

Bichanga v Republic

Court of Appeal, at Nakuru September 24, 1985

Hancox, Nyarangi JJ A & Platt Ag JA

Criminal Appeal No 131 of 1984

(Appeal from the High Court at Nakuru, Masime J)

September 24, 1985, Hancox, Nyarangi JJ A & Platt Ag JA delivered the following Judgment.

The appellant was convicted of burglary contrary to section 304 (2) of the Penal Code on the first limb and theft from a dwelling house contrary to section 279 (b) of the Penal code on the second limb and sentences to concurrent terms of five years imprisonment on each limb, together with 10 strokes of corporal punishment on each limb. The appellant's appeal to the High Court was summarily rejected.

The appellant has raised the question in his second grounds of appeal to this court, whether, the first appellant court properly considered the first appeal, in that the evidence against the appellant was based wholly on the uncorroborated evidence of an accomplice, and he also questions whether the learned judge considered the improper rejection of his defence. Those matters were raised on first appeal in different words. He had said that the trial Court had misdirected itself in law and fact, and that the trial court had erred on the burden of proof. We observed also that the trial court made no mention of the question of corroboration. It is clear that these are matters of law which the first appellate court could not determine within the ambit of section 352 (2) of the criminal procedure code.

Consequently, we agree with principal state counsel that the summary dismissal of the appeal should be set aside and the record should be remitted to the High Court to hear and determine the whole of the first appeal. The sentence was also attacked as excessive, which will be another matter for the High Court to consider.

Orders accordingly.