



IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Law, Miller & Potter JJA)

CRIMINAL APPEAL NO 28 OF 1979

NJOROGEAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted by the Resident Magistrate at Thika of robbery with violence contrary to Section 296(2) of the Penal Code and was sentenced to the mandatory death sentence. His appeal to the High Court was dismissed.

On this second appeal, we are only concerned with points of law and consider ourselves bound by the concurrent findings of fact arrived at in the courts below, unless shown to be based on no evidence.

The robbery out of which this appeal arises was a bank robbery carried out in broad daylight in the course of which some Kshs 350,000 was stolen from the Standard Bank at Thika by a gang of robbers one of whom at least was armed with a gun. On the concurrent findings of both courts below, the appellant was identified as the armed robber by two eyewitnesses, a cashier Mr Kariuki (PW 8) and a policeman who happened to be in the bank at the time, PC Sironga (PW 13). Both these witnesses subsequently picked out the appellant at properly conducted identification parades. Mr Kariuki at a subsequent parade also picked out a person who was not a suspect.

Mr Gathenji for the appellant submitted that by picking out an innocent man, Mr Kariuki had shown himself to be an unreliable witness whose evidence should have been rejected, especially as he had only seen the person whom he identified as the appellant for a very short time which he put at three seconds. The first appellate court had this aspect of the case very much in mind and gave it careful consideration. They held that Mr Kariuki's evidence was reliable because he picked out the appellant at the identification parade and because his evidence of identification was supported by that of PC Sironga, who saw the appellant both inside and outside the bank and had picked him out of a parade. We are thus faced with concurrent findings of fact, based on evidence, that the appellant was correctly identified by two witnesses.

Although the robbery was of necessity attended by some degree of confusion, these concurrent findings of fact remove this case from the scope of such authorities as *Wendo v R* [1953] 20 EACA 166 and *Roria v R* [1967] EA 583 which were concerned with the dangers attendant upon identification by a single witness under conditions rendering identification difficult. In this case, on the concurrent findings of both courts below, the appellant was identified by two witnesses and there was evidence to support those findings, which are accordingly binding on this Court.

It follows that in our view, this appeal fails and must be dismissed, and we so order.

Dated and delivered at Nairobi this 15th day of March, 1982.

E.J.E LAW

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JUDGE OF APPEAL

C.H.E MILLER

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JUDGE OF APPEAL

K.D POTTER

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR