



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO 994 OF 1982

(From original conviction and sentence in Criminal Case No 711 of 1982 of the Chief Magistrate's Court at Nairobi)

JAMINI YAMINAAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO 100 OF 1982

(From original conviction and sentence in Criminal Case No 711 of 1982 of the Chief Magistrate's Court at Nairobi)

BAUBATA AWENGA NDENDWA.....APPELLANT

Versus

REPUBLICRESPONDENT

CORAM: PORTER AG J.

(Appellants absen, unrepresented F. Nabutete (State Counself) for Respondent.

JUDGMENT

The two appellants in these concolidated appeals were convicted with robbery contrary to section 296(1) of the Penal Code for that they on the 20th of March, 19S2 at Miotoni West road Karen, within Nairobi Area jointly with others not before court robbed Christine Russel Knox of Cash 1,900 a grunding radio and two wrist watches all valued at Kshs 100 the property of the said Christine Kussell Knox. The two appellants were convicted after trial and sentenced by learned District Masistrate at Nairobi to 5 years imprisonment with hard labour plus 3 strokes of the cane and an order was made for police supervision for 5 years on release from prison.

This robbery took place on the 20th of March 1982 at about 9.30 a.m. It was therefore a broad daylight case and P W 2 and P W 3 were trapped in the house by a gang of about 5 people. Their gardener was also locked into the house and they were injured as a result of the robbery. They were unable to describe or identify any of the people involved in the gang who all wearing hats making identification difficult.

When the gang left the house the gardener managed to get out of the window of the bathroom into which he had been locked and set off the siren and started to chase off the gang. He was seen by P W 4 who is a gardener working for a nearby neighbour who joined in the chase as did other members of the public. That witness P.W.4 saw the two accused running from the direction of the complainant's house at the time that the sirens on the complainant's were operating. It so happened that there were some police officers attending the scene of an accident at the junction of Karen Miotini road and they heard the alarm and saw people chasing shouting thieves1 thieves1. There was a vehicle which had been parked a blue Datsun and the two appellants making for that vehicle. One of them i.e. the 2nd appellant was trying to get into the vehicle but the driver had run out of petrol and gone away to fill a jerry can full of petrol and shortly after the two appellants were arrested the police found him coming back to the vehicle with a jerry can of petrol and arrested him as well. He in fact was acquitted by the court below. The 2nd appellant at the time was said by P W 5 to have been carrying a panga.

When the 1st and 2nd appellant had been arrested they were searched and nothing was recovered from them.

Both the appellants made unsworn statements. The 1st appellant said that he was walking along the road when he was caught before he heard any noise or anything and taken to the police station. The 2nd appellant said that he got off a buss at the junction of Ngong road and saw the police run and arrest him. He was also taken to the police station.

The learned Magistrate in his judgment has set out the evidence of the prosecution and the evidence of the two appellants and has weighed the evidence and I considered it. He has arrested the two appellants had no grudge against the accused and he could see no likelihood for them to tell a lie about the two appellants. He accepted their evidence and it followed therefore that where the appellants were saying that they walking innocently along the road when they were arrested at the time when no sirens were going off and the prosecution witnesses whom the learned District Magistrate has decided to -believe were saying that they were running from the direction of the complainant's house and trying to get into a motor car but were nevertheless arrested the learned District Magistrate was right to come to the conclusion that the appellants were part of the gang who robbed the complainants in broad day light. Reviewing the whole of the evidence it is clear that the blue Datsun motor car was a vehicle which they intended to use as a get away car.

The police officers saw one of the appellants running straight to it and trying to get into it although the driver was not there. As State Counsel points out in this case establishes hot pursuit. He saw the two appellants coming from the complainant's house and running along the road and saw the same people arrested by the police.

In all those circumstances I do not see that the learned District Magistrate had any alternative but to convict in this case in view of the evidence which was led and it would be wrong I think to interfere with the conviction.

Turning to the question of sentence, the appellants were first offenders and they had nothing to say in mitigation. The learned District Magistrate pointed out that the offence committed was very serious and the details of the treatment of the complainants inside the house were such as to make the complainant inside the house were such as to make the nature of the robbery very unpleasant indeed. In the circumstances of this case I do not think that the sentence which were passed can be considered to be manifestly excessive and I therefore decline to interfere with it. Therefore both these appeals against conviction and sentence will be dismissed

D.C. PORTER

AG JUDGE

5/3/83