



IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Madan, Law JJ A & Miller Ag JA)

CRIMINAL APPEAL NO. 55 OF 1978

BETWEEN

ALBERT BERNARD OKWARO WANJALAAPPELLANT

JOSEPH ALAKA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

JUDGMENT OF THE COURT

The appellants were convicted on two counts of robbery with violence, contrary to section 296(2) of the Penal Code, by the Senior Resident Magistrate at Kisumu, and were duly sentenced to death. Their appeals to the High Court were dismissed.

The robbery charged in count 1 took place at night at the house of Ojasi in Busia district on the night of 6th July 1977. A gang of robbers armed with a pistol, and *panga* and sticks broke into the house and stole Shs 600,000 which was kept there. They slashed and wounded Ojasi's wife and his son Okumu. Another son, Frederick, raised an alarm. This brought to the scene Ojasi's nephew Crispin, who was sleeping in a near-by house, and who arrived in his motor car. He was also slashed and beaten by the robbers, who also raided his house and stole Shs 2000, a watch and a radio. This robbery was the subject of count 2.

The first appellant was identified by Okumu, by the light of kerosene lamps in the house, and by Frederick and Crispin who saw him in the headlights of Crispin's car. The second appellant was identified by Frederick and Crispin by the light of the headlights. All three witnesses knew the appellants well. Crispin was a former class-mate of the first appellant, and had taught at a school where the second appellant was a pupil. Frederick had attended the same school as both appellants.

The defences of both appellants were bare denials that they had participated in the robberies.

The only point of law arising in this second appeal is whether the identification of both appellants was sufficiently reliable to make the convictions sustainable. Both courts below went carefully into this aspect of the case, and were satisfied with the evidence of identification as being reliable and free from the possibility of error. We see no reason to differ from these concurrent findings. The opportunity for accurate observation was not unfavourable, as the house was illuminated and both appellants were seen in the headlights of Crispin's car. Both appellants were well known to all three identifying witnesses. We entertain no doubt that both appellants were properly convicted, their guilt having been established beyond all reasonable doubt.

As a general rule, it is undesirable to charge more than one capital count in the same information. In the circumstances of this case, however, no possible prejudice can have been caused as the two robberies formed part of one transaction, and the evidence to support one charge was relevant to the other. We agree with the observations of the High Court judges on this point.

We see no merit in the appeal of either appellant, and order that the appeals of both appellants be dismissed.

Appeals dismissed.

Dated and delivered at Nairobi this 12th day of January 1979

C.B MADAN

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JUDGE OF APPEAL

E.J.E LAW

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JUDGE OF APPEAL

C.H.E MILLER

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Ag. JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR