

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO 267 OF 1986

KITHUKU.....,.....APPELLANT

V

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted by the learned resident magistrate of robbery contrary to section 296(1) of the Penal Code. He was sentenced to two and a half years imprisonment together with two strokes and was ordered to be under police supervision for five years.

In the early hours of May 1, 1986, the complainant and his girlfriend where returning from labour day dance at the Multi Purpose Hall in Kitui Township when they were robbed of their monies, wrist watch of the complainant and their pairs of shoes by a gang of three robbers armed with panga and simis. The complainant who was drunk was unable to identify any of the robbers. The girlfriend identified the appellant by the light of torch shone on him and the complainant whilst the appellant was making search of the complainant. She had known the appellant physically as she used to see him in Kitui Township.

On May 11, 1986, the complainant who was in company of a police officer found the appellant wearing his shoes. These were caused to be removed and closely scrutinized by the complainant. He identified the same by metal on the sole which he had caused to be removed.

The appellant in his sworn testimony claimed that the pair of shoes were given to him by a friend in Mombasa on April 29 1986. This could not be possible if the shoes belonged to the complainant. The learned trial magistrate properly accepted the identification by the complainant of his pair of shoes which were stolen from him during the night of robbery on May, 1, 1986. The appellant's ground of appeal is alibi and that the pair of shoes are his which he bought from someone in Mombasa on April 29, 1986.

Upon consideration of all the evidence before the trial court, I am satisfied that the appellant was properly convicted. The sentence was fair and reasonable. The appeal is dismissed.

Dated and delivered at Machakos this 8th day of March 1987.

ABDULLAH

JUDGE