



REPUBLIC OF KENYA

Thuita v Republic

High Court, at Nairobi April 11, 1985

Porter J

Criminal Appeal No 39 of 1985

(Appeal from the District Magistrate's Court at Kibera, W N Giture Esq)

Advocates

Appellant absent, unrepresented and not wishing to be present

Major J Q Mbewa for Respondent

**April 11, 1985, Porter J delivered the following Judgment.**

The appellant was charged in the court below with theft from the person contrary to section 279(a) of the Penal Code.

What the prosecution alleged was that the complainant was involved in an accident with a Land Rover, and was injured. The driver of the Land Rover agreed to take the complainant to hospital, and the appellant who had nothing to do with any of them volunteered to go with the complainant to help. The complainant was put in the back of the Land Rover, and his friend went with him. The appellant was also in the back. The complainant said that he was in pain, but conscious, and on the way he felt someone take his watch off his wrist, so he told his friend what had happened and his friend looked and saw the watch of the complainant in the hand of the appellant. He took it from the appellant.

The driver of the vehicle heard what was going on, and, I have no doubt, and nor did the learned trial magistrate, hoping to explain the injuries to the complainant in another way than as a result of an accident with his vehicle started saying that the appellant had beaten the complainant and stolen his watch, which both the complainant and his friend denied.

That part of the evidence was red herring introduced for his own purposes by the driver. Leaving it aside, we have the evidence of the complainant that his watch was stolen and the corroboration of that evidence in that his friend saw it in the hand of the appellant, taken together with the fact that although the original destination was to be the hospital, they in fact went to the police station. The appellant said that he complainant was unconscious and that he was accused by the driver of hitting the complainant and taking his watch which he denied.

The learned trial magistrate heard all the witnesses and disbelieved the account of the appellant. On my own assessment of the record I think he was right. I would come to the same findings. The conviction was proper.

In the rather unpleasant circumstances of this case sentence was not excessive. Appeal against conviction and sentence will therefore be dismissed.