

Court of Appeal, at Kisumu June 21, 1985

Nyarangi JA, Platt & Gachuhi Ag JJA

Criminal Appeal No 6 of 1985

(Appeal from the High Court at Kakamega, Gicheru J)

Evidence – identification – whether— by torch coupled with voice constitutes sufficient identification.

The appellant and another were charged with the offence of robbery contrary to section 296 (1) of the Penal Code. While his co-accused was acquitted he was sentenced to 31/2 years imprisonment and ordered to be subject to police supervision for a period of 5 years after release from prison. His appeal to the High Court was dismissed hence the second appeal. The evidence relied on by the magistrate was that the complainant did see and recognize him very and well and his co accused when they stood before him in the room lit by hurricane lamp. Held:

1. Identification by a single witness by means of a flash of a torch coupled with identification by voice of the appellant is valid identification (Samuel Awiti Karani v Republic no 181 of 1984 followed) Appeal dismissed.

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

The appellant, Peter Wambulwa and another person were charged with the offence of robbery contrary to section 296 (1) of the Penal Code before the learned magistrate's court at Bungoma. While the co-accused was acquitted of the aforesaid offence, the appellant was convicted of the same and sentenced to 3 1/2 years' imprisonment. He was also ordered to be subject to police supervision for a period of 5 years after his release from prison. His appeal to the High Court (Gicheru Ag J) was dismissed. He has now appealed to this Court against the said dismissal. His grounds of appeal may be summarized as follows: that he was arrested on suspicion, there were no exhibits found on him and that there was no sufficient evidence before the court connecting him with the offence.

The evidence of the complainant, which was relied upon by the trial magistrate, was that the complainant did see and recognize the appellant very well together with the other co-accused who was acquitted and another person as they stood before him. There was a hurricane lamp in the room. The accused had a gun and went straight to the complainant and told him to pack up which the complainant resisted. The complainant who knew the appellant also did recognize the appellant's voice. His alibi was rejected by the court. The trial magistrate cautioned himself of the danger of convicting a person on the evidence of a single witness on identification. The learned Senior State Counsel supports the conviction.

There was a concurrent finding of the fact that the appellant had been sufficiently identified by the complainant by means of the light in the room and by the voice when the appellant told the complainant to pack up while the complainant was still looking at the appellant and before the light went out as a result of the gun fire. In the recent decision of this court in Samuel Awiti Karani vs. Republic Criminal Appeal No 181 of 1984 at Kisumu, identification by a single witness by means of flash of a torch couple with identification by voice of the appellant was held to be a valid identification.

We are satisfied that, in all the circumstances of the matter, the appellant was identified by the complainant. It follows that there was no misdirection regarding the concurrent finding that the appellant was sufficiently identified. We dismiss the appeal. That is the order of the Court.