



REPUBLIC OF KENYA



**Goa v Republic (Criminal Appeal E010 of 2021)  
[2022] KEHC 3020 (KLR) (21 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 3020 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL APPEAL E010 OF 2021**

**KW KIARIE, J**

**JUNE 21, 2022**

**BETWEEN**

**DEO BETER GOA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*((From the original conviction and sentence in S.O.A case No.59 of 2019 of the Senior Principal Magistrate's Court at Mbita by Hon. Japheth Bii–Senior Resident Magistrate))*

**JUDGMENT**

1. Deo Beter Goa, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* No.3 of 2006.
2. The particulars of the offence were that on the night of 18<sup>th</sup> day of December, 2019 at [particulars withheld], Gwassu South Location in Suba Sub County within Homa Bay County intentionally and unlawfully caused his penis to penetrate the vagina of S.A. a child aged 8 years.
3. The appellant was sentenced to life imprisonment. He has appealed against both conviction and sentence.
4. The appellant was in person. He raised grounds of appeal as follows:
  - a) That the sentence of life imprisonment imposed by the trial magistrate is harsh and excessive as it violated the right to benefit from the least severe punishment under article 50 (2) (p) of *the Constitution*.
  - b) That the trial magistrate erred in law and facts by not considering that there existed a grudge between him and the parent of PW1 who gave her evidence as PW2.



- c) That the trial magistrate erred in law and facts by not considering that there was no investigation carried out at all to establish the truth as the alleged scene of crime was not visited but instead the investigating officer relied on the coached evidence of prosecution witnesses.
  - d) That the trial magistrate erred in law and facts by not considering that the age of the complainant was not proved beyond reasonable doubts to be below 11 years.
  - e) That the trial magistrate erred in law and facts by relying on medical evidence that was not sufficient enough to prove penetration as one of the ingredients of defilement.
  - f) That the trial magistrate erred in law and facts by relying on medical evidence of PW4 who was the medical expert contained in the P3 form that was not properly filed as he did not indicate his conclusion as required under section C part 2(a) and therefore his opinion that there was penetration was an afterthought.
  - g) That the trial magistrate erred in law and facts by relying on prosecution's evidence that was marred with contradictions and inconsistencies.
  - h) That the trial magistrate erred in law and facts by not considering the defence evidence.
5. The appeal was opposed by the state through Mr. Ochengo, learned counsel, who contended that the offence of defilement was proved to the required standards.
6. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
7. Section 8(1) of the [Sexual Offences Act](#) defines defilement in the following terms:
- “A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
- An offence of defilement therefore, is established against an accused person when the prosecution has proved the following ingredients:
- a) That there was penetration of the complainant's genitalia;
  - b) That the accused was the perpetrator; and
  - c) The age of the victim must be below eighteen years.
- In *Fappyton Mutuku Ngui v Republic* [2012] eKLR Joel Ngugi J. said:
- “Going by this definition of defilement, I agree with Mr. Mwenda on the issues which the court needs to determine. The first is whether there was penetration of the complainant's genitalia; the second is whether the complainant is a child; and finally, whether the penetration was by the Appellant.
- These are the ingredients that the prosecution must prove against an accused person.”
8. The appellant in his defence and in the grounds of appeal argued that he was implicated due to an existing grudge with one Atieno whom he alleged he had opposed her marriage to his brother as a second wife. Though in his pleadings he indicated that she was PW2, this was not so. The only lady who testified and said the appellant was her brother in-law was PW3. The appellant did not challenge



her with this allegation. The learned trial magistrate was therefore justified to dismiss this defence as an afterthought.

9. The complainant was taken to hospital for age assessment on 28<sup>th</sup> January, 2021. She was assessed to be 8 years old. Her age was therefore proved to the required standards.
10. In her evidence S.A. (PW1) said that the appellant defiled her. This was after calling her and indicated that he wanted to send her. Her mother (PW3) said that when she met with the complainant, she was crying. She informed her that the appellant had defiled her. On checking her, her pants were wet.
11. Richard Ojuok (PW4) examined the complainant on 18<sup>th</sup> December, 2019. He found lacerations at the vaginal entrance and her hymen was freshly torn. He therefore concluded that there was penetration. When he examined the appellant, there was no injury detected on his penis.
12. The proviso to section 124 of the *Evidence Act* states:

“Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.

Though the trial magistrate did not record why he believed the complainant, I find that there was no reason from the evidence on record to doubt her credibility. I therefore find that the appellant was identified by the evidence on record as the perpetrator.”

13. Section 8 (2) of the *Sexual Offences Act* provides:

“A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.”

14. The complainant herein was aged 8 years. The sentence that was meted out is the one prescribed and cannot be said to be excessive.
15. From the foregoing analysis of the evidence on record, I find that the appeal has no merits and I accordingly dismiss it.

**DELIVERED AND SIGNED AT HOMA BAY THIS 21ST DAY OF JUNE, 2022**

**KIARIE WAWERU KIARIE**

**JUDGE**

