

Waweru v Republic

High Court, at Nakuru September 27, 1985

Hancox, Nyarangi, JJA & Platt, AG JA

Criminal Appeal No 153 of 1984

September 27, 1985 Hancox, Nyarangi, JJA & Platt, AG JA delivered the following

Judgment.

On April 22, 1984 about 9.00 pm John Ndari (PW 1) was still in his shop taking stock.

His wife Lidya was in the Kitchen within the same premises. PW 1 suddenly heard his wife screaming that she was under attack and rushed into the kitchen, there found the appellant, with whom he was very familiar, holding a knife jumped at him under lamp light, caught hold of the right hand holding the knife, wrestled with the appellant while Lydia raised more alarm, both PW 1 and the appellant fell to the ground during which time PW 1 was stabbed on his left shoulder but the appellant managed to dash out of the kitchen. PW 1 and the neighbours gave chase and he was caught. Some 300 paces away.

Later that night he was handed over P C Muture (PW 4) and the next day he was charged with attempted robbery contrary to section 297 (1) of the Penal Code, convicted and sentenced to 4 years' imprisonment plus 10 strokes corporal punishment. His appeal to the High Court (Masime J) was summarily rejected under section 352 (2) of the Criminal Procedure Code. (cap 75)

The issue of law raised by his appeal to this court is whether the appeal to the High Court, fairly looked at, challenged the decision of the magistrate on the ground that the conviction was against the weight of the evidence or that the sentence is excessive. The appellant's claim that he had gone to the shop to demand sum of Kshs 20 he had paid in advance for sugar which was not then available in the shop was considered and rejected by the magistrate.

Appellant in effect criticized the magistrate for not according his evidence the weight he thought it deserved. We can find no error in the finding of the magistrate in the matter of Kshs 20.00 and the judge was right in concluding that the grounds of the appeal to the High Court were caught by section 352 (2) of the Criminal procedure Code. The appellant's Petition of Appeal to this court including his supplementary grounds do not alter the position at all. The appellant armed himself with a knife (and entered the shop premises through the kitchen hoping, no doubt, that he would not easily be detected) so as to surprise, frighten and rob with ease. If the appellant's main intention was to assault he would have stabbed Lydia who was alone in the Kitchen as soon as he entered the kitchen.

There is not merit in the appeal. It is dismissed. That is the order of this court.