



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAKURU

crim app 189 of 88

OPONDO.....APPELLANT

V

REPUBLIC.....RESPONDENT

Judgment.

The appellant was convicted of robbery with violence contrary to section 296(1) of the Penal Code and sentenced to 5 years imprisonment and six strokes of the cane followed by 5 years mandatory police supervision. His appeal to the High Court against both conviction and sentence was dismissed and he now appeals to this court. In his petition of appeal, the appellant has raised a number of grounds but the only substantial issue of law raised in this second appeal is whether the appellant was properly identified as the person who attacked and robbed the complainant.

The evidence which was accepted by the trial court was that the appellant attacked the complainant as he was walking home with his girlfriend shortly after midnight. The complainant, a matatu conductor, had gone to Thumaina Bar in Langalanga Estate, Nakuru, to collect his girlfriend. The appellant grabbed the complainant's girlfriend and when the complainant interceded, the appellant attacked him with an unidentified object and he fell down unconscious. As he lay unconscious, the appellant robbed him of cash and a watch.

The area where the attack took place was brightly lighted with street lights and security lights as well. The appellant was in physical contact with both the complainant and his girlfriend. In the course of the struggle, the hat which the appellant was wearing, obviously to hide his face and avoid identification, fell down and both his victims recognised him as Coxy a man they knew very well and was a well known personality in the neighbourhood. As the complainant recognised the appellant and reported to the police immediately with details, there was really no need for an identification parade.

We have, like the trial and first appellate courts, analysed the evidence and are satisfied that the conditions in which the appellant was identified were most favourable and quite free from the possibility of error. The lighting was adequate and the appellant was well known to his victims.

In result, this appeal fails and is ordered to be dismissed



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