



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**CRIMINAL APPEAL NO.61 OF 2017**

**SAMUEL OCHIENG AUGO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from original conviction and sentence in Sexual Offences Act case No.8 of 2017 of the CM's court at Oyugis dated 05.12.2017 – Hon. J.S. Wesonga, SRM)*

**JUDGMENT**

1. The appellant, **SAMUEL OCHIENG AUGO**, appeared before the Senior Resident Magistrate at Oyugis facing a charge of defilement, contrary to **Section 8 (1)** as read with **Section 8 (4)** of the **Sexual Offences Act**, in that on the 4<sup>th</sup> May 2017 in Homa Bay County, he defiled **JMAA**, a child aged seventeen (17) years.

Alternatively, the appellant was charged with Indecent Act with a child contrary to **Section 11 (1)** of the **Sexual Offences Act**. It was alleged that he rubbed his male sexual organ against the girl's sexual organ.

2. After trial, the appellant was convicted on the main count and sentenced to fifteen (15) years imprisonment.

Being dissatisfied with the conviction and sentence, the appellant preferred this appeal on the basis of the grounds in his petition of appeal filed herein on 15<sup>th</sup> December 2017. He appeared in person at the hearing of the appeal and relied on his written submissions in support of his case.

3. The respondent was requested by the learned prosecution counsel, **MR. OLUOCH (S/ADPP)** who neither opposed nor supported the appeal and chose to leave the matter in the hands of the court whose duty was to reconsider the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

4. In that regard, this court re-visited the evidence by the prosecution through the complainant (PW1), her mother, **RAA (PW2)**, the arresting officer **CPL SHEM YOYA (PW3)**, the investigating officer, **PC JOSEPH ATIMO (PW4)** and the Clinical Officer, **DANIEL OUMA OYOO (PW5)**.

Also revisited was the appellant's evidence in defence. He indicated that he did not commit the offence as he was arrested on 5<sup>th</sup> May 2017 after being summoned to the chief's office where he was beaten senseless and placed in the cells before being taken to Pap Onditi, Nyando law court and eventually Oyugis Law Courts.

5. It was clear from the evidence that what presented itself as the main issue for determination was whether the complainant was indeed defiled and if so, whether the appellant was the person responsible for the offence.

The trial court's finding that the complainant was defiled by the appellant was based on the complainant's evidence as corroborated by that of the clinical officer (PW5) in relation to the act. This evidence was found to be credible.

On the aspect of identification of the offender, the trial court relied mostly on the complainant's evidence and that of her mother (PW2) and the arresting officer (PW3).

6. In the opinion of this court, the evidence by the complainant and the clinical officer (PW5) was sufficient and credible enough in establishing the material ingredients of the offence of defilement.

The complainant's age of seventeen (17) years was established by the production of the relevant birth certificate (**P. Exhibit 1**).

Basically, there was no dispute that the complainant was indeed defiled. The crucial issue for determination was whether the appellant was responsible for the offence.

7. The complainant's evidence clearly indicated that she was with the accused for a period of time prior to the actual date of the offence. She further indicated that her friend called Sheila took and probably introduced her to the accused who operated a video shop at Kabondo. The two girls appeared to have ran away from their homes and sought refuge in the accused's video shop.

8. **CPL. YOYA** (PW3), arrested the appellant when he found him with the complainant at his video shop. He (PW3) and the mother of the complainant (PW2) indicated that the appellant and complainant were found staying together as a married couple from what they heard from the appellant.

The foregoing evidence by the complainant, her mother and the arresting officer was also sufficient and credible enough in establishing that the appellant was the person who actually defiled the complainant and in discrediting his defence suggesting that he was arrested elsewhere and implicated for the offence without good cause.

9. In sum, the appellant's grounds of appeal and his submissions in support thereof are unsustainable in view of the very cogent and credible evidence adduced against him by the prosecution which proved the charge beyond reasonable doubt.

This appeal is therefore dismissed in its entirety.

**J.R. KARANJAH**

**JUDGE**

**28.02.2019**

**[Delivered and signed this 28<sup>th</sup> day of February, 2019]**