sativa (bhang) in question. The same were not in medicinal preparation. I dismiss her appeal against conviction.

On sentence, I agree with Mr. Gachivi that a sentence of 2 years imprisonment cannot be said to have been manifestly excessive. However, the appellant is a mother with a small child. She is a single parent. She told the court that she was about to go in for an operation. She was a first offender and remorseful. In the particular circumstances of this case, having regard to the peculiar circumstances of the Appellant, I will interfere with the sentence that was imposed. I allow the appeal against sentence, which I reduce to a period of 6 months.

In the result, the appeal against conviction is dismissed while the appeal against sentence is allowed in hereinabove stated.

Dated and delivered at Mombasa this 30th day of June, 1995

S.O. OGUK

JUDGE