



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

CRIMINAL APPEAL NO 10 OF 2020

BRIAN KEMBOI ALIAS VICTOR KIPKORIR.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original sentence of Hon P.C. Biwott, SPM, dated 6/8/2019 in Criminal Case No 13 of 2018 in the Senior Principal Magistrate's Court at Kabarnet, Republic v Brian Kemboi Alias Victor Kipkorir)

JUDGMENT

In his petition to this court the appellant has challenged his sentence of five years' imprisonment in respect of the offence of grievous harm contrary to section 234 of the Penal Code (Cap 63) Laws of Kenya.

Mr. Mongare for the respondent has supported the sentence.

In his mitigation in this court the appellant has stated as follows.

He has urged the court to take into account the period he has been in custody in sentencing him as required by section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.

Furthermore, the appellant has urged this court to take into account that he has acquired skills in carpentry, joinery and stitching clothes. He has also qualified and has been awarded a certificate in theology.

The appellant has also urged the court to take into account that he is in danger of contracting corona in prison.

The appellant has therefore urged the court to release him.

I have already noted that Mr. Mong'are for the respondent has supported the sentence and has urged the court to dismiss it.

In sentencing the appellant, the trial court took into account that the appellant was a first offender. The court also took into account that the appellant broke the jaws of his victim and was admitted in hospital for a long time.

I have re-evaluated the sentence imposed upon the appellant as a first appeal court. In doing so I have borne in mind that sentencing is a discretion of the trial court.

Furthermore, I have also borne in mind that as a first appeal court, I may only interfere with the sentencing discretion of the trial court if the following matters are shown to exist. First, it must be shown that the court took into account an irrelevant factor or ignored to take into account a relevant factor.

Second I may also interfere if it is shown that the sentence imposed is manifestly excessive or lenient to the extent of occasioning a miscarriage of justice.

I have re-evaluated the sentence imposed in the light of the applicable law. I find that the attack upon the victim of the crime was brutal and it also caused him grievous injuries.

I find that the sentence imposed is lenient but it has not occasioned a miscarriage of justice to warrant it being enhanced.

I further find that the trial court exercised its discretion properly in imposing the sentence of 5 years' imprisonment.

In the premises, the appellant's appeal fails and is hereby dismissed in its entirety.

Judgement dated, signed and delivered in open court at Kabarnet this 27th day of January 2021.

J M BWONWONG'A

JUDGE

In the presence of:

Mr. Kemboi Court Assistant.

Appellant present in person.

Mr. Mong'are for the Respondent.