



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL CASE NO. 16 OF 2020

JOHN MUNENE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An Appeal from the Judgment of the Senior Resident Magistrate Honourable C. Menya in Eldoret Chief Magistrate's court Criminal Case No. SO 223 of 2016 dated 24th January, 2020)

JUDGMENT

JOHN MUNENE the appellant herein was charged in the lower court with the main count of defilement contrary to *Section 8(1)* as read with *Section 8(3)* of the *Sexual Offences Act No. 3 of 2006*.

The particulars of this offence being that on the diverse dates between 30th August 2016 and 1st of September 2016 at [Particulars Withheld] village within Uasin Gishu County, the appellant intentionally and unlawfully caused his genital organ (penis) to penetrate into genital organ (anus) of CO, a boy aged then 12 years.

In the alternative, the appellant faced a charge of Indecent Act with a child contrary to *Section 11(1)* of the *Sexual Offences Act No. 3 of 2006*.

The particulars hereof being that on the diverse dates between 30th August 2016 and 1st September 2016 at [particulars withheld] Village within Uasin Gishu County, the appellant intentionally and unlawfully caused his genital organ (penis) to come into contact with the genital organ (anus) of CO, a boy aged then 12 years.

The prosecution case is that the complainant in this case, who gave evidence as PW-1, was living at the time with his mother, the PW-2 in this case, at [particulars withheld] village. The complainant at the time was aged 12 years and was schooling at [particulars withheld] primary school in class 7. The appellant was a teacher in the said school. He was also living at [particulars withheld]. PW-2 organized for PW-1 to be attending tuition in the appellant's house. The complainant started tuition on 29/8/2016. The complainant was to be paid Kshs.100 per week. When the complainant went for tuition on 30/8/2016, of which was between 6.00p.m and 8.00p.m, the appellant held his hand and kissed it. He then asked him to lie on a chair. He applied oil on his penis, removed the complainant's trouser and inner pant before he penetrated his anus with his penis. He then warned the boy not to tell anyone. On 31st of August and 1st of September, 2016 he repeated it and warned him that incase he told anyone he'll kill him. On 2nd of September 2016 the complainant for the said reason refused to go for tuition. When the mother (PW-2) got concerned and asked why, the complainant revealed what the appellant had done to him.

PW-2 reported the matter to the village elder who advised her to take the complainant to the hospital. Dr. Rono examined the complainant at Moi Teaching and Referral Hospital. He noted that he had no major injuries but the anus had bruises an indication that he had been sodomised several times. He thus filled the P-3 form.

The matter was reported to the police who arrested the appellant and after investigations he was charged with the offences carried in the charge sheet.

The appellant gave sworn testimony in his defence and called one witness. His case is that he was a teacher at a school at Kapsoya area. On 20/9/2016 he was arrested by the police from his house. He was taken to Kapsoya police station. On 21/9/2016 the OCS called him and alleged that he had stolen a television set from one Oliver Moraa and demanded for 20,000/-. He did not give the amount and was charged with a strange offence of defilement.

His witness, a boy aged then 16 years stated he was attending tuition with the complainant in the appellant's house. The appellant was living with his brother called Francis. However he could not tell of what happened about this case.

The trial magistrate evaluated the evidence and found that the three main ingredients for the offence of defilement were proved by the prosecution beyond reasonable doubt. These are the age of the victim, penetration, and identification of the suspect. The appellant's defence was weighed against the prosecution case and found to be of no meaningful consequence, given the weight of the prosecution evidence. The appellant was thus convicted of the offence in the main count and sentenced to serve 20 years imprisonment. The appellant dissatisfied with both the conviction and sentence, appealed to this court on the grounds that:-

- (1) That he was denied a fair trial.
- (2) Investigation were shoddy and shambolic.
- (3) Case was not proved against him beyond reasonable doubt.
- (4) Section 19(1) of the oath and statutory Declaration Act was breached.
- (5) Evidence was inconsistent.
- (6) Medical evidence was not supportive and conclusive.
- (7) His defence was unfairly disregarded.

The appellant filed written submissions on which he expounded on the aforementioned grounds of appeal.

The prosecution offered oral submissions in which they opposed the appeal. They averred that the three main ingredients for the offence of defilement were well established by the prosecution witnesses. That is; the age of the victim, penetration and identification of the assailant. They urged the court to dismiss the appeal and uphold the sentence.

I have re-evaluated the entire evidence against the preferred charges, considered the judgment passed and the sentence meted. I have also considered the grounds of appeal and submissions. As alleged by the state, the prosecution evidence is watertight. The complainant who knew the appellant very well as his teacher, stated vividly how he defiled him when he went to his house for tuition, by inserting his genital organ (penis) into the complainant's genital organ (anus). The P3 evidence corroborated the evidence on penetration. The victim could not have made a mistake of the assailant as he knew him very well before then and also knew his house. The complainant and his mother had no cause to fix the appellant. The appellant's defence was a sham and was rightly rejected by the trial court. The boy's age was well established by his mother and it is a fact that a birth certificate was available though not produced in court as an exhibit.

I find this a case where the trial court rightly evaluated the evidence and arrived at the right verdict. The raised grounds of appeal have no legs to stand on in facts and the law. The appeal is therefore dismissed. The sentence meted is lawful and I have no cause to interfere with the same. It is upheld.

S. M GITHINJI

JUDGE

DATED, SIGNED AND DELIVERED AT ELDORET THIS 11TH DAY OF AUGUST, 2021.

In the presence of:-

The appellant in person

Ms Limo for state

Ms Gladys - Court assistant