Nganga v Republic

Court of Appeal, at Nyeri

April 25, 1990

Masime, Gicheru & Cockar JJA

Criminal Appeal No 123 of 1989

On April 25, 1990, Masime, Gicheru & Cockar JJA delivered the following Judgment. This is an appeal against a sentence of 10 years imprisonment imposed at the Nyeri High Court on 28th July, 1987 following a plea of guilty by the appellant to a charge of manslaughter. The appellant was a former senior Superintendent of police attached to C.I.D. headquarters at Nairobi. From the facts related by the principal state counsel, Nyeri, to the superior court, which the appellant accepted as being true, it appears that the appellant on 28th January, 1989 left for Kirinyaga in the morning in order to visit his farm there. He had been authorized to carry a loaded gun during the course of his duties and he was carrying it with him on that occasion. He reached Kerugoya town at about 11.00 am and appears to have engaged in a drinking spree with friends continued upto about 8.00 pm.

He then moved to Kiandai Trading Centre where again he had a few drinks with friends. Among the revellers in the bar was the deceased, a leader of some substance in the area, with his friends.

Later the appellant went to his farm where he missed his workman, a Ugandan who earlier had been arrested, charged and convicted for being unlawfully present in the country. The appellant went back to the same bar at Kiandai Trading centre and enquired from the deceased about the whereabouts of the workman. A disagreement arose between the two. The appellant shot the deceased and thereafter he shot other people in the bar. In all he fired seven bullets thereby causing the death of the deceased and three others and critical injuries to another three men. The appellant then drove to Kerugoya Police Station, after throwing his gun into the bush on the way, and reported that he had lost his gun and then drove back to Nairobi then same night.

There are four grounds of appeal. The first ground of appeal is that the prison sentence is so manifestly excessive as to amount to an error or a misdirection. We shall deal with that ground at the end.

The second ground of appeal is that sufficient weight was not given to the appellant’s plea of guilty which had saved time of both the court and the prosecution. On this Mr Muite, for the appellant, urged that he had emphasized before the High Court facts relating to abusing language used by the deceased and the scuffle that had ensued during which attempt had been made to seize the gun from the appellant. Instead of raising a defence on those lines which he would have done if the trial had proceeded, contended Mr Muite, he had persuaded the appellant to plead guilty which had resulted in a substantial saving of time. We observe here that on 12 June, 1989 the appellant was committed by the principal magistrate for trial before the High Court on a charge of murder. On 15th May, 1989 after the plea was taken on the lesser charge of manslaughter, the Principal State Counsel, Mr Gachivi, when stating facts the court made it clear that the appellant’s plea to the lesser offence was accepted because of continous drinking leading to drunkenness and the charge was, therefore, on that day, reduced to manslaughter. So there was an offer of plea to the lesser offence by the appellant himself and that was accepted by the state. Both the appellant and his learned advocate must have weighed the benefits to the appellant when an offer of a plea to the lesser offence was being contemplated by them. That perhaps was the reason why the attention of the superior court was not drawn to the saving of time as a mitigating factor by Mr Muite when he addressed that court. There is no merit in this ground.

The third ground of appeal complains of misdirection on the part of the learned judge when he said that the accused (appellant) ought to have left the gun “if he wished to indulge in a bout of drinking of that

proportion. Mr Muite's contention was that the records of events leading to the fatal confrontation showed that the appellant had not

planned or decided in advance that he was going to indulge in drinking. There is no substance in this submission. The simple facts are that the appellant was not on duty, was not even in the area of his duty, and yet he had gone about with a loaded gun. To make matters worse, with a loaded gun in his pocket, he had made for the bar where he spent a substantial part of the day drinking. All these acts of his add to rather than detract from the extreme seriousness of the offence. We reject ground No. 3. In respect of the 4th ground of appeal Mr Muite drew attention to the learned judge's findings that the presence of the appellant at the scene was fortuitous, that there was a scuffle and that the deceased may have been hosted to and may have even threatened the appellant. Mr Muite contended that the learned judge had not give the sufficient weight to these matters. We do not agree with Mr Muite's contentions. The record shows that these matters were very much in the mind of the learned judge and he had given due weight to them in so far as they represented mitigating factors.

As regards the first ground of appeal that the sentence of ten years imprisonment is manifested excessive, keeping in mind all the relevant factors including loss of lives and injuries that were caused during the shooting incident for deaths and three persons injured critically, in our view the sentence it not at all excessive. The appeal is dismissed and the superior courts sentence is confirmed.
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