

Kamau v Republic

High Court, at Mombasa

July 10, 1992

Omolo J

Criminal Appeal No. 31 of 1992

July 10, 1992, **Omolo J** delivered the following Judgment.

The appellant, Patrick Gicheru Kamau, was after his trial convicted on a charge of robbery with violence, contrary to Section 296(1) of the Penal Code and the particulars of that charge alleged against him that on the 12th October, 1991 at about 8.00 p.m at Shikomani Village, in Lamu District, he robbed George Kimani of Shs.6,460/- and that during the robbery, he used actual violence to the said George Kimani.

On the 12th October, 1991, George Kimani (PW.1) went to Mpeketoni Trading Centre to buy iron sheets and for that purpose he carried with him Shs.6,500/-. He found the shop in which he was to buy the iron sheets was already closed so he went away, and called at the house of the appellant's father to take some traditional liquor. While in that house, the appellant offered to sell to him a kilogramme of nails for Shs.40/-, and to enable him pay the appellant that money he removed a note of Shs.500/- and gave it to the appellant. He was refunded Shs.460/- and that left him with a total of Shs.6,460/-. That was the money it was alleged the appellant robbed him of. It is not clear if he had some separate money which he used to buy the traditional liquor, but it would appear the shs.6500/- which he originally had was to be used for buying iron sheets. The complainant left the appellant's father's house at about 8.00 p.m., took his bicycle and started to ride away. It was his evidence that on the way, he came upon the appellant who first knocked him off of his bicycle and then grabbed him by the neck and started to strangle him. PW.1 called for help and his screams were heard by Peter Gichohi Kamau (PW.2) who is the brother of the appellant. PW.2 swore that on hearing the screams he went out and he came upon the appellant strangling the complainant. He told the appellant to stop but the appellant would not do so and PW.2 ran back into his house and came out with a panga. It was only when the appellant saw PW.2 with a panga that he left the complainant and ran away. The complainant then immediately said his money had been stolen from him. In his short sworn statement the appellant said he had been arrested on the 13th and that he did not know why he was so arrested.

There was clear evidence that the appellant attacked the complainant while the complainant was on his way home. The complainant himself said he recognized the appellant and shouted for help, and the appellant's own brother (PW.2) swore that he came upon the appellant attacking the complainant and that he had to bring a panga to stop the attack. There would be no reason for PW.2 in particular to make up a story against his own brother. Earlier the appellant had seen the complainant with money and it is clear the appellant attacked the complainant to gain access to that money, and he did gain access to it. The learned trial magistrate who saw and heard the witnesses testify before him believed those for the Republic and rejected the appellant's short evidence. On the material before me, not only was the magistrate entitled to believe the witnesses for the republic but in the circumstances he was right in doing so. The evidence brought by the prosecution proved the charge against the appellant beyond any reasonable doubt, and I accordingly dismiss his appeal against conviction.

On sentence, the appellant received 5 years imprisonment with 10 strokes of the cane. I think the sentence imposed on the appellant is excessive in the circumstances of the case, and I accordingly reduce the prison term to 2½ imprisonment and the 10 strokes of the cane to 5 strokes. The 5 years of police supervision is mandatory. To the extent indicated herein, the appeal against sentence succeeds.