

Kinuthia v Republic

High Court, at Nairobi Mbaluto J

Criminal Appeal No 460 of 1986

November 10, 1986 Mbaluto T delivered the following Judgment.

Kinuthia The appellant was convicted of theft from a person contrary to section 279 (a) of the Penal Code and sentenced to fourteen months imprisonment plus four strokes. He has appealed against both the conviction and sentence.

The case for the prosecution was that the complainant Philomena Wambui (PW 1) was travelling home in a matatu when the appellant snatched her handbag, wrist-watch and Kshs 2,150 cash. She had seen the appellant very clearly as he had been one of the four who were causing trouble in the matatu as it travelled from the city center towards Dandora. The four were preventing passengers from getting out and PW 1 was forced to remain in the matatu until the very last stage of its journey where the theft was committed. When the appellant snatched her bag, wrist watch and money she screamed and the appellant ran off and disappeared. Later she reported the matter to the police and assisted in tracing the matatu involved and eventually the appellant was arrested. The evidence of PW 1 was confirmed by the matatu driver James Kamau Njonjo (PW 2). He testified that he saw the appellant snatch the complainant's handbag and run away.

In his defence the appellant gave an unsworn statement and called no witness. He did not deny having been in the matatu at the material time but he said he was drunk and was attacked by three people who injured him. He further stated that he was arrested at a clinic when he was waiting for treatment.

The learned trial magistrate found the evidence of PW 1 and PW 2 truthful and found that the prosecution had proved its case to the degree required. He accordingly convicted the appellant as charged. In his petition of appeal the appellant complains that the evidence adduced by the prosecution was not sufficient to prove the charge laid against him and consequently he was wrongly convicted and that the learned trial magistrate did not consider his defence. The appellants also claims that the person who informed the police that he was at the clinic should have been called to explain how he knew him.

As regards the evidence in support of the prosecution case the court below relied on the identification of the appellant by both PW 1 and PW 2. These two witnesses were with the appellant in the matatu and had sufficient time to observe him as he continued to cause trouble in the matatu before finally snatching the complainant's handbag and other property. The appellant does not deny having been in the matatu but in his defence he gives a story which is wholly irrelevant to the charge before him. The learned trial magistrate considered all the evidence before him and including the appellant's defence and was satisfied on the basis of that evidence that it was the appellant who snatched the complainant's property. Having reviewed and evaluated the evidence for myself I am convinced that the trial magistrate was fully justified in reaching the conclusion he did. There was ample evidence to prove the charge beyond any reasonable doubt and there is no merit in the appellant's conflict. I have also carefully considered the appellants two other complaints and as stated earlier I am satisfied that his defence was fully considered by the learned trial magistrate; as regards the person who informed the police of the appellant's presence at the clinic I find that his evidence was not essential to the determination of the truth in this case and in any event failure to call him did not occasion any miscarriage of justice. The appellant's appeal against conviction has therefore no merit.

The appellant also appeals against sentence. He was sentenced to 14 months imprisonment, plus 4 strokes of the cane. He was a first offender. Taking into consideration all the circumstances of the offence, I am satisfied that the sentence meted out to the appellant was appropriate. The appeal against sentence does not therefore have any merit. For the above reasons the appellants appeal is dismissed in its entirety.

