



REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAKURU

(CORAM: CHUNGA, C.J, LAKHA & O'KUBASU, J.J.A)

CRIMINAL APPEAL NO. 22 OF 2001

BETWEEN

STANLEY CHERUIYOT LANGATAPPELLANT

AND

REPUBLICRESPONDENT

**(Appeal from conviction and sentence of the High Court of
Kenya at Kericho (Lady Justice Ondeyo) dated 11th
July, 2000**

in

H.C. CR. CASE NO. 12 OF 1998)

JUDGMENT OF THE COURT

Before the High Court of Kenya at Kericho, (Ondeyo J.), the appellant was charged with murder contrary to section 203 as read with section 204 of the Penal Code Chapter 63 of the Laws of Kenya.

At the end of the trial, however, he was convicted of the lesser offence of manslaughter contrary to section 202(1) as read with section 205 of the same code and was sentenced to 4 1/2 years imprisonment. From that conviction and sentence, he has appealed to this Court.

The appellant, in person, initially filed twelve grounds of appeal. At the hearing before us on 16th September, 2002, he added some six new grounds. All these grounds turned primarily on the evidence given by prosecution witnesses against him, and, thereby, forming the basis of the conviction in the High Court.

In his submissions before us, the appellant reiterated his grounds of appeal and, particularly, attacked the evidence of PW3, PW6, and PW7. In essence, it was his complaint that these three witnesses were unreliable. He also questioned his identification or recognition by PW6 and PW7 because the offence was committed at night and evidence of light which enabled the two witnesses to see him was not, in his submissions, sufficient or satisfactory.

The basic facts on which the appellant was tried and convicted may be stated thus. On the fateful day, in the evening, the appellant, the deceased, and others, were consuming chang'aa in the house of PW3. In due course a dispute arose when the appellant claimed that the deceased had stolen his money in the sum, which first he stated to be Ksh.1000/= and later, changed to Ksh.200/=. The dispute developed into a fight as a result of which the appellant, the deceased and the others came out of PW3's house. It was the evidence of the witnesses present (PW1, PW2 and PW3), that the appellant and the others accosted the deceased out of PW3's house until they caught him and wrestled him to the ground. The appellant and others continued to struggle with the deceased as he was on the ground and, as they did so, PW6 saw them and was able to recognize the appellant and the deceased from the torch light shown by a passer-by. PW6 had previously seen and known both the appellant and the deceased by appearance.

PW7 heard noise and came out of his bar. He went behind the bar where the noise was coming from and saw a struggle between some four people, one of whom was on the ground. He recognized the person on the ground as one "KILA" (the deceased herein) whom he knew previously as his customer at the bTahre. witness also recognized the appellant whom, similarly, he knew previously as his customer. The witness pleaded with the appellant and the others to stop beating the deceased and instead take him to police. However, one of the assailants, who the witness referred to as a tall man, refused and said they would teach the deceased a lesson. The tall man left and returned with paraffin in a soda bottle. He poured the paraffin on the head of the deceased and lit matchbox which he threw on the deceased and thereupon a huge fire exploded and engulfed the deceased. The deceased rose up, tried to run away, and entered a nearby house, but was overwhelmed by fire and collapsed. He was taken to hospital where he eventually died. Subsequent post mortem examination revealed 80% burns and established cause of death as severe burns together with electrolyte imbalance and dehydration. In his defence before the learned trial Judge, the appellant denied the offence. He said that on the fateful day he went to Kedowa trading centre in the house of one mama Esther to drink busaa. He remained there till about 1.00 p.m. when they left. Later in the evening he returned to the trading centre and went to another bar where he joined other patrons and they stayed till 3 p.m. when he left. In the evening, though feeling very drunk, he went to the house of PW3 and found her selling chang'aa to some people whom he joined and they drunk until he became drowsy and later was woken up by one Lang'at who told him there was trouble outside the house. He came out of the house and saw five people, one of whom was in flames. The person was taken to hospital in a hired vehicle and he contributed twenty shillings towards the charges.

In her judgment, the learned trial Judge rejected the appellant's evidence and accepted prosecution evidence. She found that the appellant was in the house of PW3. She found that a dispute broke out between the appellant and the deceased when the appellant claimed that the deceased stole his money. She found that the appellant and others accosted the deceased outside PW3's house, wrestled him to the ground, beat him up and set him ablaze in the manner already explained. She, therefore, convicted the appellant of the lesser charge of manslaughter as indicated earlier and sentenced him to 4 1/2 years imprisonment.

This is a first appeal and turns largely on facts which we have fully evaluated as we are required to do by law. We are, like the trial Judge, satisfied that the prosecution case rested largely on the evidence of PW6 and PW7, both of whom were eye witnesses. The two witnesses previously knew the appellant and were able to recognize him with the help of light coming from a torch, in the case of PW6, and from a blazing fire set on the deceased, in the case of PW7. PW6 was a child of tender years but upon being examined by the learned trial Judge, was allowed to give sworn evidence. Accordingly, his evidence required corroboration by virtue of section 124 of Evidence Act (Cap 80). That corroboration was fully available in the evidence of PW7 and in the other circumstances of the case.

We find no fault in the judgment of the learned trial Judge and we are satisfied that the two witnesses, on whom she relied (PW6 and PW7) were witnesses of truth and they accurately and safely recognized the appellant because they knew him previously and the circumstances were favourable to positive and accurate identification or recognition. Finally, we agree with submissions of the State Counsel before us that although the appellant is not the one who set the deceased ablaze, evidence clearly shows that he and the others were acting in concert and therefore shared a common intention to assault the deceased. Since the deceased died from their attack, he is equally responsible for the subsequent death of the deceased.

For these reasons, and after careful consideration of the appellant's grounds of appeal, his submissions before us and the submissions of the State Counsel, we arrive at the conclusion that the conviction was safe and we order the appeal dismissed. The sentence given of 41/2 years was lawful and was not manifestly excessive in the circumstances of the case and we affirm the same. Appeal dismissed in its entirety.

Orders accordingly.

Dated and delivered at Nakuru this 18th day of September, 2002.

B. CHUNGA

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CHIEF JUSTICE

A.A. LAKHA

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JUDGE OF APPEAL

E. O. O'KUBASU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR