Kariuki v Republic

High Court, at Nairobi November 5, 1982

Brar J

Criminal Appeal No 686 of 1982

Criminal Practice and Procedure - evidence - corroboration -identification of accused by complainant - complainant the only witness - no corroboration of complainant's evidence - no evidence given on second count - accused convicted on both counts - whether conviction proper - Penal Code (Cap 63) Section 279(a).

It was alleged that the appellant had stolen a sum of money from the complainant, who reported the matter to the police. Over ten months later, the complainant saw the appellant being beaten by members of the public allegedly for stealing a purse from a woman. After he was taken to a police station, the complainant identified appellant to the police as the person who had stolen from her the previous year. The appellant was charged in the magistrate's court with one count theft from the person and a second count of being a rogue and a vagabond. At the trial, the appellant denied the two charges stating that his beating had arisen out of fight over a girl with some boys. There was no purse recovered from him and there was no complainant or witness called who had lost any purse or taken part in the appellant's beating. The appellant was convicted and sentenced on both counts and sentenced to twelve months' imprisonment with six strokes on the first count and to three months' imprisonment on the second count. He appealed against both convictions and sentences.

Held:

1. The identification of the accused person by the complainant was, in the absence of any corroborative evidence, far from convincing.

2. There was no evidence that the appellant was a rogue and a vagabond.

3. The convictions on both counts could not be allowed to stand.

Both convictions quashed and both sentences set aside.

Cases

No case referred to.

Statutes

Penal Code (Cap 63) Section 279 (a)

Advocates

BM Mbai for Respondent

November 5, 1982, Brar J delivered the following Judgment.

The appellant was convicted of one count of theft from the person contrary to Section 279 (a) of the Penal Code (Cap 63). He was sentenced to twelve months imprisonment with six strokes of the cane on the first count and to three months imprisonment on the second count. The sentences were ordered to run consecutively. He is appealing against both the conviction and the sentences.

It was alleged that the appellant jointly with others not before the court stole a sum of Kshs 2,575 from the complainant (PW 1) at about 7.00 am on August 15, 1981. She reported the matter to the police and the matter rested there until June 11, 1932 when by sheer chance she saw the appellant while he was being beaten because he had stolen a purse from a woman but there was neither any woman at the scene from whom he was alleged to have stolen the purse nor any purse recovered from him or seen in his possession when he was searched by PW 2 and PW 3 who arrived at the scene while he was being held by the members of the public. He was arrested by PW 2 and PW 3 who took him to Central Police Station where according to PW 2 he was to be charged for being a rogue and vagabond but because of PW 1's complaint to the police that the appellant had stolen her money on August 15, of the previous year, he was also charged for that offence.

The appellant denied the two charges and stated that the he had never seen the complainant prior to his arrest in June, 1982 and according to him the reason why he was being beaten was that there had been a fight between him and some boys over a girl. That explanation, in the absence of another woman complainant from whom he was alleged to have stolen a purse and in the absence of recovery of any purse from his possession, seems to me to be a plausible one. He was arrested at about 10.00 am on a working day in the centre of the city. If he had in fact stolen a purse from any woman that morning neither the purse nor the woman could have just disappeared into the thin air. Strangely enough no member of the public who had beaten the appellant before handing him over to PW 2 and PW 3 was called as witness. The case on count No 1 rested entirely on the word of PW 1 who according to her evidence had never seen the appellant prior to August 15, 1981 but was able to identify him when she next saw him by chance nearly ten months later. This identification in the absence of any corroborative evidence seems to me to be far from convincing.

As to the second count there was no evidence at all that the appellant was a rogue and a vagabond. The learned state counsel, quite rightly in my view, submitted that he did not support the conviction on either of the two counts on the grounds of doubt in the identification of the appellant in respect of count No 1 and absence of any evidence in respect of count No 2. With respect, I entirely agree with these submissions.

The appeal against convictions on both counts is accordingly allowed. Both convictions are quashed and the sentences on either of them is set aside. The appellant is ordered to be released from custody forthwith unless he is held under some other lawful order.