



REPUBLIC OF KENYA

IN THE HIGHCOURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.631 OF 2000

(From Original Conviction and Sentence in Criminal Case No.7040 of 1998 of the Senior Principal Magistrate's Court at Kibera).

ALBERT NANDWA AYOMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.691 OF 2000

(From Original Conviction and Sentence in Criminal Case No.7040 of 1998 of the Senior Principal Magistrate's Court at Kibera).

ROSE MUSAVI MATOBE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Criminal Appeal Nos.631 and 691 of 2000 are consolidated.

Both appellants, husband and wife respectively, have now admitted to us that they robbed the complainant of cash Ksh.3,445/= and Indian Rupees 4,185/= as charged.

However, each of them has urged us to substitute the conviction for Robbery contrary to section 296(1), P.C.

The evidence was that the 2nd appellant, Rose was working as the complainant's house main at the material time on 25th August, 1998, at 8.30 a.m. when she together with her husband, Albert N. Ayomo (1st appellant), robbed the complainant of the cash in her (complainant's) house. During the course of the robbery the appellants tied up the complainant's hands and feet with her saree after pushing her in the bathroom. Her neck was also tied with some clothes and she was threatened with a knife. Thereafter, the appellants untied her legs and took her to her bedroom where, when upon asking, she opened the cupboard the appellants helped themselves with the cash stated from therein.. She was then pushed back into the bathroom with a demand for more money, which she did not have. They beat her up and the 2nd appellant, Rose cut of the complainants hair with a pair of scissors. They (appellants) then left leaving the complainant (Hamalata) in the bathroom. Later the report of the robbery was made and the police (PW3) arrested the appellants the same day and upon searching their house recovered all the cash the complainant was robbed of from underneath a bed in the house.

In considering issue of the substitution we note that the complainant's injuries were classified as harm, they not being of a serious nature. The cash robbed was not much and was recovered at once.

We find this case a proper one for the substitution of the conviction. Miss Okumu, the learned State Counsel for the Republic also agrees to it.

Both appellants were in remand for about one year and ten months before the case was finalized on 12th June, 2000.

Both appellants had past clean records. There is no remission for robbery sentence. Order:

We substitute the conviction against each of the two appellants for Robbery, contrary to section 296(1), P.C. and set aside the death sentences. We sentence each appellant to 4 ½ years imprisonment with effect from 12th June, 2000 plus two strokes for 1st appellant.

Judgment delivered at Nairobi on 26th day of March, 2002.

V.V. PATEL

JUDGE

W.K. TUYOIT

JUDGE



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