



REPUBLIC OF KENYA

Kuria v Republic

High Court, at Nairobi October 3, 1985

Butler-Sloss J

Criminal Appeal No 649 of 1985

(Appeal from the Senior Resident Magistrate's Court at Kiambu, J Ombonya, Esq)

Advocates

D N Ngatia for appellant

G N Gatheru for respondent

October 3, 1985, Butler-Sloss J delivered the following Judgment.

On October 15, 1984, Paul Gicheha Kuria, the above named appellant, appeared before J Ombonya, Esq, senior resident magistrate in the senior resident magistrate's court at Kiambu. He was there charged with stealing from a dwelling house contrary to section 279(b) of the Penal Code. The particulars of offence were that on the October 10, 1984, at Githunguri village in Kiambu District of the Central Province, jointly with another not before the court, he entered the house of Danson Wangu s/o Kamau and stole from therein five main electric switches of the value of Kshs 2,200, the property of Danson Wangu Kamau.

The appellant pleaded not guilty.

On March 14, 1985, the appellant was convicted and sentenced to 18 months imprisonment with 2 strokes of the cane.

By his petition of appeal, which is undated but which was filed in court on May 21, 1985, the appellant puts forward seven grounds of appeal against conviction and one against sentence. On the hearing of the appeal, Mr Ngatia has appeared for the appellant and Mr Gatheru for the respondent.

The evidence for the prosecution had been that a house was being constructed at the home of PW 1 Danson Wango. The house was being constructed by his son, Samuel Mukeha, but Danson Wango said that he was the one supervising the building. As such, he would have been in possession of electrical switches at the building site. If the switches were stolen, which is an offence against possession, he would be properly named in the charge as the complainant even though his son might have a stronger claim to ownership of the switches.

Although the point is nowhere referred to in the petition of appeal, Mr Ngatia, in his address in reply, contended that the particulars of charge put the wrong person as complainant and that the evidence did not support the particulars of the charge. I do not agree, and, for the reasons I have given, I consider that

the charge and the particulars given under it were not defective.

On October 10, 1984, two young men came to the site. PW 1 identified the appellant as being one of those two young men, and said that he knew him well. He was wearing the uniform of the Kenya Power and Lighting Company. He wanted to have the house opened in order, he said, to inspect the wiring. PW 1 believed him, and complied with his request. It was followed by other requests for a ladder, for a piece of paper, and for a pen all of which had the effect of obliging PW 1 to go away from the house and leave the appellant and his colleague alone in it. On returning from his last errand, PW 1 found that the appellant had locked the house and had reached the gate and was on the point of leaving. The appellant said he would return on October 13, 1984. When, later that evening, PW 1 reported the incident to his son, Samuel Mukeha, both father and son returned to the house and found that electric sockets, as they called them were missing. On October 11, 1984, PW 1, on his way to report the theft to the police, saw the appellant and required the appellant to accompany him to the police station which the appellant did.

When put on his defence, the appellant, in a sworn statement, simply said that nothing was found in his possession and that he worked in a hotel. The judgment of the learned magistrate, at page 9 of the record, recorded the appellant as saying that he was never in the house under construction.

There is no reason to doubt that a crime of theft was committed in the way described by PW 1 but there is an issue as to whether or not the appellant was one of two men who committed that crime. It is an issue as to identity. Can PW 1's identification of the appellant be relied upon?

The point is dealt with by the learned magistrate in his judgment. It appears at the bottom of page 9 in the record, where the magistrate says :

“The complainant PW 1 gave the account of how the accused inspected the house vividly. There is no ground at all to doubt him. I accept his testimony.”

I agree. PW 1 had extensive dealings with the appellant on October 10, 1984, and dealt with him as a man he knew well. On the October 11, 1984, when PW 1 was taking the appellant to the police station, he was taking the same man. This is not a case of a witness catching a fleeting glimpse of a stranger and then believing he has seen the same man again. It is simply that PW 1 saw Paul Gicheha Kuria on October 10, 1984, and he saw him again on October 11, 1984.

I am satisfied that there was no possibility of error here on the part of PW 1, and that this offence was proved against the appellant beyond reasonable doubt. The appellant also appeals against sentence of eighteen months imprisonment with two strokes of the cane. He is a first offender but his offence was a bold one, and I do not consider that the sentence was manifestly harsh and excessive as suggested in paragraph 8 of the petition of appeal.

This appeal against conviction and sentence is accordingly dismissed.