REPUBLIC OF KENYA

Amigo v Republic

Court of Appeal, at Kisumu June 21, 1985 Hancox JA, Platt & Gachuhi Ag JJA Criminal Appeal No 175 of 1984 (Appeal from the High Court at Kisumu, Schofield J)

June 21, 1985, Hancox JA, Platt & Gachuhi Ag JJA delivered the following Judgment.

The appellant Michael Otieno Amigo was described in the trial proceedings as the third accused, although in some headings he was listed the fourth. There is no doubt, however, from the charges and the trial magistrate's handling of the trial and his judgment, that this appellant was always treated and correctly treated, as the third accused. As such he was convicted of only one offence out of the four charged, namely on the second count, when it was alleged that on July 26, 1982, the appellant with three others robbed Dayabhai Chaganbhai Patel of his Mercedes car, a coat and a wrist watch as well as cash, all valued at Ksh 143,000, at about 5.30 pm at Mr Patel's shop in Kisumu. From the evidence of Mr Patel, which both the trial court and first appellate court accepted, that there is no doubt that the robbery took place as Mr Patel described. The main question in issue, was whether the appellant had been recognized as one of the robbers. Mr Patel said he was, and identified the appellant on an identification parade about six weeks later on September 8, 1982. The appellant made a short statement admitting his involvement in that offence.

The appellant had appealed on the grounds that when he was arrested, there was no proof of robbery found with him. On this bases he was acquitted of a robbery charge. It is true that his arrest took place at his home and that nothing incriminating was found with him. Constable Gedion Olang confirmed that position in giving the evidence of arrest which occurred on the 6th/7th September, 1982. What the fourth accused told the police about this appellant which led to the appellant's arrest, was not evidence, and was not held against the appellant.

The next issue raised was whether the statement was voluntary. There is nothing on the record to show that the two statements made were not voluntary. The statement of the 8th September 8, 1982 relates to Mr Patel's case. They were accepted as voluntary and here the trial court had the advantage of seeing the witnesses. There was evidence on which the trial court could properly reach its conclusion. The first appellate court also accepted the findings of the trial court. As no point of law arises, this court accepts the findings of the courts below. But it can be said that the trial court did not place a great deal of emphasis upon the statement.

The identification parade is the main question raised on appeal. The appellant alleges that the officer who conducted the parade, communicated the appellant's identity to Mr Patel. There is nothing on the record from which this can be inferred. The trial court considered this matter carefully. The questions of fact were decided against the appellant, in what appears from the recorded evidence, to have been the only reasonable way.

It is true that there were no other eye-witnesses. Mr Patel's staff had left before the gang entered his shop. But he had a good opportunity of seeing this appellant. As Mr Patel describes the incident it was to this appellant that Mr Patel handed the key of the car when forced to do so at gun point; it was to this appellant that the first bag of Kshs 19,000 was given; this appellant asked for more money, and Mr Patel opened up the safe and told this appellant to check himself. The appellant did so and found a further Kshs 21,000 lastly it was this appellant who took Mr Patel's wrist watch and his coat hanging on the wall. There was daylight and Mr Patel was not injured. It is not surprising that Mr Patel recognized the appellant on the identification parade.

On the whole, there are no valid grounds upon which the appellant's conviction can be attacked. His appeal against conviction is consequently dismissed.

The sentence as varied by the High Court must stand. The appellant will undergo 10 year's imprisonment and five strokes of corporal punishment.

The appeal is dismissed in its entirety.