



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL APPEAL NO. 40 OF 2019

WILLIAM KYALO KILONZO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against the conviction and sentence in the Chief Magistrate's Court at Garissa

in Criminal Case No. 71 of 2018 delivered by Hon. J.J. Masiga (SRM) on 14/10/2019)

JUDGEMENT

1. The appellant was convicted and sentenced to 5 years imprisonment for offence of grievous harm contrary to section 234 of the Penal Code Cap 63 Laws of Kenya.
2. He was aggrieved by the aforesaid decision. He lodged instant appeal challenging conviction and sentence essentially in that there was no prove of case beyond reasonable doubt, the sentence was excessive and that the period in custody was not taken into account.
3. During the hearing of the appeal, the appellant abandoned appeal on conviction and instead urged court to take into account the period he was in custody. That is 28/1/2018 date of arrest to 4/10/2019 when he was convicted and sentenced a span of one year and 8 months or there about.
4. The prosecution urged court to exercise its discretion in the circumstances of the case.
5. Under section 234 of the Penal Code Cap 63 Laws of Kenya a person found guilty of the offence of grievous harm is liable to sentence of life imprisonment.
6. The appellant was sentenced to serve 5 years imprisonment for the same offence which attracts a maximum sentence of life imprisonment.
7. According to the P3 form produced as an exhibit during trial, the victim (PW1) sustained first degree burns on the left forearm blistering of the right thump. Also burnt were right ankle and buttocks.
8. The injuries were caused by hot oil which the appellant had pushed the victim (PW1) into while contained in a hot frying pan.
9. The prosecution case was anchored on evidence of PW1 complainant, PW2 clinical officer and PW3 the investigation officer. The PW1 narrated how appellant pushed him on the material date into a frying pan containing hot oil thus sustaining the stated injuries.
10. PW2 clinical officer produced P3 form stating the injuries classified as grievous harm. PW4 investigation officer testified how the report was made of the incident and after investigation he charged the appellant with offence of grievous harm.
11. When given chance to defend himself the appellant opted to remain silent.
12. After conviction, in mitigation before sentence the appellant just said that he had wife and 3 children. He was not remorseful nor repentant.
13. Though he was a first offender as there was no record of his previous record and that he had been in custody for about 1 year and 8 months before conviction and sentence, I find the court considered his mitigations.

14. Further the offence attracts a maximum of life sentence and he was lucky that he was awarded only (5) years imprisonment.

15. Thus, the court finds no merit in appeal and dismisses the same in the circumstances of the instant case. Thus, court makes the following orders;

i)The appeal is dismissed both on conviction and sentence and the court upholds the trial court decision.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 21ST DAY OF SEPTEMBER, 2020.

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C. KARIUKI

JUDGE