

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

CRIMINAL APPEAL NO 772 OF 1982

(From Original Conviction and Sentence in Criminal Case No 21007 of 1982 of the District Magistrate's Court at Makadara)

MARY WANJIRUAPPELLANT

Versus

REPUBLIC RESPONDENT

CORAM: BRAR J

MTO Adala for JW Onyango Otieno for Appellant F Nabutete (State Counsel) for Respondent

JUDGMENT

The appellant was charged before a District Magistrate II at Makadara District Magistrate's Court Nairobi for the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code (Cap 63). She was convicted and sentenced to five months imprisonment. This appeal by her is both against conviction and the sentence.

In her petition of appeal her only ground of appeal against conviction is that the complainant (PW 1) was assaulted by some other men and not by her. The prosecution case was that on the evening of December 12, the complainant and PW 2 went to the appellant's house where they knew they could buy beer. They found the appellant and three men in the house. After consuming four bottles of beer between the two of them, the complainant paid for the same with a Kshs 100 currency note and while he was waiting for the change PW 2 left the house and went away. In the meantime the complainant ordered another beer and after deducting the charges for the five bottles of beer, the appellant paid from him Kshs 72.50 as the change from his Kshs 100 note. Later while the complainant was returning from the toilet he was attacked by the men and the appellant inside the house and he was robbed of his possessions including a sum of Kshs 70 which was a part of the change he had received from the appellant and which he says was removed from his shirt pocket where he had kept it by the appellant herself. After he had been assaulted and robbed the four inmates of the house lifted the complainant's body and dumped him in a ditch about 50 yards away from the house.

Mr Adala, on behalf of the appellant has argued that there is no evidence to connect the appellant with the assault and that although there is evidence that she had remove Kshs 70 from the complainant's pocket, he argues, that such evidence has not been corroborated. With respect I am unable to accept these arguments as I have no doubt in my mind that upon the evidence on record there can be no doubt that the appellant and her three male companions were acting in concern and that they had formed a common intention to prosecute an unlawful purpose in conjunction with one another within the meaning of Section 21 of the Penal Code (Cap 63). It does not therefore matter in the least as to who of the four actually hit the complainant and who out of them robbed him of his property each of them is deemed to have committed the offence of assault. As to the question of corroboration, it was not necessary to look for corroboration of the complainant's evidence so long as the learned magistrate was satisfied that he had told the truth. The appellant's ground of appeal against conviction therefore fails.

The learned District Magistrate was conscious of the fact the charge of assault against the appellant rested

solely on the evidence of the complainant. He convicted her after satisfying himself that she was one of the assailants who assaulted the complainant on the night in question. I see no reason to disturb his findings which I am satisfied were based on the evidence before him. The appeal against the conviction is accordingly dismissed. As to the sentence of five months' imprisonment, this cannot be said to be manifestly excessive having regard to all the circumstances of the case. The appeal against the sentence is also dismissed.

Judgment delivered at Nairobi this 20th day of October 1982

in the presence of

Mr Onyango Otieno for the appellant and Mr Nabutete for the respondent.

PS BRAR

JUDGE.